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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-22]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In a final rule issued in June 1990, the FAA adopted a 2-year limitations period that applies to civil penalty actions brought under the agency's general assessment authority. The rule provides for dismissal of a civil penalty action in which a notice of proposed civil penalty was issued more than two years after an alleged violation. The preamble to the rule made it clear that this limitations period applied to actions in which an alleged violation occurred on or after the effective date of the June 1990 final rule. This amendment clarifies the limitations period by expressly providing that the 2-year limitations period does not apply to actions alleging a violation that occurred before the effective date of the June 1990 final rule. This action will ensure that the rule accurately reflects the intended applicability of the limitations period to future civil penalty actions brought under the agency's general assessment authority.

EFFECTIVE DATE: August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Special Counsel to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3773.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of this final rule. Persons interested in being placed on the mailing list for future notices of proposed rulemaking also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

In a notice of proposed rulemaking (NPRM) issued on April 17, 1990, the FAA specifically solicited comment regarding an appropriate limitations period that would apply to civil penalty actions (1) not exceeding $50,000 for a violation of the Federal Aviation Act of 1958, or of any rule, regulation, or order issued thereunder; and, (2) regardless of amount, for a violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder. 55 FR 15134, 15135-15136; April 20, 1990. On June 27, 1990, the FAA issued a final rule revising the initiation procedures and the rules of practice for civil penalty actions, and adopted a 2-year limitations period that applies to civil penalty actions initiated under the agency's general assessment authority. 55 FR 27548; July 3, 1990.

Pursuant to the limitations period, the FAA is generally required to issue a notice of proposed civil penalty within two years from the date of an alleged violation in all cases initiated under its general assessment authority. The FAA inserted the limitations period in § 13.208(d) of the rules of practice so that it was clearly set forth in the rules. The FAA also amended § 13.209 of the rules so that it was clear that, instead of filing an answer to a complaint, a respondent may file a motion to dismiss allegations in a complaint or the entire complaint based on the limitations period in § 13.208. Also, as several commenters suggested in response to the NPRM, the FAA adopted a "good cause" standard that, on a case-by-case basis, enables an administrative law judge to excuse reasonable or justified delay in the agency's notification to a respondent.

In the preamble to the final rule, the FAA explained that the limitations period applies only prospectively.

> Finally, the limitations period provided in § 13.208(d) applies only to those violations alleged to have occurred on or after the effective date of this final rule. The adoption of this time limit should not serve as a defense to (1) respondents who have already received a notice of proposed civil penalty for violations alleged to have occurred more than two years before issuance of the notice; or (2) those respondents who may receive a notice in the future, unless the violation is alleged to have occurred *on or after the effective date of this rule* and more than two years passed before the issuance of a notice of proposed civil penalty. [Emphasis added.]

55 FR at 27556-27557; July 20, 1990. Although the preamble to the final rule clearly stated the prospective applicability of the limitations period, § 13.208(d) as adopted in June 1990 did not so expressly state. Although the intent of the applicability of limitations period was evident from the preamble to the rule that established it, the FAA is amending § 13.208(d) so that it clearly states that allegations contained in a complaint must have occurred on or after August 2, 1990. The 2-year limitations period does not apply to actions alleging a violation that occurred before the effective date of the June 1990 final rule. Those actions continue to be subject to the general 5-year statute of limitations for proceedings for the enforcement of any civil fine or penalty. 28 U.S.C. 2462.

This amendment is intended to avoid needless confusion or unnecessary argument about the applicability of the limitations period so that future civil penalty proceedings will not be unduly delayed. This minor clarification does not alter the ability of a respondent to submit the motion to dismiss, based on a failure by the FAA to issue a notice of proposed civil penalty in a timely manner, that was provided in the rule as adopted in June 1990. *See* § 13.208(d). However, to the extent the clarification eliminates confusion regarding the applicability of this section, the amendment will promote consistent implementation of the rules of practice.

Effective Date of the Final Rule

This action is a minor clarification of a final rule issued on June 27, 1990, to

coincide with the effective date of that rule on August 2, 1990. This amendment will convey more accurately the agency's intent, as expressed in the preamble to the June 1990 final rule, and will not place any new restriction or requirement on persons or entities involved in a civil penalty action. The FAA specifically solicited comment on the issue of an appropriate limitation period, and the applicability of any period adopted by the agency, in an NPRM issued in April 1990. Because this amendment is a minor technical amendment, because public comment was solicited on the subject of the amendment in an NPRM, and because an additional period for comment would unduly delay the adoption and implementation of this clarifying rule, the FAA finds that further notice and opportunity for public comment under the Administrative Procedure Act (5 U.S.C. 553(d)) are unnecessary.

It is important that this clarifying amendment be effective at the same time that the civil penalty initiation procedures and the general rules of practice become effective, on August 2, 1990, to avoid public misunderstanding of procedural requirements. The FAA believes that adoption of this clarifying amendment on August 2, 1990 will ensure consistent interpretation of the applicability of the final rule and will conserve the resources of the parties and the adjudicators in civil penalty actions initiated pursuant to the agency's assessment authority. Accordingly, the FAA finds that good cause exists for making this amendment effective less than 30 days after publication in the **Federal Register**.

Conclusion

For the reasons stated above, the FAA has determined that this final rule is not a major action under the criteria of Executive Order 12291 and is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The FAA also has determined that this action does not warrant further preparation of a regulatory evaluation, particularly because the action will have no impact on, or economic consequences to, persons or entities involved in civil penalty actions initiated pursuant to the agency's general assessment authority.

For the same reasons, the FAA certifies that the clarifying amendment adopted herein will not have a significant economic impact, positive or negative, on a substantial number of small entities, as those terms are defined in the Regulatory Flexibility Act of 1980. There also will be no impact on trade opportunities for U.S. firms operating outside the United States or foreign firms operating within the United States. Moreover, this amendment will not have substantial direct effects on the States, 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, the FAA has determined that this amendment does not have sufficient Federalism implication to warrant preparation of a Federalism assessment.

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Amendment

Accordingly, the FAA amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1481–1489, 1523 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1471(a)(3) (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 U.S.C. App. 1475 (Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act, as revised, 49 U.S.C. 106(g)); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987)); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR § 1.47 (f), (k), and (g) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.208 is amended by revising paragraph (d) to read as follows:

§ 13.208 Complaint.

* * * * *

(d) *Motion to dismiss allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

* * * * *

Issued in Washington, DC on July 27, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–17895 Filed 7–27–90; 1:46 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 787 and 788

[Docket No. 900659–0159]

RIN 0694–A096

Export Enforcement and Administrative Proceedings

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends parts 787 and 788 of the Export Administration Regulations (15 CFR part 730–799). Section 787.5—which prohibits the misrepresentation of facts to, or the concealment of facts from, various U.S. Government agencies—is amended by inserting a general reference to the Bureau of Export Administration (BXA), in paragraphs (a)(1) through (a)(3), to replace specific references to certain component offices within BXA. This change will ensure that all offices within BXA are covered by § 787.5.

Part 788 (Administrative Proceedings) is amended by making nomenclature changes consistent with a final rule published on March 30, 1989 (54 FR 13054). The nomenclature changes made on March 30, 1989, were based on the transfer of the export control functions from the International Trade Administration to the newly created Bureau of Export Administration. Several nomenclature changes that should have been made in part 788 were not made at that time. This final rule makes these nomenclature changes to part 788 and also amends certain statutory references in part 788 to make them conform with other provisions in the Regulations.

EFFECTIVE DATE: This rule is effective August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Daniel C. Hurley, Jr., Office of the Chief Counsel for Export Administration, Telephone: (202) 377–5305.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not contain a collection of information subject to the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is being issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Daniel C. Hurley, Jr., Attorney-Advisor, Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, room H-3839, Washington, DC 20230.

List of Subjects

15 CFR Part 787

Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

15 CFR Part 788

Administrative practice and procedure, Boycotts, Exports, Penalties.

Accordingly, parts 787 and 788 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 787—[AMENDED]

1. The authority citation for part 787 continues to read as follows:

Authority: Pub. L. 96–72 of September 29, 1979, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, 95 Stat. 7127, by Pub. L. 99–64 of July 12, 1985, 99 Stat. 120, and by Pub. L. 100–418 of August 23, 1988, 102 Stat. 1107; E.O. 12525 (13 CFR 377 (1986)); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*): and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 787.5 is amended by revising the introductory text of paragraph (a)(1), by revising the first sentence of paragraph (a)(2), and by revising the second sentence of paragraph (a)(3), as follows:

§ 787.5 Misrepresentation and Concealment of Facts; Evasion.

(a)(1) *Misrepresentation and Concealment.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

* * * * *

(2) *Scope.* Paragraph (a)(1) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Bureau of Export Administration and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes. * * *

(3) * * * Every person who has made any representation, statement, or certification must notify, in writing, the Bureau of Export Administration, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. * * *

* * * * *

PART 788—[AMENDED]

3. The authority citation for part 788 continues to read as follows:

Authority: Pub. L. 96–72 of September 29, 1979, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, 95 Stat. 7127, by Pub. L. 99–64 of July 12, 1985, 99 Stat. 120, and by Pub. L. 100–418 of August 23, 1988, 102 Stat. 1107; E.O. 12525 (13 CFR part 377) (1986)); E.O. 12214 (3 CFR part 256 (1981)), and E.O. 12002 (3 CFR part 133 (1978)).

§ 788.1 [Amended]

4. Section 788.1 is amended by inserting the phrase "the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107)," immediately following the words "Export Administration Amendments Act of 1985 (Pub. L. 99–64, 99 Stat. 120) (Act)," in the first sentence.

5. The phrases "Assistant Secretary" and "Assistant Secretary's" are revised to read "Under Secretary" and "Under Secretary's", respectively, in the following places:

Sec.
788.1
788.16 (c) and (e)
788.19 (e)(4) and (e)(5) [two references]

§ 788.3 [Amended]

6. In § 788.3, footnote No. 2 to paragraph (a)(1) is revised by inserting the phrase "the Export Administration Act, the International Emergency Economic Powers Act," immediately following the words "to a person convicted of a violation of".

7. The phrase "Assistant General Counsel" is revised to read "Chief Counsel" in the following places:

Sec.
788.5
788.6(b)

§ 788.6 [Amended]

8. In § 788.6(b), the phrase "Room H-3845" is revised to read "Room H-3839".

§ 788.16 [Amended]

9. In § 788.16(b)(2), the phrase "Assistant Secretary of Commerce for Trade Administration ('Assistant Secretary')" is revised to read "Under Secretary of Commerce for Export Administration ('Under Secretary')".

Dated: July 26, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-17854 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-90-1371; FR-2208-I-03]

RIN 2577-AA32

Indian Housing; Revised Consolidated Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule; extension of comment period.

SUMMARY: This document extends by 60 days the period for receiving public comments on the Interim Rule published on June 18, 1990, entitled Indian Housing: Revised Consolidated Program Regulations. The Department has decided that the complexity and length of this rule makes it appropriate to provide an extended comment period.

DATES: Comments due by October 16, 1990.

ADDRESSES: Interested persons may submit comments regarding the rule published at 55 FR 24722 (June 18, 1990) to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708-1015 (voice) or (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department has decided that the complexity and length of this rule makes it appropriate to provide an extended comment period. A number of interested Indian groups have participated in a conference during the month of July that has considered the various provisions of the interim rule. To assure that these and other interested parties will have sufficient opportunity to develop their thoughts on the issues raised and to submit written comments, the Department is extending the period for public comments by 60 days, until October 16, 1990. This extension of the comment period does not affect the October 1, 1990 date for the interim rule to take effect.

Comments received by October 16, 1990 will be considered in the development of a final rule.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 1990.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 90-17850 Filed 7-31-90; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: To improve enforcement of existing restrictions on transactions in Vietnam, this rule revises the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), by establishing restrictions on the amount of currency that travelers to countries designated by that Part (Vietnam, Cambodia, and North Korea) may carry with them for transactions subject to the Regulations. This rule also make various clarifying and technical amendments.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Section 500.563 of the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), currently authorizes transactions by individuals ordinarily incident to their own travel in Vietnam, Cambodia, and North Korea (the "designated foreign countries"), including payment for living expenses and goods personally consumed there. This rule amends the Regulations to establish a per diem of $100 for such travel and maintenance expenses. Individuals carrying currency from the United States to the designated foreign countries may be required to justify possession of funds in excess of amounts authorized for per diem expenses. Other authorized purposes for which funds may be carried to a designated foreign country include $100 for items to be purchased there for U.S. importation as accompanied baggage, pursuant to § 500.563(a)(3), and, for Vietnam and Cambodia only, remittances for the support or emigration of close relatives resident in Vietnam to the extent authorized by § 500.565 of the Regulations (for support, $300 per donor per recipient household in any three-month period; for emigration, a one-time payment of $750 per donor per recipient individual). Persons wishing to carry additional currency for transactions in a designated foreign country which are subject to the Regulations must obtain a specific license from the Office of Foreign Assets Control. Funds may also be carried for transactions not subject to the Regulations, including transactions incident to the importation or exportation of publications and other informational materials, and amounts intended for use in third countries.

This rule also revises § 500.566 of the Regulations, which previously restricted reimbursement for transactions by or on behalf of designated nationals traveling to the United States to travel costs incurred from points outside a designated country. The revised provision allows transactions incident to travel on behalf of designated nationals directly from a designated country to the United States, provided that such reimbursement is limited to transport costs incurred aboard a third-country carrier. Finally, this rule makes explicit the longstanding interpretation of the Office of Foreign Assets Control that the term "property," defined in § 500.311, includes services, and makes other minor technical and clarifying amendments.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Cambodia, Currency, North Korea, Travel and transportation expense, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended: E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart C—General Definitions

§ 500.311 [Amended]

2. Section 500.311 is amended by adding the word "services," after the phrase "contracts of any nature whatsoever,".

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 500.563 [Amended]

3. Section 500.563(a)(2) is amended by adding the words ", provided the total for such expenses does not exceed $100 per day unless otherwise specifically licensed pursuant to the procedures contained in § 500.801" before the period at the end of that paragraph.

§ 500.566 [Amended]

4. Section 500.566(a)(1) is amended by removing the words "points outside of" after the words "United States and", and by adding the words "aboard a third-country carrier, *i.e.*, a carrier that is neither owned, controlled, nor chartered by: (i) Vietnam, Cambodia, North Korea, or Cuba, or a national thereof, (ii) the Government of Libya or Iran, or (iii) a person subject to the jurisdiction of the United States," immediately after the word "(Cambodia)".

§ 500.569 [Amended]

5. In the first sentence of § 500.569, the reference to "§ 500.563(d)(2)" is revised to read "§ 500.563(c)(2)".

Dated: July 13, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 19, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-17867 Filed 7-27-90; 1:55 pm]

BILLING CODE 4810-25-M

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31 CFR Part 515

Removal From List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of removal from the list of Specially Designated Nationals (Cuba).

SUMMARY: This notice removes CITA (Centro Industrial de Tabaqueros Asociados), S.A., Canary Islands, and Victor Azrak, Calpar de Panama, S.A., Pan Canal Shipping Company, and Televisora Nacional Canal 2, all of Panama, from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR part 515). These companies come within the scope of the definition of a specially designated national.

EFFECTIVE DATE: August 1, 1990.

ADDRESSES: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 15th and Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control. Tel: (202) 566-5021.

SUPPLEMENTARY INFORMATION: Pursuant to the Cuban Assets Control Regulations (31 CFR part 515), CITA (Centro Industrial Tabaqueros Asociados), S.A., Canary Islands was listed in the **Federal Register** on November 29, 1989 (54 FR 49258). Victor Azrak was listed on December 10, 1986 (51 FR 44459). Calpar de Panama, S.A., Pan Canal Shipping Company, and Televisora Nacional Canal 2, all of Panama, were listed on October 31, 1989 (54 FR 45730). It has been determined that these no longer come within the scope of the definition of a "specially designated national" as defined in § 515.306 of the Regulations; and, therefore, they are removed from the list of Specially Designated Nationals.

Specially Designated Nationals of Cuba, Removals

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), March 7, 1989 (54 FR 9431), April 10, 1989 (54 FR 32064), September 20, 1989 (54 FR 38810), October 31, 1989 (54 FR 45730), November 29, 1989 (54 FR 49258), January 26, 1990 (55 FR 2644), April 2, 1990 (55 FR 12172) and June 18, 1990 (55 FR 24556), is amended by removing the names:

Azrak, Victor, Panama
Calpar de Panama, S.A., Panama
CITA, Canary Islands
Pan Canal Shipping Company, Panama
Televisora Nacional Canal 2, Panama.

Dated: July 12, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 18, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-17866 Filed 7-27-90; 2:36 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage of Physician Assistant Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends DoD 6010.8-R (32 CFR part 199) which implements the CHAMPUS, providing coverage of physician assistant (PA) services performed under supervision and billed by employing physicians. This amendment provides authority for the payment of these services at appropriate rates below that of employing physicians, thereby enhancing the accuracy of payment as well as improving beneficiary access to health care.

EFFECTIVE DATE: July 1, 1990, for services rendered on and after that date.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Sevices (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph C. Rhea, Office of Program Development, OCHAMPUS, telephone (303) 361-3278.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

On January 31, 1990, we published the proposed rule providing for coverage of PA services. This final rule takes into consideration comments received from interested parties during the comment and coordination period.

II. Discussion of Comments

We received comments from a number of state physician assistant associations, in addition to a national association, supporting the proposed rule. We also received comments from some individual physician assistants. Nearly all of the commenters recommended a technical correction to

the description of authorized physician assistants to include those who received their education and training prior to the approval requirement for current PA education programs. This recommended change is in keeping with the original intent, and has been adopted in the final rule.

One commenter proposed that physician assistants be reimbursed for their services at the same rate as physicians, citing physician supervision as a primary reason along with the team relationship of the assistant-at-surgery. Upon review, we have concluded that the reimbursement rates utilized by Medicare and other third party payers are reasonable. Accordingly, no change has been made to the final rule.

The proposed rule publication inadvertently omitted the reimbursement rate for the assistant-at-surgery and a statement that PA services are reimbursed only when billed by the employing physician. These statements are included in the final rule.

All other comments received supported the proposed rule without further comment.

III. Regulatory Impact

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub.L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 805(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub.L. 96–354), that this regulation will not have a significant impact on a substantial number of small businesses, organizations or government juridictions.

This final rule enhances the scope of coverage of health care provider services for medically necessary care rendered to CHAMPUS beneficiaries by including the services of physician assistants when under the general supervision of and billed by a physician. No additional requirements are placed on physician practices since the procedures followed are those recommended by the concerned medical professional organizations.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.6 is amended by redesignating paragraph (c)(3)(iii)(H) as (c)(3)(iii)(I), and adding new paragraph (c)(3)(iii)(H) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(H) *Certified physician assistant.* A physician assistant may provide care under general supervision of a physician (see § 199.14(g)(1)(iii) of this Part for limitations on reimbursement). For purposes of CHAMPUS, a physician assistant must meet the applicable state requirements governing the qualifications of physician assistants and at least one of the following conditions:

(*1*) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians, or

(*2*) Has satisfactorily completed a program for preparing physician assistants that:

(*i*) Was at least 1 academic year in length;

(*ii*) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(*iii*) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(*3*) Has satisfactorily completed a formal educational program for preparing program physician assistants that does not meet the requirement of paragraph (c)(3)(iii)(H)(*2*) of this section and had been assisting primary care physicians for a minimum of 12 months during the 18-month period immediately preceding January 1, 1987.

* * * * *

3. Section 199.14 is amended by adding paragraph (g)(1)(iii) as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(g) * * *

(1) * * *

(iii) The allowable charge for physician assistant services other than assistant-at-surgery may not exceed 85 percent of the allowable charge for a comparable service rendered by a physician performing the service in a similar location. For cases in which the physician assistant and the physician perform component services of a procedure other than assistant-at-surgery (e.g., home, office or hospital visit), the combined allowable charge for the procedure may not exceed the allowable charge for the procedure rendered by a physician alone. The allowable charge for physician assistant services performed as as an assistant-at-surgery may not exceed 65 percent of the allowable charge for a physician serving as an assistant surgeon when authorized as CHAMPUS benefits in accordance with the provisions of § 199.4(c)(3)(iii) of this Part. Physician assistant services must be billed through the employing physician who must be an authorized CHAMPUS provider.

* * * * *

Dated: July 24, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Officer, Department of Defense.

[FR Doc. 90–17602 Filed 7–31–90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AE08

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehibilitation and Education Service, Veterans Benefits Administration,

Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 42961 and 42962 of the **Federal Register** of October 19, 1989, there was published notice of intent to amend part 21, 38 CFR, to provide an increase in benefits payable under the Educational Assistance Test Program. Interested people were given 32 days to submit comments, suggestions or objections. The Department of Veterans Affairs (VA) and the Department of Defense received no comments, suggestions or objections. Accordingly, we are making the regulations final.

The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to the based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6 percent. These regulations adjust 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1753, and monthly payment of subsistence allowance for full-time students of $437.

VA and Department of Defense are making the increases effective October 1, 1988. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1988. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

VA and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Educations, Grant programs-education, Loan programs-education. Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 30, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 27, 1990.

Donald W. Jones,

Lieutenant General, U.S. Army, Deputy Assistant Secretary of Defense, (Military Manpower & Personnel Policy).

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), (b)(1)(ii) (A) and (B), and (b)(2)(ii) (A) and (B) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of education assistance.* The amount of educational assistance may not exceed $1753 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $194.78 for a full-time student or by $97.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.49 for a full-time student or by $3.25 for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $194.78 for a full-time student or by $97.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.79 for a full-time student or by $3.25 for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

2. In § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $437 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $218.50 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $437 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $218.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

[FR Doc. 90-17935 Filed 7-31-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 8F3622 and FAP 0H5597/R1066; FRL-3714-9]

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: These regulations establish interim tolerances for residues of the herbicide clopyralid on the raw agricultural commodities (RACs) field corn grain at 0.2 part per million (ppm), field corn forage at 1.0 ppm, field corn fodder at 5.0 ppm and in the food/feed commodity field corn milling fractions at 0.6 ppm. These regulations were requested by Dow Chemical U.S.A. and establish maximum permissible levels for residues of the herbicide in or on these RACs and the food and feed commodities. The interim tolerances expire June 15, 1991.

DATES: These regulations become effective August 1, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP8F3622 and FAP 0H5597/R1066], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1988 (53 FR 18897), EPA issued a notice which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposed amending 40 CFR 180.431 by establishing a regulation to permit the residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on field corn grain at 0.2 ppm, field corn green forage/silage at 0.8 ppm, and field corn fodder at 4.0 ppm. EPA issued a notice of a revised Section F for PP 8F3622 in the **Federal Register** of April 18, 1990 (55 FR 14466), proposing to amend 40 CFR 180.431 by establishing tolerances of the herbicide clopyralid as follows: 0.2 ppm in or on corn, field, grain; 1.0 ppm in or on corn, field, green forage/silage; 5.0 ppm in or on corn, field, fodder. In the same issue of the **Federal Register**, EPA also issued notice of a food/feed additive petition (FAP 0H5597) proposing to amend 40 CFR 185.1100 and 186.1100 by establishing regulations to permit the residues of the herbicide clopyralid in or on field corn milling fractions at 0.6 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD_{50}) with an LD_{50} of 4,300 milligrams/kilogram (mg/kg) of body weight.
3. A 13-week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.
4. Two 180-day dog feeding studies with a NOEL > 50 mg/kg/day.
5. A rabbit teratology study with a developmental and a maternal NOEL of > 250 mg/kg/day, highest dose tested (HDT).
6. A rat teratology study with a developmental NOEL of > 250 mg/kg/day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.
7. A two-generation rat reproduction study with a reproductive NOEL of > 1,500 mg/kg/day and a systemic NOEL of 500 mg/kg/day.
8. A 1-year dog feeding study with a NOEL of 100 mg/kg/day.
9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no oncogenic potential observed under the conditions of the study at doses up to and including 150 mg/kg/day (HDT). A significant decrease in mean body weights of females occurred at 150 mg/kg/day.
10. A repeat 2-year rat chronic feeding/oncogenicity study with a systemic NOEL of 15 mg/kg/day and with no oncogenic potential observed under conditions of the study up to 1,500 mg/kg/day (HDT). Hyperplasia and thickening of the limiting ridge of the stomach occurred at 150 mg/kg/day.
11. Three 2-year mouse oncogenicity studies with no oncogenic potential observed under the conditions of the study up to and including 2,000 mg/kg/day (HDT) and a systemic NOEL of 500 mg/kg/day.
12. A dominant lethal assay, negative.
13. *In vivo* rat cytogenic study, negative.
14. *In vitro Salmonella* and *Saccharomyces* assay, negative.
15. An *in vivo* mouse host-mediated assay, negative.
16. An unscheduled DNA synthesis assay in rats, negative.

Based on a NOEL of 50 mg/kg/day in a 2-year chronic feeding/oncogenicity study in the rat and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.5 mg/kg/day. The existing tolerance and the tolerances established by this final rule have a theoretical maximum residue contribution of 0.008053 mg/kg/day and would utilize 1.6 percent of the ADI.

These tolerances are being established as interim tolerances because the Agency does not have adequate data from a rat metabolism study which is due on January 1, 1991, and the following studies with the technical product that are due within 1 year from the date of the establishment of these tolerances: (1) A 21-day dermal study in rabbits and (2) a mutagenicity study testing other genotoxic effects. When the Agency receives these data it will reassess these tolerances for residues in or on corn and corn products. The use on corn will result in measurable residues in feed commodities; however, the Agency does not believe that these tolerances pose significant risks.

There are no regulatory actions pending against the registration of clopyralid. The metabolism of clopyralid in plants is adequately understood for purposes of the tolerances set forth below. The metabolism of clopyralid in animals is partially understood. An analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

Calvin Furlow, Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-557-4432.

Established tolerances are adequate to cover residues that would result in meat, milk, poultry, and eggs. The Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify

the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-54, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.431 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(b) Interim tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following raw agricultural commodities:

Commodities	Parts per million	Expiration date
Field corn, grain	0.2	June 15, 1991
Field corn, fodder	5.0	June 15, 1991
Field corn, forage	1.0	June 15, 1991

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1100, by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 185.1100 Clopyralid.

* * * * *

(b) An interim tolerance is established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following foods:

Foods	Parts per million	Expiration date
Field corn, milling fractions	0.6	June 15, 1991

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1100, by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 186.1100 Clopyralid.

* * * * *

(b) An interim tolerance is established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following feeds:

Feeds	Parts per million	Expiration date
Field corn, milling fractions	0.6	June 15, 1991

[FR Doc. 90-17737 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9E3790/R1083; FRL-3766-7]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the fungicide iprodione, its isomer, and its metabolite in or on the raw agricultural commodity Chinese mustard. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective August 1, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9E3790/R1083], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 9, 1990 (55 FR 19279), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3790 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Florida.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the raw agricultural commodity Chinese mustard at 15.0 parts per million (ppm). The petition proposed that this use of iprodione be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader

registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1990

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.399, by adding new paragraph (c), to read as follows:

§ 180.399 Iprodione; tolerance for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on the following raw agricultural commodity:

Commodity	Parts per million
Chinese mustard	15.0

[FR Doc. 90-17788 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 8E3677, 9E3716, 9E3718, 9E3753, 9E3779/R1082; FRL-3766-6]

Pesticide Tolerances for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide oxyfluorfen and its metabolites in or on the raw agricultural commodities papaya, taro (corms and leaves), persimmons, horseradish, and feijoa. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective August 1, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 8E3677, 9E3716, 9E3718, 9E3753, 9E3779/R1082], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 9, 1990 (55 FR 19277), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 8E3677, 9E3716, 9E3718, 9E3753, and 9E3779 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage at 0.05 ppm in or on certain raw agricultural commodities as follows:

1. *PP 8E3677.* Petition submitted on behalf of the Hawaii Agricultural Experiment Station proposing a tolerance for papaya.

2. *PP 9E3716.* Petition submitted on behalf of the Hawaii Agricultural Experiment Station proposing a tolerance for taro (corms and leaves).

3. *PP 9E3718.* Petition submitted on behalf of the Agricultural Experiment Stations of California, Florida, and Hawaii proposing a tolerance for persimmon.

4. *PP 9E3753.* Petition submitted on behalf of the Agricultural Experiment Stations of Illinois, Maryland, and Wisconsin proposing a tolerance for horseradish.

5. *PP 9E3779.* Petition submitted on behalf of the Agricultural Experiment Station of California proposing a tolerance for feijoa.

The petitioner proposed that use on the commodities papaya and taro (corms and leaves) be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1990.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.381, paragraphs (a) and (b) are amended as follows: By adding and alphabetically inserting the raw agricultural commodities feijoa, horseradish, and persimmons in paragraph (a); by adding and alphabetically inserting the raw agricultural commodities papaya and taro (corms and leaves) in paragraph (b), to read as follows:

§ 180.381 Oxyfluorfen; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Feijoa	0.05
* * * * *	
Horseradish	0.05
* * * * *	
Persimmons	0.05
* * * * *	

(b) * * *

Commodities	Parts per million
* * * * *	
Papaya	0.05
Taro (corms and leaves)	0.05

[FR Doc. 90-17791 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 411

[BPD-327-CN]

RIN 0938-AC07

Medicare Program; Medicare Coverage of Hepatitis B Vaccine for High and Intermediate Risk Individuals, Hemophilia Clotting Factors and Certain X-ray Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors to the final rule regarding Medicare coverage for hepatitus B vaccine published in the June 4, 1990 issue of the **Federal Register** (FR Doc. 90-12845), 55 FR 22785.

EFFECTIVE DATE: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: David Higbee, (301) 966-4636.

SUPPLEMENTARY INFORMATION: In the final rule that was published on June 4, 1990 (55 FR 22785), we inadvertently failed to reflect a redesignation that was published on October 11, 1989 (54 FR 41733).

Specifically, we failed to note that 42 CFR 405.310 was redesignated as § 411.15. Therefore, we are making this change and other technical corrections to the June 4, 1990 document.

1. On page 22785, the document heading reading "42 CFR Parts 405 and 410" is corrected to read "42 CFR Parts 410 and 411".

2. On page 22786, in the third column in the 17th line from the top, the phrase "amend § 410.63(b)" is corrected to read "add a new § 410.63(b)."

3. On page 22788, in the third column, in the fourth and fifth lines from the bottom, the phrase "§§ 405.310(e) and (k)(4)" is corrected to read "§ 411.15(e), and adding a new § 411.15(k)(5)".

4. On page 22789, in the first column, in the 26th line from the top, add the following additional text at the end of the existing sentence, "For purposes of consistency, we are also amending the title of this section from that which was in the proposed rule."

5. On page 22789, in the third column, under "List of Subjects", the listing for part 405 is corrected to read as follows:

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

6. On page 22789, in the third column, the 27th line from the top, the amendatory language for "42 CFR part 405, subpart C" is corrected to read "42 CFR part 411, subpart A".

7. On page 22789, in the third column, the 29th through 34th lines from the top, the Part and Subpart titles are corrected to read:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

Subpart A—General Exclusions and Exclusion of Particular Services

8. On page 22789, in the third column, the 35th line from the top, the amendatory language for "subpart C" is corrected to read "subpart A".

9. On page 22789, in the third column, the authority citation is corrected to read "**Authority:** Secs. 1102, 1862, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1395hh)."

10. On page 22789, in the third column, in the amendatory language for § 405.310, the references to "405.310" and "paragraph (k)(4)" are corrected to read "§ 411.15" and "paragraph (k)(5)", respectively.

§ 405.310 [Corrected]

11. On page 22789, in the third column, the 47th line from the top, "§ 405.310" is corrected to read "411.15".

12. On page 22790, in the first column, the 19th line from the top, "(4)" is corrected to read "(5)".

13. On page 22790, in the first column, in the Table of Contents for part 410, subpart B, the title of § 410.63 is corrected to read "Hepatitis B vaccine and blood clotting factors: Conditions."

14. On page 22790, in the second column, the next to last line from the bottom, "6." is corrected to read "5."

§ 410.63 [Corrected]

15. On page 22790, in the third column, in the first and second lines, the title of § 410.63 is corrected to read "Hepatitis B vaccine and blood clotting factors: Conditions."

(Catalog of Federal Domestic Assistance Program No. 13773, Medicare-Hosptial Insurance)

Dated: July 23, 1990.

Neil J. Stillman,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90-17818 Filed 7-31-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-365; RM-6811]

Radio Broadcasting Services; Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gillbro Communications Limited Partnership, substitutes Channel 224C3 for Channel 224A at Ottumwa, Iowa, and modifies its license for Station KTWA to specify operation on the higher powered channel. Channel 224C3 can be allotted to Ottumwa in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) northwest to avoid a short-spacing to the pending application of Station KGRC, Hannibal, Missouri, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 41-05-00 and West Longitude 92-27-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-365, adopted July 20, 1990, and released July 27, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Iowa, is amended by removing Channel 224A and adding Channel 224C3 at Ottumwa.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17914 Filed 7-31-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-368; RM-6809]

Radio Broadcasting Services; Greenwood, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C3 for Channel 282A at Greenwood, Mississippi, in response to a petition filed by Team Broadcasting Co., Inc. See 54 FR 37136, September 7, 1989. It also modifies the construction permit for Station WGNL to specify operation on Channel 282C3. The coordinates for Channel 282C3 are 33-35-48 and 90-15-50.

EFFECTIVE DATE: September 10, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-368, adopted July 19, 1990, and released July 27, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Mississippi by removing Channel 282A and adding Channel 282C3 at Greenwood.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17915 Filed 7-31-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-475; RM-6925]

Radio Broadcasting Services; Mount Vernon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 294C3 for Channel 294A at Mount Vernon, Missouri, in response to a petition filed by Linda Adams, d/b/a Missouri FM. *See* 54 FR 47372, November 14, 1989. It also modifies the construction permit for Channel 294A to specify operation on Channel 294C3. This allotment can be made in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site, 18.6 kilometers (11.5 miles) east of Mount Vernon. The coordinates for Channel 294C3 are 37-09-16 and 93-36-58.

EFFECTIVE DATE: September 10, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the commission's Report and Order, MM Docket No. 89-475, adopted July 19, 1990, and released July 27, 1990. The full text of this Commission decision is available for inspection and coyping during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 294A and adding Channel 294C3 at Mount Vernon.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17916 Filed 7-31-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 91160-0003]

Foreign Fishing, Pacific Coast Groundfish Fishery

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

ACTION: Notice of final reapportionment.

SUMMARY: The Secretary of Commerce is supplementing the amount of Pacific whiting available for joint venture processing in 1990 by 10,000 metric tons, an amount surplus to domestic processing needs in Washington, Oregon, and California. This is based on the results of an inseason survey reassessing the needs of the domestic fishing industry. This action is intended to promote full utilization of the Pacific whiting resource and to provide for the needs of the domestic processing industry before making surplus amounts available to joint venture operations, as required by the Magnuson Fishery Conservation and Management Act.

EFFECTIVE DATES: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: William L. Robinson or Katherine A. King, 206-526-6140.

SUPPLEMENTARY INFORMATION: Under the implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and part 663, the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY) and the amounts of the OY that are available for domestic annual processing (DAP), joint venture processing (JVP), domestic annual harvest (DAH, which equals DAP + JVP), and the total allowable level of foreign fishing (TALFF).

A survey of domestic processors, joint venture operators, and fishermen's trade associations was conducted in September of 1989 to determine domestic fishing and processing needs for 1990, as required by the regulations at 50 CFR 663.24. The survey results indicated that the 196,000 metric ton (mt) OY quota for Pacific whiting should be apportioned 35,000 mt for DAP and the remaining 161,000 mt for JVP. These annual specifications were published in the **Federal Register** at 55 FR 1036 (January 11, 1990).

The regulations also provide for adjusting these specifications during the fishing year if necessary to accommodate changes in the resource or the needs of the domestic industry. During the fishing year, near July 1, the annual specifications are reassessed by a telephone survey of the domestic fishing and processing industry, according to the regulations at 50 CFR 611.70(d), to determine whether there is any change in the domestic intent and capacity to harvest and process these species. Past and projected domestic catch, effort, and processing performance are taken into account. As a result of the reassessment, surplus DAP may be reapportioned to JVP.

NMFS conducted the inseason survey of domestic processing needs on June 6-22, 1990. NMFS has concluded, based on the inseason survey, that domestic processors will not utilize the entire 35,000 mt DAP and that 25,000 mt (a reduction of 10,000 mt) would accommodate all of the domestic processing needs in 1990. The survey also indicated interest in additional Pacific whiting by joint venture companies that operated in the fishery until it was closed on June 20, 1990, after taking its initial quota. Consequently, the Secretary published a notice in the **Federal Register** on July 10, 1990 (55 FR 28247) proposing to increase the JVP for Pacific whiting from 161,000 mt to 171,000 mt by reapportioning 10,000 mt of surplus DAP to JVP.

The Secretary consulted with the Pacific Fishery Management Council at its July 11-12, 1990, meeting in Portland, Oregon, and considered testimony received at that meeting before making a final determination to reapportion 10,000 mt from DAP to JVP.

Secretarial Action

After consultation with the Council and considering past and projected U.S. catch, effort, and processing performance, the Secretary modifies the specifications for Pacific whiting in 1990 (in thousands of metric tons) as published in Table 2 of the **Federal Register** (55 FR 1038, January 11, 1990) as follows:

	Total OY	DAP	JVP	DAH	TALFF
Current specification	196.0	35.0	161.0	196.0	0.0
Change	0.0	−10.0	+10.0	0.0	0.0
Revised specification	196.0	25.0	171.0	196.0	0.0

Classification

The reassessment of the needs of the domestic industry and the reapportionment of surplus DAP to the JVP for Pacific whiting are based upon the most recent data available. One comment on the timing of the reopening was received during the public comment period which ended July 25, 1990. This action is taken under the authority of 50 CFR 611.70(d), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations. The action contains no additional collection of information requirement for purposes of the Paperwork Reduction Act. The regulations at 50 CFR 663.23(c) state that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register** unless the Secretary finds and publishes with the notice good cause for an earlier effective date. The Secretary finds good cause to waive the 30-day delay in effectiveness for the following reasons:

(1) The foreign processing vessels that are expected to operate in this reopening are ready to receive Pacific whiting now and will not be available later in the year; (2) Pacific whiting migrates north and disperses, becoming less available in U.S. waters after September; and (3) the regulations at 50 CFR 611.70(d) provide that the reapportionment will be made near August 1, 1990. Therefore, this action becomes effective August 1, 1990.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries.

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

Dated: July 26, 1990.

Joe P. Clem,

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

[FR Doc. 90-17909 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 900656-0196]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce changes the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice (1) for Atlantic migratory groups of king and Spanish mackerel, decreases the TAC and allocations; (2) for the Gulf migratory group of Spanish mackerel, decreases the bag limit in the exclusive economic zone (EEZ) off Texas; and (3) effective January 1, 1991, for Gulf and Atlantic migratory groups of Spanish mackerel, increases the bag limits in the EEZ off Florida. The intended effects are to protect the mackerels from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

EFFECTIVE DATE: August 1, 1990, except that revised § 642.28(a)(1)(iii)(B) and (a)(5)(ii) and new § 642.28(a)(1)(iii)(C) are effective August 20, 1990, and revised § 642.28(a)(1)(iii)(A) and (a)(1)(iv)(A) are effective January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NOAA published a proposed rule containing changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel (55 FR 25986, June 26, 1990). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final rule are the same as those in the proposed rule. No comments were received on the proposed rule.

The Regional Director concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. In addition, they are consistent with the Magnuson Act and other applicable law. Accordingly, the Councils' recommended changes are implemented.

A final rule implementing Amendment 5 to the FMP was published on July 19, 1990 (55 FR 29370). In that rule, the commencement date of the fishing year for Gulf migratory group Spanish mackerel is changed from July 1 to April 1. Accordingly, the TAC and allocations contained in this rule for Gulf migratory group Spanish mackerel, as well as for the Atlantic migratory groups of king and Spanish mackerel, are effective for the fishing year that commenced on April 1, 1990. The TAC and allocations for the Gulf migratory group of king mackerel are effective for the fishing year that commenced on July 1, 1990.

The final rule implementing Amendment 5 also redefines "overfished" for a mackerel or cobia stock in terms of the relationship of the spawning stock biomass per recruit (SSBR) of that stock to a SSBR target level percentage (not less than 20 percent) recommended by the stock assessment group and approved by the Scientific and Statistical Committees of the Councils. In accordance with that procedure, the current SSBR target level percentages are 40 percent for Gulf and Atlantic migratory groups of king mackerel, 35 percent for Gulf and Atlantic migratory groups of Spanish mackerel, and 20 percent for cobia.

The rule implementing Amendment 5 redesignates the paragraphs in § 642.28. To avoid confusion and to simplify implementation of two changes to § 642.28 within a short period of time, this rule reflects the redesignations contained in the rule implementing Amendment 5, and changes in this rule to § 642.28 are effective concurrently with Amendment 5, except for the changes to § 642.28(a)(1)(iii)(A) and (a)(1)(iv)(A), which are effective January 1, 1991.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 26, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

§ 642.21 [Amended]

2. Effective August 1, 1990, in § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(2), first sentence	3.34	3.08
(b)(2)	5.66	5.22
(c)(2)	3.24	3.14
(d)(2)	2.76	1.86

3. Effective August 20, 1990, in § 642.28, as published in the **Federal Register** on July 19, 1990 (55 FR 29370), paragraphs (a)(1)(iii)(B) and (a)(3)(ii), are revised and a new paragraph (a)(1)(iii)(C) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(1) * * *

(iii) * * *

(B) Possessing ten Spanish mackerel per person per trip from the central area.

(C) Possessing three Spanish mackerel per person per trip from the western area.

* * * * *

(3) * * *

(ii) For the purposes of paragraph (a)(1)(iii) of this section,

(A) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(B) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at

29°32.1'N. latitude, 93°47.7'W. longitude to point B (on the outer limit of the EEZ) at 26°11.4'N. latitude, 92°53'W. longitude.

* * * * *

4. Effective January 1, 1991, in § 642.28, paragraphs (a)(1)(iii)(A) and (a)(1)(iv)(A) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(1) * * *

(iii) * * *

(A) Possessing five Spanish mackerel per person per trip from the eastern area.

* * * * *

(iv) * * *

(A) Possessing five Spanish mackerel per person per trip from the southern area.

* * * * *

[FR Doc. 90-17910 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 148
Wednesday, August 1, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Differentials

AGENCY: Office of Personnel Management.

ACTION: Proposed rule and request for comments.

SUMMARY: This rule will entitle General Schedule employees who are exposed to the hazards of airborne asbestos fibers to a hazard pay differential of eight percent. This rule is authorized by section 5545(d) of title 5, United States Code which provides for hazardous duty pay for General Schedule employees.

DATES: Comments must be submitted on or before October 1, 1990.

ADDRESS: Send or deliver written comments to White Collar Pay and Allowances Division, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Clarence Mathews (202) 632-7858.

SUPPLEMENTARY INFORMATION: The Department of Health & Human Services and the Department of Veterans Affairs have asked the Office of Personnel Management (OPM) to establish an eight percent hazard pay differential for General Schedule employees who are exposed to the hazards of asbestos. OPM is responsible for establishing hazardous duty pay differentials prescribed by section 5545(d) of title 5, United States Code, for General Schedule employees. This rule authorizes a hazard pay category for employees who are exposed to the hazards of asbestos. The establishment of the category does not relieve agencies of the responsibility for creating a safe and healthful workplace for employees, including removing employees who might be incidentally exposed to asbestos from areas where unsafe levels of asbestos fibers are found to exist.

The Federal Wage System has a category covering exposure to the hazards of asbestos, for which an eight percent environmental differential is payable. Currently, General Schedule employees are not entitled to differential based on exposure to asbestos because there is no asbestos category established. These circumstances cause pay inequity because employees may be working side by side but are covered under separate pay systems, only one of which pays a differential for the hazard.

For example, the Social Security Administration has episodic response teams, comprised of both Federal Wage System and General Schedule employees, that reduce or eliminate dangerous exposure to asbestos-containing materials in emergency situations. As a part of the Social Security Administration's overall asbestos abatement program, industrial hygienists, supervisors and managers inspect for asbestos, repair and/or remove asbestos, and oversee contractors performing asbestos repair and/or removal.

The same hazardous conditions might be encountered by these employees whether they are paid under the Federal Wage System or the General Schedule. Employees under either pay system might work in an area where airborne concentrations of asbestos fibers may expose them to potential illness or injury and protective devices or safety mesures may not practically eliminate the potential for such personal illness or injury.

Therefore, a new General Schedule category for asbestos is necessary. Like the Federal Wage System category it will have a differential of eight percent.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend subpart I of 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

1. The authority for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

2. Appendix A to subpart I of part 550 is amended by adding a new category to the Hazard Pay Differential Table to read as follows:

Appendix A—Schedule of Pay Differentials Authorized for Irregular or Intermittent Hazardous Duty Under Subpart I

Hazard Pay Differential of Part 550 Pay Administration (General)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Exposure to Hazardous Agents, work with or in close proximity to:		
* * * * * * *		
(6) *Asbestos.* Wreking in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury.	8	[Insert date of publication of the final rule in the **Federal Register.**]
* * * * * * *		

[FR Doc. 90-17855 Filed 7-31-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations;

Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) proposes to amend 7 CFR 1.123 by adding another system of records to those exempted from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(k).

DATES: Comments must be received on or before August 31, 1990.

ADDRESSES: Interested persons may submit written comments to: Kenneth E. Cohen, Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-5565.

FOR FURTHER INFORMATION CONTACT: Jinhee K. Wilde, Office of the General Counsel, USDA (202) 447-8045.

SUPPLEMENTARY INFORMATION: This amendment is made necessary due to the fact that the Forest Service system of records entitled "Law Enforcement Investigation Records, USDA/FS-33" was inadvertently omitted when 7 CFR 1.123 was amended in 1988. This system contains investigations conducted pursuant to 16 U.S.C. 559, which authorizes Forest Service employees "to make arrest for the violation of the laws and regulations relating to the national forest * * *." It therefore contains "investigatory material compiled for law enforcement purposes * * *" and may be exempted from certain sections of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2).

This rule has been reviewed under the Secretary's Memorandum 1512-1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more. In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy Act.

For the reasons set out in the preamble, it is proposed to amend 7 CFR, subtitle A, part 1, subpart G as follows:

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 552a.

2. In consideration of the foregoing, it is proposed to amend 7 CFR 1.123 by adding a new entry alphabetically to read as follows:

§ 1.123 Specific exemptions.

* * * * *

Forest Service

Law Enforcement Investigation Records, USDA-FS-33.

* * * * *

Done this 26th day of July 1990, at Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-17842 Filed 7-31-90; 8:45 am]

BILLING CODE 3410-14-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 100

[Docket No. R-90-2011; FR-2665-N-04]

Fair Housing Accessibility Guidelines

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

ACTION: Supplement to notice of proposed accessibility guidelines—Clarification of design and construction activities considered in compliance with Fair Housing Act prior to publication of final guidelines.

SUMMARY: On June 15, 1990, the Department published a notice in the **Federal Register** (55 FR 24370) seeking public comment on proposed accessibility guidelines. The proposed guidelines, presented in the form of three design options, were issued to provide builders and developers with technical guidance on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988 (the Act). In the notice, the Department recognized the projects now being designed, in advance of publication of the guidelines, may not be available for occupancy until after March 13, 1991, the Act's compliance deadline for first occupancy multifamily dwellings. The Department advised that it would consider efforts to comply with the "option one" guidelines in the design of projects, likely to be completed before inssuance of the final guidelines, as evidence of compliance with the Act in connection with the Department's investigation of any discrimination complaints (55 FR 24371). The Department already has received a number of inquiries on whether certain projects, now being designed and constructed and likely to be completed before issuance of final guidelines, would be considered in compliance with the Act. Accordingly, the Department has decided to issue this supplementary notice to clarify which design and construction activities, now underway, would be considered as evidence of compliance with the Act.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Margaret Milner (202) 708-0720 (voice) or (202) 708-3938 (TDD); for fair housing enforcement questions, contact Peter Kaplan (202) 708-2904 (voice) or (202) 708-0015 (TDD). (The above listed numbers are not toll-free numbers.) The toll-free TDD number is 1-800-537-8099.

SUPPLEMENTARY INFORMATION: The Fair Housing Amendments Act of 1988 (the Act) expanded coverage of title VIII of the Civil Rights Act of 1968 to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(c) of the Act provides that unlawful discrimination includes a failure to design and contruct covered multifamily dwellings, available for first occupancy after March 13, 1991, in Accordance with the Act's accessibility requirements. On January 23, 1989 (54 FR 3232), the Department published a final rule implementing the Act. (See 24 CFR part 100.) In the preamble to the final rule, the Department stated that it would publish proposed accessibility guidelines to provide more specific guidance on how to comply with the Act's accessibility requirements (54 FR 3251). The proposed guidelines were published on June 15, 1990 (55 FR 24370).

The proposed accessibility guidelines presented three options for accessible design. Option one ("Option One") contains guidelines developed by the Department with the assistance of the Southern Building Code Congress International (SBCC) and incorporates suggestions received in response to a notice of intention to develop accessibility guidelines and invitation to comment published on August 2, 1989 (54 FR 38156). Option two contains guidelines developed by the National

Association of Home Builders (NAHB) and the National Coordinating Council on Spinal Cord Injury (NCCSCI). Option three offers "adaptable accommodations" guidelines, an approach that provides for identification of certain features in dwelling units that could be made accessible to people with handicaps on a case-by-case basis.

In the June 15, 1990 notice, the Department recognized that projects now being designed, in advance of publication of the guidelines, may not become available for occupancy until after March 13, 1991. Accordingly the Department advised that efforts to comply with the proposed accessibility guidelines of Option One, in the design of projects which would be completed before issuance of the final guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. The Department has received a number of inquiries on whether certain design and construction activties in connection with projects, likely to be completed before issuance of final guidelines, would be considered in compliance with the Act. Accordingly, this supplementary notice clarifies the Department's position or efforts to comply with the Act's accessibility requirements prior to publication of final accessibility guidelines.

The Department only will consider efforts to comply with the accessibility guidelines of Option One as evidence of compliance with the Act. Evidence of compliance with the Option One guidelines under the circumstances described below shall be a basis for a determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings:

(1) Any covered multifamily dwellings which are designed in accordance with the Option One guidelines, and for which construction is completed before publication of the final accessibility guidelines, will be considered to be in compliance with the accessibility requirements of 24 CFR 100.205(c).

(2) Any covered multifamily dwellings which have been designed in accordance with the Option One guidelines, but for which construction is not completed by the date of publication of the final guidelines, will be considered to be in compliance with the accessibility requirements of 24 CFR 100.205(c) provided:

(a) Construction begins before the final guidelines are published; or

(b) A building permit is issued less than 60 days after the final guidelines are published.

Dated: July 27, 1990.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 90-17919 Filed 7-31-90; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Title I of Americans With Disabilities Act; Implementation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. Title I of the Act which prohibits employment discrimination on the basis of disability, is enforced by the Equal Employment Opportunity Commission (EEOC or the Commission). The Act requires that regulations implementing Title I be issued within one year of the date of enactment. These regulations will address such issues as the definition and proper application of the terms "disability," "reasonable accommondation" and "undue hardship."

The EEOC is issuing this Advance Notice of Proposed Rulemaking to solicit comments from interested individuals and groups as early as possible in the development of these regulations. There will, of course, be an additional opportunity to comment following the publication of the Notice of Proposed Rulemaking. However, to maximize the opportunity to participate in the rulemaking process, we strongly encourage the submission of any ideas, comments or concerns which should be considered in the course of framing these regulations.

DATES: Comments must be submitted on or before August 31, 1990.

ADDRESSES: Written comments to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Associate Legal Counsel, Coordination and Guidance Services, 1801 "L" Street, NW., Washington, DC 20507.

Evan J. Kemp, Jr.,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 90-17843 Filed 7-31-90; 8:45 am]

BILLING CODE 6750-06-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE23

VA Assistance in Developing Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to implement recent legislation addressing VA's responsibility to assist claimants in developing the facts pertinent to their claims. It has been a long-standing VA policy to provide such assistance, but until recently there has been no statutory requirement to do so. The intended effect of this amendment is to clarify VA's obligation in this area.

DATES: Comments must be received on or before August 31, 1990. This change is proposed to be effective thirty days after the date of publication of the final rule. Comments will be available for inspection until September 10, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 pm Monday through Friday (except holidays) until September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Donald England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been a long-standing VA policy to assist claimants in developing the facts pertinent to their claims. The Veterans' Judicial Review Act, Pub. L. 100-687, section 103(a), 102 Stat. 4105 (1988),

made this VA policy a statutory requirement and codified it as title 38, United States Code, section 3007. We proposed to clarify VA's responsibility in this area by adding new § 3.159 to title 38, Code of Federal Regulations.

Anyone seeking a benefit administered by VA has the responsibility of providing evidence sufficient to satisfy VA evidence requirements as set forth in 38 CFR 3.102. The Veterans Benefits Administration (VBA) will help claimants develop the facts pertinent to their claims, but the agency's ability to obtain evidence is directly related to the accuracy of the available identifying information. By attempting to assist claimants VBA does not relieve them of the obligation to provide evidence. Should it be unable to acquire necessary evidence for any reason which the claimant could rectify by paying a fee, executing an acceptable release authorization, etc., VA will so notify the claimant and advise him or her that the ultimate responsibility for providing the requested evidence rests with him or her.

VBA will request evidence on behalf of a claimant from the categories shown below, but only if it has information sufficient to identify and locate the necessary evidence. It will request existing records, to include proof of service, character of discharge, medical and clinical records, etc., directly from military authorities. VBA will also request records from other Federal agencies and documents such as birth, death and marriage certificates maintained by state or local governmental authorities. Non-government records which have a direct bearing on a claim will also be requested if the claimant has executed an authorization for release of the information in a form acceptable to the custodian of those records. VBA will not pay any fees charged for furnishing requested information, nor will it seek evidence which does not already exist.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: July 17, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended by adding § 3.159 to read as follows:

§ 3.159 Department of Veterans Affairs assistance in developing claims.

(a) Although it is the responsibility of any person filing a claim for a benefit adminstered by the Department of Veterans Affairs to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded, the Department of Veterans Affairs shall assist a claimant in developing the facts pertinent to his or her claim. This requirement to provide assistance shall not be construed as shifting from the claimant to the Department of Veterans Affairs the responsibility to produce necessary evidence.

(b) When information sufficient to identify and locate necessary evidence is of record, the Department of Veterans Affairs shall assist a claimant by requesting, directly from the source, existing evidence which is either in the custody of military authorities or maintained by another Federal agency. At the claimant's request, and provided that he or she has authorized the release of such evidence in a form acceptable to the custodian thereof, the Department of Veterans Affairs shall assist a claimant by attempting to obtain records maintained by state or local governmental authorities and medical, employment, or other non-government records which are pertinent and specific to the claim. The Department of Veterans Affairs shall not pay any fees charged by the custodian for providing such evidence.

(c) Should its efforts to obtain evidence prove unsuccessful for any reason which the claimant could rectify, the Department of Veterans Affairs shall so notify the claimant and advise him or her that the ultimate responsibility for furnishing evidence rests with the claimant.

(Authority: 38 U.S.C. 3007)

[FR Doc. 90–17938 Filed 7–31–90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900-AE51

Veterans Education; Procedural Due Process and the Educational Assistance Test Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) has been reviewing regulations for the purpose of improving due process procedures. This proposal provides that in certain instances if VA does not furnish claimants or beneficiaries with notice of the time limits within which they are required to act in order to perfect a claim under the Educational Assistance Test Program, those time limits do not apply until notice is provided. This proposal will provide increased due process to veterans and eligible persons affected by those time limits.

DATES: Comments must be received on or before August 31, 1990. Comments will be available for public inspection until September 10, 1990.

ADDRESSES: Send written comments to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 10, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: VA and the Department of Defense are

proposing to amend 38 CFR 21.5732 to provide that when VA does not provide notice of regulatory time limits which must be met when submitting evidence to perfect a claim under the Educational Assistance Test Program, or to challenge an adverse VA decision regarding benefits payable under that program, the time limits will be extended.

The Department of Veterans Affairs and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by this regulation.

List of Subjects in 38 CFR Part 21

Civil Rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 3, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 25, 1990.

Donald W. Jones,

Lieutenant General, USA, Deputy Assistant Secretary, (Military Manpower & Personnel Policy).

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

In § 21.5732, paragraph (c) is revised to read as follows:

§ 21.5732 Time Limits.

* * * * *

(c) *Failure to furnish claim or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) VA's failure to furnish an individual notice of the time limit within which evidence must be submitted to perfect a claim, or notice of the time limit within which to challenge an adverse VA decision shall extend the time limit for such action in accordance with the provisions of § 3.110.

(Authority: 38 U.S.C. 3001, 30130)

[FR Doc. 90–17939 Filed 7–31–90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2509 and 5E3257/P516; FRL-3772-8]

Pesticide Tolerances for Oxytetracycline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the pesticide oxytetracycline in or on the raw agricultural commodities cherries and tomatoes. The proposed regulation to establish maximum permissible levels for residues of oxytetracyline in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 1E2509 and 5E3257/P516], must be received on or before August 31, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 1E2509 and 5E3257 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of oxytetracycline in or on certain raw agricultural commodities as follows:

1. *PP 1E2509.* Petition submitted on behalf of the California Agricultural Experiment Station proposed a tolerance for residues in or on cherries at 0.1 part per million (ppm).

2. *PP 5E3257.* Petition submitted on behalf of the Agricultural Experiment Stations of Florida, Michigan, and New Jersey proposed a tolerance for residues in or on tomatoes at 0.1 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year chronic feeding study in Osborne-Mendel rats with a no-observed-effect level (NOEL) of 3,000 ppm, approximately 150 milligrams (mg)/kilogram (kg)/day (highest dose tested).

2. A 2-year chronic feeding study in Sprague Dawley rats with a NOEL of

1,000 ppm, approximately 50 mg/kg/day (highest dose tested).

3. A 2-year chronic feeding study in dogs with a NOEL of 10,000 ppm, approximately 250 mg/kg/day (highest dose tested).

4. A mouse teratology study with a NOEL for maternal and developmental toxicity at 2,100 mg/kg (highest dose tested).

5. A study in dogs to evaluate antimicrobial resistance to oxytetracycline with a NOEL of 2 ppm (approximately 0.05 mg/kg/day). Mature dogs were fed a diet containing 0, 2, and 10 ppm (approximately 0, 0.05, 0.25 mg/kg/day) of oxytetracycline for 44 days. A change resulted in the high-dose level (10 ppm) group from a predominately drug-susceptible population of enteric lactose-fermenting organisms to a multiple antibiotic-resistant population.

The results of oncogenicity studies in rats, which were fed oxytetracycline at dosages of 0, 25,000, and 50,000 ppm (approximately 0, 1,250, and 2,500 mg/kg/day) for 103 weeks, and in mice, which were fed 0, 6,300, and 12,500 ppm (0, 945, and 1,875 mg/kg/day) for 103 weeks, were reported by the National Toxicology Program (NTP). NTP's Peer Review Committee concluded that there was equivocal evidence of carcinogenicity in rats as indicated by an increased incidence of pheochromocytomas of the adrenal gland in male rats and an increased incidence of adenomas of the pituitary gland in the high-dose group of female rats. No evidence of carcinogenic effects in the mouse study were observed.

In December of 1988, EPA completed a review of the available data for oxytetracycline in association with a Registration Standard and concluded that there is no positive evidence of carcinogenic effects in either the mouse or the rat study. No additional toxicology data were required to evaluate tolerances for oxytetracycline due to the volume of information available relating to its use as an antibiotic in humans.

Oxytetracycline has been used extensively as a human and animal drug for control of microbial-related diseases. The oral dose for adults ranges from 1 to 2 grams per day. Although a number of adverse effects resulting from the use of oxytetracycline as a human drug have been identified in susceptible humans, these effects are usually seen only after prolonged exposure at relatively high dosages. The pesticide uses of oxytetracycline result in substantially less exposure than the oral or intravenous routes of exposure for the drug uses. The Agency does not believe that the adverse effects observed from the drug use of oxytetracycline are likely to result from the pesticide uses.

The reference dose (RfD) is established at 1.0 mg/kg/day based on an estimated NOEL of 100 mg/kg, which is derived from a comprehensive evaluation of the chronic feeding studies available for oxytetracycline, and a 100-fold uncertainty factor.

The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.000065 mg/kg of body weight/day. The proposed uses would contribute 0.000150 mg/kg of body weight/day. Existing pesticide uses of oxytetracycline and the proposed uses on cherries and tomatoes would utilize less than 0.1 percent of the RfD. The Agency concludes that the amount of the pesticide added to the diet from the proposed uses poses a negligible risk.

The nature of the residues is adequately understood, and an adequate analytical method, microbiological assay, is available for enforcement purposes. The method is similar to the Final Action Microbiological Methods I and II in the AOAC Official Methods of Analysis (1984; 42.293-42.298). There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.337 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E2509 and 5E3257/P516]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.337 is amended by adding and alphabetically inserting tolerances for the raw agricultural commodities, to read as follows:

§ 180.337 Oxytetracycline; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * * *	
Cherries	0.1
* * * * * *	
Tomatoes	0.1
* * * * * *	

[FR Doc. 90-17789 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 482 and 483

[BPD-650-P]

Medicare/Medicaid Programs; Fire Safety Standards for Hospitals, Long Term Care Facilities, and Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HFCA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the fire safety standards for hospitals, long term care facilities, and intermediate care facilities for the mentally retarded and would affect only those facilities. It would delete references to the 1967 and 1973 editions of the Life Safety Code of the National Fire Protection Association and require compliance with either the 1981 or 1985 editions depending on the date when the facility was first certified to participate in Medicare or Medicaid. This proposed rule would create a uniform policy for all types of facilities that participate in the Medicare and Medicaid programs. The rescission of the 1967 and 1973 editions of the Life Safety Code is intended to ensure that Medicare and Medicaid beneficiaries and recipients have the benefit of the most current fire protection standards.

DATES: To ensure consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on October 1, 1990.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-650-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-650-P. Comments will be available as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's officies at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890).

FOR FURTHER INFORMATION CONTACT: Samuel Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Life Safety Code of the National Fire Protection Association

Since the beginning of the Medicare and Medicaid programs, we have been concerned with ensuring that health care facilities meet certain health and safety requirements to make certain that patients are safe from fire. The Life Safety Code (LSC) developed by the National Fire Protection Association (NFPA) serves as the basis for governmental fire safety regulations, including those of the Medicare and Medicaid programs. Federal, State, and local governmental authorities have adopted the LSC as the basis for fire safety laws and regulations and have enforced provisions of the LSC.

The LSC is a nationally recognized standard, and includes fire protection requirements necessary to protect patients and residents in health care facilities. It was initially developed in 1913 by the Committee on Safety to Life of the NFPA. The NFPA is a nonprofit organization, established in 1896, for the purpose of reducing loss of life and property due to fire. The types of occupancies addressed by the LSC include health care facilities, residential dwellings, rooming houses, schools, correctional facilities, and commercial establishments.

The LSC is designed to provide a reasonable degree of safety from fire and similar emergencies. The LSC covers construction, fire protection, and occupancy features to minimize danger to life from fire, smoke, and fumes. The code may be applied to both new and existing buildings. The development and maintenance of a body of fire safety codes and standards is one of the NFPA's primary functions. The standards are developed by technical committees that are composed of experts in the fire and building safety field and represent a broad spectrum of interests including fire marshals, architects, engineers, and representatives from private industry and government.

B. Hospitals

Section 1861(e)(9) of the Social Security Act (the Act) requires that, to participate in Medicare, a hospital must meet the health and safety requirements as set forth by the Secretary. Section 1861(e)(9)(C) of the Act allows for a waiver to be granted to a hospital with respect to fire and safety regulations promulgated under section 1861(e)(9), if specific provisions of the LSC would result in unreasonable hardship, and the safety of patients is not compromised. In addition, the Secretary may accept a facility's compliance with a State's fire and safety code, if imposed by State law, instead of the LSC, if that code adequately protects patients.

The above requirements are set forth in the regulations at 42 CFR part 482, Conditions of Participation for Hospitals. Included in § 482.41 is the requirement that a hospital must meet the applicable provisions of the 1985 edition of the LSC of the NFPA. It further states that any hospital that met the requirements of the 1967 edition of the LSC (with or without waivers), as of November 26, 1982, or met the requirements of the 1981 edition of the LSC as of May 9, 1988, will be considered to be in compliance with the standard as long as the facility has remained in compliance with that edition of the LSC.

C. Long Term Care Facilities

Under section 4204 of the Omnibus Budget Reconciliation Act of 1987, effective October 1, 1990, long term care facilities must meet the provisions of the LSC of the NFPA applicable to nursing facilities in order to participate in the Medicare or Medicaid program. Section 1819(d)(2)(B) of the Act, which applies to skilled nursing facilities participating in Medicare, and section 1919(d)(2)(B) of the Act, which applies to nursing facilities participating in Medicaid requires these facilities to meet the applicable requirements of the LSC. These sections also provide for waivers of LSC requirements if compliance with a specific requirement would result in unreasonable hardship upon the facility, and the waiver will not adversely affect the health and safety of patients. The Secretary may accept a State's fire and safety code, if imposed by State law, instead of the LSC, if that code adequately protects patients in nursing facilities.

The above requirements are set forth at § 483.70. Specifically, the regulations require that a long term care facility meet the applicable provisions of the 1985 LSC. The regulations state that facilities that were in compliance, with or without waivers, with the requirements of the 1967 or 1973 editions of the LSC on November 26, 1982, are considered to be in compliance if they have remained in compliance with those editions of the Code. The regulations also provide that facilities were in compliance with the 1981 LSC on May 9, 1988, are considered in compliance if

they have remained in compliance with that edition of the LSC.

D. Intermediate Care Facilities for the Mentally Retarded

Section 1905(a)(15) of the Act authorizes optional Medicaid coverage for services in intermediate care facilities for the mentally retarded (ICFs/MR). These are facilities that provide health-related care to mentally retarded individuals who do not need the degree of care commonly provided in hospitals or skilled nursing facilities, but who do require care and services above the level of room and board that can only be made available to them through institutional facilities. Under section 1905(d) of the Act, an ICF/MR must meet standards, including safety standards, prescribed by the Secretary.

The above standards are set forth in the regulations at § 483.470. Specifically, the regulations require that an ICF/MR meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancy Chapter of the 1985 LSC. An ICF/MR will be considered in compliance if it met the LSC definition of a health care occupancy and complied with the 1981 edition of the LSC (with or without waivers) as of April 18, 1986, or it complied with the 1967 edition of the LSC as of November 26, 1982, as long as the facility has remained in compliance with those respective editions of the Code.

II. Provisions of the Proposed Regulations

A. General Description

We are proposing to amend §§ 482.41 (hospitals), 483.70 (long term care facilities) and 483.470 (ICFs/MR) to delete reference to the 1967 and 1973 editions of the LSC. We propose no changes in other portions of the regulations, for example, we propose no changes in the waiver provisions. This proposed amendment would conform the fire safety requirements for hospitals, long term care facilities, and ICFs/MR to those for ambulatory surgical centers (ASCs) and hospices. We propose no changes for ASCs (§ 416.44) or hospices (§ 418.100), each of which must currently meet either the 1981 or 1985 edition of the Code.

B. Hospitals; Section 482.41 Condition of Participation; Physical Environment

We are proposing to revise the regulations to delete any reference to the 1967 Code and to require hospitals to meet either the 1981 or 1985 Code, depending on the date when the hospital was first certified to participate in Medicare or Medicaid. For example, a hospital first certified in 1985 would have been required to meet the 1981 Code, while a hospital first certified in 1989 would have to meet the 1985 Code. We believe that the 1967 Code is an outdated Code that relies heavily on compartmentation, that is, it relies too heavily on stringent construction requirements to divide a building into compartments and theoretically limits the spread of fire and smoke. Current technology relies on early detection and extinguishment, not compartmentation. Moreover, the 1967 Code does not require early notification (direct connection of the fire alarm to the fire department). Finally, the 1967 Code does not encourage sprinklers, since it does not offer the "trade-offs" for having sprinklers found in later editions. "Trade-offs" permit less restrictive fire protection requirements if sprinklers are installed. For example, when a facility has a sprinkler system present, the facility may have longer travel distance to exits.

C. Long Term Care Facilities; Section 483.70 Level A Requirements Physical Environment

We are proposing to amend the long term care regulation to delete all references to the 1967 and 1973 Codes for the reasons listed in B above to require long care facilities to meet either the 1981 or 1985 Code, depending on the date when the facility was first certified to participate in Medicare or Medicaid. For example, a facility first certified in 1985 would have been required to meet the 1981 Code, while a facility first certified in 1989 would be required to meet the 1985 Code. In addition, the 1981 and 1985 Codes require corridor smoke detection systems in new nursing homes that were not required in earlier editions of the Code.

D. ICF/MR; Section 483.470 Condition of Participation; Physical Environment

We are proposing to amend the ICF/MR regulation to delete the provision permitting certain ICFs/MR to meet the requirements of the 1967 Code for the reasons listed in B above. We note that ICFs/MR subject to the Health Care Occupancies chapters of the LSC are currently required to meet the 1967, 1981 or 1985 edition of the Codes. (Note: The requirement to meet the 1985 Code is included in § 483.470(j)(1)(i), which is not changed by this proposed rule.)

III. Regulatory Impact

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule is not expected to meet the $100 million criterion nor do we believe that it will meet the other E.O. 12291 criteria for a major rule. Therefore, an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, long term care facilities, and ICFs/MR to be small entities.

This proposed rule would amend the fire safety standards for hospitals and long term care facilities by deleting references to the 1967 and 1973 editions of the LSC of the NFPA and require compliance with either the 1981 or 1985 editions. In addition, it would amend the ICFs/MR regulation to delete all references to the 1967 edition for these health care entities. ICFs/MR are already required to meet the standards prescribed by the 1981 or 1985 editions.

The 1981 and 1985 LSCs are updates of previous LSCs. We believe that any facility currently in compliance with the 1967 or 1973 LSCs would not have to incur significant expenditures of funds to achieve compliance with either the 1981 or 1985 LSCs.

The major cost factor in the 1985 LSC is the requirement that all newly constructed health care facilities 75 feet or higher must be fully equipped with sprinklers. We are uncertain as to the number of new hospitals and long term care facilities which will be constructed, however, we anticipate the number will be low. We do not believe this requirement would be unduly burdensome.

A minor cost factor would be the direct connection of the fire alarm to the

fire department. We believe this would be a minimal expense. An additional minor cost factor would be the requirement that new nursing homes have corridor smoke detection systems. We do not believe this would be a significant expense since it applies only to new nursing homes and thus these systems can be installed during the construction process.

We believe that the cost factors associated with the 1985 LSC requirements, mentioned above, are justified since meeting those requirements would ensure that Medicare and Medicaid beneficiaries and recipients would have the benefit of the most current fire protection standards.

Section 1861(e)(9), and sections 1819(d)(2)(B) and 1919(d)(2)(B) of the Act provide for waivers of LSC requirements for hospitals and long term care facilities if compliance with a specific requirement would result in unreasonable hardship upon the facility or the waiver will not adversely affect the health and safety of patients. We believe these waivers would lessen the cost impact of this regulation on those hospitals and long term care facilities that qualify for them.

For these reasons, we have determined and the Secretary certifies that this proposed rule would not have a significant effect on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which has fewer than 50 beds and is located outside of a Metropolitan Statistical Area.

To participate in Medicare, section 1861(e)(9) of the Act requires that a hospital must meet the health and safety requirements as set forth by the Secretary. In the last sentence of section 1861(e), clause (C) allows for a waiver to be granted to a rural hospital of 50 beds or fewer with respect to fire and safety regulations promulgated under section 1861(e)(9), if specific provisions of the LSC would result in unreasonable hardship, and the safety of patients is not compromised. The Secretary may accept such a facility's compliance with a State's fire and safety code, if imposed by State law, in lieu of the LSC, if that code adequately protects patients.

Therefore, for the reasons set forth in the preceding paragraph, we are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirement

This proposed notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Responses to Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

List of Subjects

42 CFR part 482

Grant programs—health, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

We are proposing to amend 42 CFR chapter IV as set forth below:

I. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Subpart C—Basic Hospital Functions

1. The authority citation for part 482 is revised to read as follows:

Authority: Secs. 1102, 1814(a)(7), 1819(d)(2)(B), 1861(e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1905(a), and 1919(d)(2)(B) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(7), 1395i–3(d)(2)(B), 1395x(e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396d(a), and 1396r(d)(2)(B).

2. In § 482.41, paragraph (b)(1) introductory text is republished, paragraph (b)(1)(i) and the footnote to paragraph (b)(1) introductory text are revised to read as follows:

§ 482.41 Condition of participation: Physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as provided in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the hospital must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference.) [1]

(i) Any hospital that on May 9, 1988, complied with the 1981 edition of the Life Safety Code, is considered to be in compliance with this standard as long as the facility has continued to remain in compliance with that edition of the Code.

* * * * *

[1] See footnote to § 483.70 of this chapter.

II. Part 483 is amended as follows:

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Sec. 1102, 1819(a), (d), 1861(j), and (l), 1863, 1871, 1902(a)(28), 1905(a) and (c), and 1919(a) and (d) of the Social Security Act (42 U.S.C. 1302, 1395i(3)(a) and (d), 1395x(j) and (l), 1395z, 1395hh, 1396a(a)(28), 1396d(a) and (c), and 1396r(a) and (d)), unless otherwise noted.

2. In § 483.70(a) the introductory paragraph is removed and paragraph (a)(1) is revised to read as follows:

§ 483.70 Level A requirement: Physical environment.

(a) *Level B requirement: Life safety from fire.* * * *

(1) A facility is considered to be in compliance with this requirement as long as on May 9, 1988, the facility complied, with or without waivers, with the 1981 edition of the Life Safety Code and has continued to remain in compliance with that edition of the Code.

* * * * *

3. In § 483.470, paragraph (j)(2)(i) introductory text is republished and paragraph (j)(2)(i)(C) is revised to read as follows:

§ 483.470 Condition of participation: Physical environment.

* * * * *

(j) *Standard: Fire protection*—

* * * * *

(2) *Exceptions.* (i) For facilities that meet the LSC definition of a health care occupancy:

* * * * *

(C) Compliance on April 18, 1986 with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.744, Medicare-Supplementary Medical Insurance Program; Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: July 18, 1990.

Gail R. Wilensky,

Administrator, Health Care, Financing Administration.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-17863 Filed 7-31-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580 and 581

[Docket No. 90-23]

Automated Tariff Filing and Information System (ATFI); Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Automated Tariff Filing and Information System ("ATFI" or "System") of the Federal Maritime Commission ("FMC") will facilitate the electronic filing, processing and retrieval of tariff data required by statute to be filed with the FMC and made available to the public. Much of the System has been designed and developed and the FMC is now in a position to apprise the public of and obtain comment on some basic features being considered for ATFI and how they may impact current paper tariff practices. In order to develop appropriate rulemaking to implement electronic filing of tariffs, this Notice of Inquiry allows for public comment in advance of any proposed rules. Additionally, a public demonstration of the System (with opportunity for questions) will be held so that comments in this inquiry can be as meaningful as possible.

DATES: *Demonstration:* A demonstration of the System will be held at 10 a.m. on September 5, 1990. Attendees are requested to call (202) 523-5866 by August 31, 1990. Seating will be on a first-come/first-served basis.

Comments: Written comments in response to this Notice (Original and 15 Copies) must be submitted by October 15, 1990.

ADDRESSES: *Demonstration:* FMC Hearing Room Number 1, 1100 L Street, NW., Washington DC.

Comments: Submit written comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5866.

SUPPLEMENTARY INFORMATION: In addition to providing advance notice to the public, the FMC is seeking views on the refined functionality and associated implementing technology of its proposed Automated Tariff Filing and Information System. **Federal Register** notices on this general subject previously appeared on December 22, 1987 (52 FR 48504); June 13, 1988 (53 FR 22048); and, December 29, 1988 (53 FR 52785).

In August 1989, a contract was awarded for the design and development of ATFI and work began under the contract in September 1989. Under FMC supervision, the Contractor validated (by comparing with, and updating, the specifications of the original Request for Proposals ("RFP") the requirements and functionality of, and designed and developed, the System (Phases I through III of the contract). By March 1990, development was far enough along to be able to make available to the public technical File Transfer Formats and Code Reference Tables,[1] so that potential filers of tariff data could begin developing their own systems to electronically interface with ATFI, i.e., by being able to prepare tariff data in the proper format for filing by modem with, or physical submission on magnetic media to, the FMC.

The System's prototype phase (IV) began in April 1990, but before allowing volunteers from the public to "test" the System, the FMC and the Contractor mutually agreed upon a list of desirable changes which was developed under the contract through FMC and Contractor user comment. These include improvements on both technical and tariff policy matters. In July 1990, the basic contract was modified to incorporate these changes into the System, also as contemplated by the original contract.

The intended refinements, however, will require revision of the File Transfer Formats and Code Reference Tables. These revisions will be issued towards the end of 1990. The full incorporation of the agreed-upon changes should allow the public (volunteer) participation in the prototype system to begin in early 1991, and commencement of full-scale operation of ATFI (with phase-in of filers) in mid-1991. This programmed delay will allow industry users more time to prepare for electronic filing and retrieval. The FMC and the Contractor are confident that these improvements, as futher detailed hereinafter, will result in a System that will be much more useful to the filing and retrieving public, and to the FMC in the performance of its statutory duties of surveillance and enforcement. Most of the refinements, as well as the basic functionality of the System, will be implemented through rulemaking, which will provide further opportunity for comment.

Accordingly, the FMC seeks public comment on the following ATFI issues and features which have been identified for possible incorporation into the System. Commenters are requested to refer to the item numbers when discussing the various issues and features in their comments.

A. Filing Matters

1. Harmonized System of Commodity Coding ("HS")

Upon the advice of the 1986 ATFI Industry Advisory Committee, the FMC previously decided against requiring standardized coding for commodities, but directed that ATFI be able to accommodate such a requirement, should it become desirable. Now, three years later, HS is required by the U.S. Customs Service for customs duties and many filers are using HS in their tariffs filed with the FMC. Therefore, it may be desirable at this point to adopt standardized commodity coding for ocean freight tariffs and the FMC seeks comment on the following aspects of the potential use of HS:

(a) Mandatory use in all commodity descriptions for both tariffs and Service Contract Essential Terms.

(b) Application to both inbound and outbound tariffs.

(c) Use at six- or ten-digit level.

(d) Addition of further modifiers for, e.g., greater specification in the

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[1] The File Transfer Formats and Code Reference Tables (transaction set) contain electronic data interchange transaction sets governing the order, form and size of each type of data that is required to be filed, and the ATFI Data Dictionary, which includes tables of abbreviations that must be used in the filing.

commodity description, packaging codes, etc.

(e) Problems/solutions relative to applying HS to shipments of mixed commodities.

2. Standardized Location Names

The FMC is not at this time proposing that filers use a standardized geographic code for location names used in tariffs, but requests comment on this feature. Even where no alpha-numeric code is required, however, names of locations used in tariffs must be validated by comparing filed place names with an official glossary.[2] For such validation, therefore, the FMC is considering and requesting comment on the use of standardized glossaries in ATFI, such as FIPS PUB 55 (for U.S.) and Rand-McNally (for foreign) place/point names.

3. Ranges and Groups

Due to the difficulty in electronically validating "ranges" (as opposed to single-location names as in #2, above), the mere reference to a geographic range, e.g., "ports on a coast from Port A to Port B," likely will not be allowed. However, the filer may use "groups" of locations, if it defines (lists the specific locations in) the "groups" in the tariff.

4. Other Defined Terms

The FMC is considering the desirability of requiring the filer to define various terms for its entire tariff, or tariffs, e.g., "Door-to-Door," "Terminal-to-Terminal," "Tons," etc. The FMC may also propose mandatory, standardized definitions. This will facilitate both filing and retrieval of tariff data. The FMC welcomes proposed additions of other such tariff-standardized terms.

5. Addition of Port or Point

In order to provide maximum flexibility and enhance competition, it is expected that existing FMC rules will be amended to allow immediate effectiveness for the addition of any port or point to an existing tariff.

6. Standardized Currency

The FMC is considering the requirement that all currency references in a tariff be stated in U.S. dollars, so that a bottom-line rate can be more readily determined and compared with other rates on the same commodity.

[2] "New York City," for example, can be set forth in a number of different ways, e.g., "NYC," "N.Y., N.Y.," "New York, N.Y.," and "New York City." An electronic tariff system must use only one term for a place to accommodate both filing and retrieval.

7. "Between Tariffs"

The use of the database format in the ATFI System will require that each tariff apply in only one geographic direction. This should substantially facilitate retrieval of tariff data. "Between Tariffs," where both inbound and outbound rates are in the same place, likely will be prohibited.

8. "Tariff Supplements"

Due to the required design of an electronic data-base-format system, all changes of a general nature, such as a General Rate Increase, will have to be individually entered for each commodity or "Tariff Line Item." Thus, it now appears that tariff supplements, by themselves, will not be accepted when ATFI first goes into full scale operation. It is possible, however, that special ATFI and/or third-party-vendor software developed later will be able to program these individual changes throughout the entire tariff upon an appropriate filing, which would provide the equivalent functionality of a "supplement."

9. Tariff Adoption

Under the current paper tariff system, carriers are allowed to "adopt" tariffs of other carriers, such as in a change of name or reorganization. Since this will cause difficulties and confusion in an electronic system, such as, for example, in the carrier or tariff "record," the FMC is considering prohibiting adoption, as such, and requiring an entire new tariff to be filed.

10. Multiple Amendments on the Same Day

It is intended that, when more than one amendment to the tariff item (e.g., commodity rate or rule) is filed on the same day, only the last filing will be effectively filed; previous amendment(s) to such item filed on that day will be void.

11. Special Case Numbers

Certain filings that deviate from standard requirements at FMC direction or with FMC permission will require authorization through "special case numbers" provided by the FMC in order to pass the edit checks for date of filing and/or effectiveness. Moreover, since no one, including the FMC staff (except in very few, limited situations such as suspensions and cancellations), will be able to change tariff data, filers, rather than the FMC, will have the responsibility of "putting their tariffs in order" by filing the necessary amendments after a Commission action (e.g., rejection) has impacted other parts of the tariff, such as amendments to the same item filed after the rejection. Filings requiring "special case numbers" will include:

(a) "Special permission" matter.

(b) Rates required by order in a "special docket" proceeding.

(c) Correction amendment to, or resubmission after notice of intent to reject, Essential Terms.

(d) Rates filed after suspension, such as for domestic carriers and controlled carriers.

(e) Matter required to be filed after a rejection or after the FMC overturns a rejection, to put a tariff in proper order.

(f) Other tariff matter required to be filed by the FMC on an ad hoc basis.

12. Bills of Lading

It is intended that sample bills of lading in paper form will no longer be filed, but the clauses and other essentials, such as blocks for shipper name and address, must be entered electronically.

13. Anti-Rebate Policy and Certifications

(a) Policy

Currently, 46 CFR 580.5(c)(2)(ii) requires that each foreign-commerce tariff filer include in each tariff an anti-rebate-policy statement. If this requirement were to continue in an electronic system, however, the retrieving shipping public, e.g., shippers, freight forwarders and other carriers, who need to know that a filer has such a policy, would not see it unless the statement were "called up on the screen" like a commodity rate. Rather than leave awareness of this important information to the discretion of the retriever, a standard (automatic) anti-rebate notice will be displayed at System log-on. All filers of tariffs in foreign commerce will be required to adhere to the statutory policy.

(b) Certifications under 46 CFR Part 582

The FMC is now considering in a proposed rule (Docket No. 90-11 at 55 FR 13293) the cancelation of tariffs of operators who are delinquent in the filing of an anti-rebate certification. If this provision becomes final, the electronic system will cancel the tariffs of, and/or prohibit tariff (or amendment) filing by, carriers who have not filed the proper certification.

14. Service Contracts and Essential Terms

(a) Essential Terms will be filed electronically. However, because of the requirements for an original signature and confidentiality, the related service

contract will continue to be filed in paper form, e.g., within 10 days of Essential Terms filing. The FMC welcomes ideas on how to eliminate the need for the paper filing, while preserving confidentiality.

(b) The FMC is considering the requirement for a common format for service contract and related Essential Terms, for each of filing and review.

(c) It may be desirable to provide for standardized numbering and, where possible, format of items required to be included in an Essential Terms under 46 CFR 581.4 and 581.5.

(d) To facilitate accurate rate retrieval, the FMC may require that Essential Terms' items that affect (or determine) the basic rate, such as "contract rates or rate schedule(s)" required by 46 CFR 581.5(a)(3)(iii), be expressed in mathematical formula(s).

15. Tariff Rules

The FMC is giving consideration to:

(a) Standard rule numbers for subjects common to both foreign and domestic tariffs.

(b) Reserving the first 100 rule numbers for future expansion of standard rules.

(c) Standardizing the content (texts) of rules (with standardized alternates) to allow a filer to adopt a standardized rule and file merely by number and letter, e.g., "14(c)." (The System would show the retriever the full text of the rule.) In the alternative, a filer could write its own text of a rule if it is not content with the standard rule or stated variations. The FMC is particularly interested in suggestions from the public on which rules can and/or should be standardized.

(d) Prohibiting the "burying" of a rate within a rule.

(e) Providing special treatment of assessorial rates within a rule so that they can be more readily applied to the basic rate, through, e.g., required mathematical formulation of these parts of rules.

16. General Reference Tariffs

Currently, general reference tariffs (e.g., equipment registers, hazardous cargo rules tariffs, etc.) are considered to be "on file" and are referred to in commodity tariffs. Under ATFI, no tariff will find its way into the database unless filed by (or for), and containing the rates (or rules) of, the responsible carrier. Accordingly, comment is requested on the following options:

(a) Eliminate general reference tariffs entirely (except insofar as the tariff-filing carrier enters them, in whole or in part); or,

(b) Maintain in paper form only, but allow incorporation by reference or crossreference.

17. Batch Filing Software

The FMC does not intend to make available to the public batch-filing software, but will distribute File Transfer Formats and Code Reference Tables (See Footnote 1), which will allow filers, especially third-party vendors, to develop and provide the batch-filing functionality. There will be validation testing by an FMC Contractor to determine the compatibility of each filer's software with ATFI, before the System will accept any tariff filings using the particular software.

18. Exemptions from Electronic-Filing Requirement

The FMC intends that all tariffs required to be filed will eventually be in the electronic database, but realizes that this requirement may impose a hardship on those not ready for the transition to electronic form. The FMC requests comments on the following possible exemptions:

(a) Temporary exemptions based on hardship, unique circumstances, etc.

(b) Exempting certain types of tariffs, such as terminal tariffs, due to their different format and the need to concentrate on the electronic accommodation of routine carrier and conference tariffs, at least initially.

B. Retrieval Matters

19. Pages

It is intended that no paper "pages" (copies) will be developed or issued by ATFI.

20. Data-Base Tapes ("Flat Files")

The FMC intends to make available to the public "raw" (unprocessed), full-data-base tapes, with updates by any of three classes of service, i.e., daily, weekly and monthly.

21. Remote Retrieval

The FMC is now proceeding on the premise that remote retrievers will have access to only one commodity-type tariff at a time, which will include access to any related rules or bill-of-landing tariffs. There will be a time limit to such access before automatic log-off, e.g., 30 minutes.

C. Technical and General Matters

22. Personal Computers v. Dumb Terminals

The FMC believes that most potential industry users of ATFI already use personal computers, rather than dumb terminals. Accordingly, the original specification that the system accommodate VT-100-type dumb terminals, which was the least expensive equipment capable of connecting with ATFI when the specification was established, is being reconsidered. This analysis is being undertaken so as to optimize "user-friendliness" in the electronic filing and retrieval of ATFI tariff data.

23. Transition to Electronic System

The following general matters are being considered for implementation relative to the transition from paper to electronic tariffs:

(a) For the electronic tariff to become the "official tariff," the corresponding paper tariff must be canceled by the filer, with the effective date for cancelation of the paper tariff (e.g., 30 days) being the same as the proposed date of effectiveness of the electronic tariff. Based on industry and technical considerations, the FMC will determine when electronic tariffs will become effective. Paper tariffs may still have to be filed for a period of time as a back-up for security purposes, and rules will govern resolution of possible conflicts between the electronic and paper tariff.

(b) Filers will be phased-in according to a schedule that will consider, among other things:

(i) Experience with the electronically-filed tariff(s) over a period of time.

(ii) Carrier type, e.g., non-vessel-operating common carrier, ocean carrier, etc.

(iii) All carriers and conferences operating on a given "trade-route."

24. EDIFACT Standard

The File Transfer Formats, or transaction set, originally proposed for ATFI, were developed with the assistance and input of the Transportation Data Coordinating Committee ("TDCC"). Since the development of these formats, international electronic data interchange ("EDI") standards have been developed by the United Nations Econoic Commission for Europe's Working Party #4 on the Facilitation of International Trade Procedures ("ECE/WP4"). These standards, known as the United Nations Electronic Data Interchange for Administration, Commerce and Transport ("UN/EDIFACT"), are gaining support and commitment from governments around the world, and also from many industries. The efficiencies inherent in EDI require the use of a single standard in order to be realized.

For example, if other countries impose tariff filing systems using different standards, the costs to industry of using EDI will increase.

Most of the use of ATFI will involve international commerce, which requires access to tariff information. Accordingly, adoption of the international EDIFACT standards for tariff data by a certain date in the future would appear to be desirable. The North American EDIFACT Board, a standing task group of the Accredited Standards Committee X12, will be asked to develop the appropriate EDIFACT messages. Users are encouraged to participate in this development process through the appropriate X12 committees and the North American EDIFACT Board.

Comments are requested on any or all of the above items by October 15, 1990. To faciliate understanding and resulting comments, a demonstration of the System (with opportunity for questions on the above-enumerated items) will be held on September 5, 1990, at 10 a.m., in the Commission's Hearing Room No. 1, on the street floor at 1100 L Street, NW., Washington DC. Seating will be on a first-come/first-served basis and people planning to attend should notify the Commission by calling (202) 523-5866 by August 31, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17857 Filed 7-31-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-339; RM-7315]

Radio Broadcasting Services; Coahoma TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Joseph Smitherman proposing the allotment of Channel 282A at Coahoma, Texas, as that community's first local radio service. The coordinates for this proposed allotment are 32-17-36 and 101-18-18. Mexican concurrence in the allotment is required since Coahoma is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before September 17, 1990, and reply comments on or before October 2, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph Smitherman, Post Office Box 832, Cameron, Texas 76520 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making MM Docket No. 90-339, adopted July 20, 1990, and released July 27, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communincations Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17917 Filed 7-31-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 148
Wednesday, August 1, 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

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the States of California (CA) and Washington (WA), and the Kankakee (IL) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specific agencies. The official agencies are the California Department of Food and Agriculture (California), the Washington Department of Agriculture (Washington), and Kankakee (IL) Grain Inspection, Inc. (Kankakee).

DATES: Applications must be postmarked on or before August 31, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

California, located at 1220 N. Street, Sacramento, CA 95814, and Washington, located at 406 General Administration Building, AX-41, Olympia, WA 98504, were designated under the Act on February 1, 1988, as official agencies, to provide official inspection services and Class X or Class Y weighing services. Kankakee, located at 4 Duncan Drive, Bourbonnais, IL 60914, was designated under the Act on February 1, 1988, as an official agency, to provide official inspection services.

The designation of each of these official agencies terminates on January 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to California, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of California, except those export port locations within the State and the geographic area assigned to the Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Washington, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Washington, except those export port locations within the State.

The geographic area presently assigned to Kankakee, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 west to the western Peoria County line; and

Bounded on the West by the western Peoria and Stark County lines, the northern Stark County line east to State Route 88; State Route 88 north to the Bureau County line.

An exception to Kankakee's assigned geographic area is the following location inside Kankakee's area which has been and will continue to be serviced by the following official agency:

Eastern Iowa Grain Inspection and Weighing Service, Inc.: Leland Farmers Company, Leland, LaSalle County.

Interested parties, including California, Washington, and Kankakee, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic

area is for the period beginning February 1, 1991, and ending January 31, 1994. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–17770 Filed 7–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Central Iowa (IA) Agency and the States of Maine (ME) and Montana (MT)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Central Iowa Grain Inspection Service, Inc. (Central Iowa), the Main Department of Agriculture, Food and Rural Resources (Maine), and the Montana Department of Agriculture (Montana) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Central Iowa's, Maine's, and Montana's designations terminate on August 31, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the March 1, 1990, **Federal Register** (55 FR 7350). Applications were to be postmarked by April 2, 1990. Central Iowa, Maine, and Montana were the only applicants for designation in those areas and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the May 1, 1990, **Federal Register** (55 FR 18144) and the requested comments on the applicants for designation. Comments were to be postmarked by June 15, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Central Iowa, Maine, and Montana were able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective September 1, 1990, and termination October 31, 1993, Central Iowa, Maine, and Montana are designated to provide official inspection services in their specified geographic area, as previously described in the February 1 **Federal Register.**

Interested persons may obtain official services by contacting Central Iowa at (515) 266–1101, Maine at (207) 289–3871, and Montana at (406) 452–9561.

Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–17768 Filed 7–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Aberdeen (SD) and McGregor (IA) Agencies and the State of Missouri (MO)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Aberdeen Grain Inspection, Inc. (Aberdeen), McGregor Grain Inspection and Weighing Corporation, Inc. (McGregor), and the Missouri Department of Agriculture (Missouri).

DATES: Comments must be postmarked on or before September 17, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

SprintMail users may respond to [PMARSDEN/FGIS/USDA].

Telecopier users may send responses to the automatic telecopier machine at (202) 447–4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1990, **Federal Register** (55 FR 22362). Applications were to be postmarked by July 2, 1990. Aberdeen and McGregor were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency. There were two applicants for the Missouri designation. Missouri applied for designation renewal in the entire area currently assigned to that agency. Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service applied for designation only in Lewis, Marion, and Pike Counties, Missouri.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–17769 Filed 7–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Howland Flat Timber Sale; Intention to Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice to intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Howland Flat Timber Sale located on the La Porte Ranger District, Plumas National Forest, Sierra County, California. The Howland Flat Timber Sale is approximately four air miles northeast of the town of La Porte, California in Township 21 N. and Range 9 and 10 E., Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) is scheduled to be published in May 1991 and the Final Environmental Impact Statement (FEIS) is planned to be available for review in August 1991.

DATES: Comments concerning the scope of analysis should be received in writing by September 14, 1990.

ADDRESSES: Submit written comments and suggestions to Charles W. Smay, District Ranger, P.O. Drawer 369, Challenge, CA 95925.

FOR FURTHER INFORMATION CONTACT: Carl McMurtrey, Program Planning Forester, or Laurie Perrot, Sale Planner, phone 916–675–2462.

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of this project area, which is located within the Beartrap Management Area (Management Area #16). The Forest Plan has designated the area to be managed under the Timber Emphasis, Visual Retention and Minimal Management Prescriptions. The proposed project would utilize tractor logging systems to harvest approximately 5.5 million board feet of timber. A range of alternatives for this project will be considered, one of which will be a "no action" alternative.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been completed for the proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from federal, state and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives to the proposed project.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environment Protection Agency (EPA) and to be available for public review by May 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the Howland Flat Timber Sale participate at that time. To be most helpful, comments on the DEIS should be a specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by August 1991. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: July 23, 1990.

David Peters,

Acting Forest Supervisor.

[FR Doc. 90–17808 Filed 7–31–90; 8:45 am]

BILLING CODE 3410-11-M

Forest Service Exemption; Hume Lake Ranger District, Sequoia National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hume Lake Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decisions resulting from the Hume Insect Salvage, Boulder Insect Salvage and Hyde Insect Salvage analyses. These environmental analyses are being prepared in response to the severe timber mortality in the Ten Mile, Boulder, and Dry Creek watersheds on the Hume Lake Ranger District, Sequoia National Forest. The unusual mortality is being caused by drought and related insect infestation. The Hume analysis area is within the Ten Mile Creek watershed, and is north of and adjacent to Kings Canyon National Park. The Boulder analysis area is within the Boulder Creek Watershed, north of and adjacent to Jennie Lakes Wilderness, approximately 4 miles east of Kings Canyon National Park, and south of the Kings River Special Management Area. The Hyde analysis area is within the Dry Creek Watershed, and is south of and adjacent to Kings Canyon National Park.

There are currently much higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. The Hume Lake District is proposing tractor harvest of 2.0 million board feet (MMBF) on up to 4,000 acres in the Hume Insect Salvage analysis and up to 1.0 MMBF on up to 2,500 acres in the Boulder Insect Salvage analysis, up to 1.0 MMBF on 1,000 acres in the Hyde Insect Salvage analysis. No new road construction is planned in any of the analysis areas. Approximately 4.0 miles of reconstruction is needed only under the Hyde analysis. All areas are within the General Forest Zone, as delineated by the Sequoia National Forest Land and Resource Management Plan. An important analysis feature is coordination with recreation activities in the Hume Lake Recreation Area under the Hume Insect Salvage analysis.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly. This is particularly true of fir trees. (Fir comprises approximately 50% of the trees proposed for salvage.)

Prompt removal of the dead and dying timber minimizes value and volume loss. Any unnecessary delays of the proposed salvage sales could delay harvesting until the 1991 logging season which could decrease the value by as much as $80,000. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decisions for the proposed projects are scheduled to be issued in mid-August, 1990. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects could not be implemented this field season. This would result in the substantial monetary loss.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions relating to the harvest and restoration of lands affected by drought-induced timber mortality in the Ten Mile, Boulder, and Dry Creek watersheds of the Hume Lake Ranger District, Sequoia National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 W. Grand Ave., Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Hume Insect Salvage, Boulder Insect Salvage and Hyde Insect Salvage environmental documents. A public scoping notice was published in the Porterville Recorder on June 19, 1990 to determine the issues to be addressed in the environmental analyses. Additionally, letters were mailed to representatives of various environmental groups and the timber industry, to provide information on the projects and to general public issues and concerns. The project files and related maps are available for public review at the Hume Lake Ranger District, 35860 East Kings Canyon Road, Dunlap, CA 93621.

The catastrophic damage presently occurring in the Ten Mile, Boulder and Dry Creek watersheds involves approximately 22,500 acres. Within this area, approximately 7,500 acres, with an associated 4.0 MMBF, is presently being analyzed for salvage in three sales. The value to the Forest Service of the salvage volume is estimated at $160,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Fresno and Tulare Counties will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

The proposals are not expected to adversely affect snag dependent wildlife species. Initial review indicates that post-harvest snag numbers will approximate the Forest Plan Standard and Guideline of 1.5 snags per acre. The Hume analysis indicates that there will be no long-term effects on the Hume Lake Campground, harvesting activity in this area will be prohibited until after Labor Day to minimize the impacts on campers. No Wild and Scenic rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project areas.

Dated: July 25, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90–17859 Filed 7–31–90; 8:45 am]

BILLING CODE 3410–11–M

Tahoe National Forest; Downieville Ranger District; Exemption From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Middle Salvage Environmental Assessment, Downieville Ranger District, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of bark beetles and severe drought. Project objectives are to recover the value of the dead and dying trees and to reduce the severe fire hazard. The Middle Salvage Environmental Assessment has been prepared for the portion of the Downieville Ranger District, Tahoe National Forest, south of the communities of Goodyears Bar, Downieville, and Sierra City, California to the Middle Yuba River. The area proposed for salvage excludes a previously inventoried roadless area and Spotted Owl Habitat Areas (SOHAs).

There are higher than normal levels of tree mortality occurring throughout the Tahoe National Forest as a result of three years of below normal precipitation. The analysis area is approximately 57,000 acres (gross) with at least 13,000 acres visibly affected at this time. Up to 50% of the trees in some stands within the analysis area are dead or dying. The Forest is proposing several sales using tractor, cable and/or hilicopter harvest systems. Up to 20 million board feet (MMBF) of timber would be harvested. No new road construction is planned (although 1.5 miles of reconstruciton has been identified as necessary). The bulk of the analysis area is in the General Forest Zone under the Downieville Multiple Use Plan, 1983. The Travel and Water Influence Zones are also found in the analysis area (adjacent to State Highway 49, high use county roads and the North Yuba River). An important feature in the analysis area is the Highway 49 viewshed.

The drought has had the greatest effect on reducing vigor and weaking natural defense mechanisms of over-stocked and over-mature stands

predisposing them to attack by bark and engraver beetles. True fir stands above 4500 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized, its value recovered, and fire hazard reduced.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs. Through timber sales, fuels treatments (yarding of substandard and submerchantable material) can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-vandenburg (K–V) funds to restore forest values being affected by extensive tree mortality.

The decision for the analysis area is scheduled to be issued in late-July 1990. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15–20 days for discretionary review by the Chief of the Forest Service) it is likely that the projects could not be implemented this field season. This would result in a loss of value of the timber due to deterioration. There would be a potential that the sales would not sell due to this value loss and as a result, the fire hazard would not be mitigated.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Middle Salvage analysis area on the Downieville Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705–2648, or to Frank J. Waldo, Acting Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959 at (916) 265–4531.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in the Middle Salvage Environmental Assessment. Public participation in the analysis was solicited through public meetings held March 14, 1990 in Grass Valley, California, and May 23, 1990 in Downieville, California, through a news release in mid-April, and through mailings to publics owning property adjacent to the Forest, mining claimants, holders of special use permits and those others known to be interested in timber management on the Tahoe National Forest. Comments received were considered in the issues, range of alternatives considered and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the North Yuba Office, Camptonville, California.

The analysis indicates that up to 20 million board feet, primarily true fir, valued at up to two million dollars, have been killed by the combined effects of drought and bark beetle attack. Up to 70% of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying or not harvesting this timber could result in a lost of up to $500,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in Nevada, Placer, Plumas, Sierra, and/or Yuba Counties.

The environmental analysis documents that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed values, visual quality, air quality, and public safety. No Wild and Scenic rivers, wetlands, wilderness areas, Spotted Owl Habitat Areas, released roadless areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources funded with K–V monies. These dealys would reslult in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels.

Dated: July 25, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90–17861 Filed 7–31–90; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Lost River Watershed, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Cancellation of notice of availability of a supplemental information report.

SUMMARY: The Notice of Avilability of a Supplemental Information Report for the Lost River Watershed, Hardy County, West Virginia, appearing in the **Federal Register** on July 26, 1990 (55 FR 30490), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Viriginia 26505, telephone (304) 291–4151.

Dated: July 26, 1990.

Rollin N. Swank,

State Conservationist.

[FR Doc. 90–17858 Filed 7–31–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Species and Designation of Critical Habitat; Petition to Designate Critical Habitat for the Northern Right Whale

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

ACTION: Notice of determination.

SUMMARY: On June 26, 1990, NMFS received a petition from GreenWorld requesting that three areas along the Eastern Seaboard be designated as critical habitat for the northern right whale (*Eubalaena glacialis*). NMFS has denied the petition from GreenWorld because it does not contain any new substantial information and essentially duplicates the petition received from the Right Whale Recovery Team on May 18, 1990 (55 FR 28670).

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (301-427-2323).

Dated: July 25, 1990.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 90-17841 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on a regulatory amendment proposed for implementation in 1991, which will reduce the directed red snapper commercial quota from 3.1 to 1.0 million pounds and the recreational bag limit from seven to two fish per person per day. In addition, the Council has proposed a shrimp trawling closed season in the Gulf from May 1 through July 31 beginning in 1991, with either additional closures or requirements for trawl gear modifications in 1993 to reduce bycatch of small snapper. Interested persons are invited to attend and to participate.

DATES: See "**SUPPLEMENTARY INFORMATION**" for dates and locations of the hearings. The hearings will begin at 7 p.m. and adjourn at 10 p.m. Written comments will be accepted until September 7, 1990.

ADDRESSES: Written comments may be mailed to Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Gulf of Mexico Fishery Management Council, (813) 228-2815.

SUPPLEMENTARY INFORMATION: The 1990 red snapper assessment reinforced the earlier conclusion in Amendment 1 to the Fishery Management Plan for the Reef Fish Resources that the red snapper population in the Gulf of Mexico is overfished. In fact, it is estimated that the present value of spawning stock biomass per recruit for red snapper is 0.6 percent, substantially below the 20 percent goal established in Amendment 1. To rebuild the population by the year 2000 would require complete closure of the directed fishery and at least a 60 percent reduction in shrimp trawl bycatch.

Red snapper is a slow growing species known to live as long as 20 years and almost certainly forms a single stock in the northern Gulf of Mexico. Juveniles are often associated with sandy or muddy bottom but older fish appear to aggregate areas of hard limestone or other irregular bottom formations. Adults are thought to be relatively sedentary. Dispersal of red snapper among different areas may rely primarily on the transport of larvae while they live as plankton in the water column.

The spawning stock has been at dangerously low levels, below 1 percent, since 1984—the first year for which spawning stock size can be estimated—and probably has been below 20 percent since the later 1970s. If all sources of fishing mortality were eliminated, it would take red snapper at least 8 years to rebuild to 20 percent spawning stock biomass per recruit. The red snapper stock will be in a sensitive and probably uncertain condition until the turn of the century and it will not be evident until the mid-1990s whether spawning biomass is going to rebuild as projected.

The prognosis for the short and perhaps medium term for red snapper is pessimistic. However, if spawning biomass levels can be rebuilt, there are grounds for confidence that a valuable long term fishery can be reestablished and as a much better understanding of its management requirements will be gained.

The hearings are scheduled as follows:

1. Monday, August 20, 1990—Florida Keys Community College, Tennessee Williams Fine Arts Center, 5901 West Junior College Road, Key West, Florida.

2. Tuesday, August 21, 1990—Patio of the Exhibition Hall, 1320 Hendry Street, Fort Myers, Florida.

3. Wednesday, August 22, 1990—Ramada Airport Hotel and Conference Center, Grandview South room, 5303 West Kennedy Boulevard, Tampa, Florida.

4. Monday, August 27, 1990—Panama City Marina Civic Center, Gallery One, 8 Harrison Avenue, Panama City, Florida.

5. Monday, August 27, 1990—Fort Brown Memorial Center, Complex, H.L. Stokley Hall, 600 International Boulevard, Brownsville, Texas.

6. Tuesday, August 28, 1990—Mobile Civic Center, room 14, 401 Civic Center Drive, Mobile, Alabama.

7. Tuesday, August 28, 1990—Texas A&M Research and Extension Center Auditorium, Route 2, Highway 44, Corpus Christi, Texas.

8. Wednesday, August 29, 1990—Gulf Coast Research Laboratory, J.L. Scott Marine Education Center & Aquarium, 1650 East Beach Boulevard, Biloxi, Mississippi.

9. Wednesday, August 29, 1990—Galveston County Court House, Jury Assembly room, 722 Moody, Galveston, Texas.

10. Thursday, August 30, 1990—Holiday Inn Central-Holidome, Purple Dawn room, 2032 NE. Evangeline Thruway, Lafayette, Louisiana.

11. Thursday, August 30, 1990—University of New Orleans, Auditorium BA 179, Office of Academic Affairs, Business Administration—Lake Front, New Orleans, Louisiana.

Dated: July 27, 1990.

Joe P. Clem,

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

[FR Doc. 90-17908 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting on August 8-10, 1990, in Building 4, room 2079 at the Northwest and Alaska Fishery Center, National Marine Fisheries Services, 7600 Sand Point Way NE., Seattle, WA. The GMT will begin its meeting at 8 a.m., on August 8 and will adjourn at 4:30 p.m., on August 10.

The GMT will review stock assessment reports and begin preparation of the annual Stock Assessment and Fishery Evaluation document. In addition, the GMT will review public proposals for management of the 1991 fisheries and begin preparation of analytical documents for review by the Council in September. Other issues related to management of the groundfish fishery may also be discussed.

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

Dated: July 26, 1990.

Joe P. Clem,

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

[FR Doc. 90-17812 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on August 20-24, 1990, at the Omni Hotel at Charleston Place; 130 Market St.; Charleston, SC. The Council will discuss Snapper/Grouper, Swordfish, Shrimp, Billfish, Coral and other fishery management business.

A detailed agenda will be available to the public on or about August 6, 1990. For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: July 26, 1990.

Joe P. Clem,

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

[FR Doc. 90-17813 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

July 26, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commission of Customs adjusting limits.

EFFECTIVE DATE: August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, 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 such Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton and man-made fiber textile products are being adjusted, variously, for carryforward, swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Appeal 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 47546, published on November 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 26, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Commissioner:

This directive amends, but does not cancel, the directive issued to you on November 9, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. The directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on August 2, 1990, the directive of November 9, 1989 is being amended to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided in the current bilateral textile agreement between the Governments of the United States and the Philippines:

Category; Levels in Group I	Adjusted 12-mo limit [1]
237	714,610 dozen.
239	7,842,995 kilograms.
331	1,009,386 dozen pairs.
347/348	1,278,432 dozen.
369-S [2]	491,892 kilograms.
604	938,139 kilograms.
634	253,381 dozen.
643	349,420 numbers.
647/648	771,395 dozen.
659-H [3]	695,864 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-17853 Filed 7-31-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 24, 1990.

The USAF Scientific Advisory Board Human Systems Division Advisory Group will meet on 28-29 August 1990 from 8:00 AM to 5:00 PM at Brooks AFB, TX.

The purpose of the meeting will be to discuss the psychometric and statistical research implications of an accelerated operational implementation of Air Training Command's Specialized Undergraduate Pilot Training (SUPT) initiative. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-17816 Filed 7-31-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Exclusive Patent License; Edge Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; Edge Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Edge Technologies, Inc., a revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,619,845, "Method for Generating Fine Sprays of Molten Metal for Spray Coating and Power Making," issued October 28, 1986.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATE: (Date of Publication).

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (202) 696-4001

Dated: July 18, 1990.

Jane M. Virga,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-17809 Filed 7-31-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to Roy N. Laney

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15490 to Roy N. Laney, for the "Laney Belt Terracer" which will have a total estimated cost of $78,835 to be provided by DOE.

SCOPE: The grant will provide funding for the construction, development and demonstration of two advanced "Laney Belt Terracer" prototypes. The project improves the inherent efficiency of terracing to control soil erosion and saves at least 20 gallons of fuel per acre over the conventional equipment.

The purpose of the new machine offers farmers a more cost effective means of terrace construction and reduces earthmoving costs for terrace construction between 70 and 86 percent. A market for the technology appears assured by virtue of the new legislation mandating terracing on critically designated acreage. By lowering the costs of terracing, this machine could allow farmers to stay independent and to meet the stringent new Federal Requirements at some relatively reasonable costs, and slow the demise of small farms.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Roy N. Laney, owner of the Laney Manufacturing Company, a small business with high qualifications in this specialized field of technology. Mr. Laney, the inventor and principal investigator of the "Laney Belt Terracer", has applied for a patent. The system will be tested in cooperation with the U.S. Soil Conservation Service to ascertain whether it can address their soon-to-be imposed farm terracing requirements.

It has been determined that this proposed project has high technical merit and represents a unique idea that is not eligible for the financial assistance under a recent, current or planned solicitation because the funding program, Energy-Related Inventions Program, has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never done and has no plans to do a competitive solicitation.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Tillman, RP-541, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-17892 Filed 7-31-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to Ruska Instrument Corporation

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15454 to the RUSKA Instrument Corporation for a mercury-free pressure, volume, and temperature (PVT) apparatus for thermophysical property analysis of hydrocarbon reservoir fluid which will have a total estimated cost of $62,200 to be provided by DOE.

SCOPE: The grant will provide funding for Ruska Instrument Corporation to develop and test a fieldworthy prototype of a mercury-free pressure, volume, and temperature (PVT) apparatus for thermophysical property analysis of hydrocarbon reservoir fluids having particular application to the economics of enhanced oil recovery.

The inventor has obtained the interest and cooperation of a number of large oil company corporate laboratories who prefer to use experimental data rather than the computational techiniques upon which they presently depend.

A market for the technology appears assured by virtue of the arrangement with corporate laboratories for demonstrating the device under practical field and laboratory conditions.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Ruska Instrument Corporation. The key personnel of Ruska Instrument Corporation are highly qualified in this field of technology. It has been determined that this project has high technical merit and has a strong possibility of adding to the national energy resources. The proposed project represents an unique idea that is not eligible for financial assistance under a recent, current or planned solititation because the funding program, Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never done and has no plans to do a competitive solicitation.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Gracie Narcho, PR-541, 1000 Independence Ave., SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-17893 Filed 7-31-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to Welden Steam Generators, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15487 to Welden Steam Generators, Inc. for a preproduction prototype of a direct—fired steam generator which will have a total estimated cost of $76,410 to be provided by DOE.

Scope: The grant will provide funding for Welden Steam Generators, Inc. to develop and test a preproduction prototype of a direct-fired steam generator.

The invention is an innovative energy saving method for heating commercial buildings. In this new approach, direct contact of water with the high-temperature combustion products of natural gas can be used to generate steam. The hot combusted gases then run through the radiators to capture latent heat before the gases are vented to the environment. The technology could have a significant impact on energy conservation.

Eligibility: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Welden Steam Generators, Inc. The inventor for Welden Steam Generators, Inc., David Welden, holds 5 patents, including one on a direct-fired steam generator for concrete curing and another on a direct-fired steam generator for heating commercial buildings. It has been determined that this project has high technical merit and has a strong possibility of allowing for future reductions in the Nation's energy consumption. The proposed project represents an unique idea that is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, Energy-Related Inventions Program (ERIP), has been structured since it beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never done and has no plans to do a competitive solicitation.

The term of the grant shall be twenty-four months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Gracie Narcho, PR-541, 1000 Independence Ave., SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-17894 Filed 7-31-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-197-999, et al.]

Montana Power Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 24, 1990.

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

1. Montana Power Co.

[Docket No. ER90-197-000]

Take notice that on July 20, 1990, Montana Power Company tendered for filing modifications to its proposed charge for nonfirm energy sales from thermal resources pursuant to its Nonfirm energy for Resale Rate (M-1) Tariff.

Comment date: August 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Colmac Energy, Inc.

[Docket No. ER90-502-000]

Take notice that on July 17, 1990, Colmac Energy, Inc. (Colmac) tendered for filing a proposed initial rate schedule for power sales from a qualifying small production facility expected to commence power sales in November, 1991. Power will be sold solely to Southern California Edison Company pursuant to the Power Purchase Contract between Southern California Edison Company and Colmac Energy, executed as of April 17, 1985, as amended by Amendment No. 1, executed as of June 20, 1989.

Colmac also requests: (1) Waiver of the Commission's prior notice requirements; (2) that the rates be accepted by the Commission without suspension or hearing; (3) that the rate schedule be found to constitute a formula rate and that any changes in charges due to operation of the formula need not be filed as a change in rate schedule; and (4) waiver of the Commission's cost-of-service data requirements and certain of the Commission's other regulations which the Commission has determined are not appropriate for application to qualifying small power production facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Co.

[Docket No. ER90-411-000]

Take notice that on June 1, 1990, Central Vermont Public Service Company (Central Vermont) tendered for filing its 1989 cost Report required under Paragraph Q-1 on Original Sheet No. 18 of the RS-2 rate schedule under which Central Vermont sells electric power to Connecticut Valley Electric Company Inc.

Comment date: August 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 383.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17835 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-149-000]

NATGAS U.S. Inc.; Tariff Changes

July 25, 1990.

Take notice that on July 20, 1990, NATGAS U.S. Inc. ("NATGAS"), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP90-149-000 Substitute First Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

NATGAS states that it is amending its filing in Docket No. RP90-149-000 to reflect an increase in its demand charges during the demand charge

period July 1, 1990 thorugh December 31, 1990 for Canadian gas purchased by NATGAS from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company, Division of Enron Corp. ("Northern") under NATGAS' Rate Schedule X-1, NATGAS states that the increase results from the combined effects of (1) An increase in Northwest Alaskan's demand charges to Northern for the July through December, 1990 period under Northwest Alaskan's Rate Schedule X-1 (see Northwest Alaskan's June 29, 1990 submission in Docket No. RP90-116-000), and (2) a decrease in Northern Border Pipeline Company's ("Northern Border") demand charges to NATGAS and Northern for said period (see Northern Border's July 16, 1990 filing in Docket No. RP90-145-000). As a result of these recent developments, NATGAS is withdrawing First Rvised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2 (which was filed herein on May 31, 1990 and conditionally accepted by the Commission on June 29, 1990), and replacing it with Substiute First Revised Sheet No. 4. In addition, NATGAS requests that the Commission provide any waivers necessary so that Substitute First Revised Sheet No. 4 will become effective as of July 1, 1990.

NATGAS states that, along with the substitute tariff sheet, it has submitted schedules and work papers which explain the derivation of its demand charges. It further states that a copy of this filing, including the tariff sheet and the attached schedules and work papers, has been served on Northern and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice & Procedure. All such petitions or protests should be filed on or before August 1, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17836 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-254-003, RP89-48-010, RP89-222-004]

Transwestern Pipeline Co.; Compliance Filing

July 25, 1990.

Take notice that Transwestern Pipeline Company (Transwestern) on July 20, 1990 tendered for filing as part of its F.E.R.C. Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective April 1, 1990

Substitute 41st Revised Sheet No. 6
2nd Substitute 3rd Revised Sheet No. 24
2nd Substitute 5th Revised Sheet No. 25
2nd Substitute 2nd Revised Sheet No. 25A
Substitute 1st Revised Sheet No. 25B
Substitute Original Sheet No. 25B.1
2nd Substitute 2nd Revised Sheet No. 28
2nd Substitute 5th Revised Sheet No. 29
Substitute 3rd Revised Sheet No. 29A
Substitute 1st Revised Sheet No. 29C
Substitute 1st Revised Sheet No. 29D
2nd Substitute 4th Revised Sheet No. 31
Substitute Original Sheet No. 31A
2nd Substitute 3rd Revised Sheet No. 32A
2nd Substitute 1st Revised Sheet No. 32B
Substitute 1st Revised Sheet No. 32C
2nd Substitute 4th Revised Sheet No. 128
2nd Substitute 1st Revised Sheet No. 140

Effective June 1, 1990

Substitute 4th Revised Sheet No. 32A

On September 29, 1989, Transwestern filed tariff sheets reflecting proposed changes to cost recovery provisions applicable to transmission fuel, company use gas, and lost and unaccounted for gas. On October 27, 1989, the Commission accepted the fuel filing tariff sheets, suspended their effectiveness until April 1, 1990, subject to refund, and ordered Transwestern to file compliance tariff sheets providing transportation customers the option of paying "in-kind" or paying the as-filed Fuel Charge through the transportation commodity rates, that is, "in-cash".

Transwestern sought rehearing on November 24, 1989, requesting, among other things, that it would be permitted to impose a mandatory in-kind payment for transmission fuel in lieu of providing an in-cash or an in-kind option.

On June 21, 1990, the Commission granted Transwestern's request for rehearing to permit a mandatory in-kind option, provided that option is modified to apply to transmission fuel, company use gas, and lost and unaccounted for gas for both firm and interruptible shippers.

Pursuant to, and in compliance with, the June 21, 1990 Order, Transwestern submits the above-referenced tariff sheets.

Transwestern respectfully requested that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective April 1, and June 1, 1990, as provided in the June 21, 1990 Order.

Transwestern states that copies of the filing were served upon Transwestern's jurisdictional customers and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 1, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17837 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-150-000]

Transcontinental Gas Pipe Line Corp.; Petition to Waive Certain Tariff Provisions

July 25, 1990.

Take notice that on July 24, 1990, Transcontinental Gas Pipe Line Corporation (Transco) filed a Petition for Authority to Waive Tariff Provisions of Rate Schedule LG-S.

The proposed effective date of the waiver is upon Commission approval of Transco's petition.

Transco requests authority to allow Rate Schedule LG-S customers to receive liquefied natural gas (LNG) service without the requirement that such customer be purchasing gas from Transco under its CD, G or OG Rate Schedules. As an alternative to such purchase requirement, Transco seeks authority to allow a customer to arrange for a concurrent delivery of natural gas to Transco using Transco's Rate Schedule IT, or FT, in addition to the option of using Rate Schedule CD, G or OG. Transco states the natural gas to be concurrently delivered may be gas purchased either from third parties or Transco under Transco's Rate Schedules IFS or IS.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 823 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR, 385.211 and 385.214). All such motions or protest should be filed on or before August 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17838 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-82-001]

Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 25, 1990.

Take notice that on July 20, 1990, Viking Gas Transmission Company (Viking) filed Substitute Seventh Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective August 1, 1990. Viking states that the purpose of this filing is to reflect a corrected reference to "CRL-2" under the Daily Demand Rate heading on that sheet.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before August 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17840 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-43-002]

Williams Natural Gas Co.; Compliance Filing

July 25, 1990.

Take notice that on June 29, 1990, Williams Natural Gas Company (WNG) submitted a proposal to recover prospectively through its purchase gas adjustment (PGA) certain settlement costs paid to producers and to delete, at the same time, such costs from its Order No. 500 filing in purported compliance with the Commission's May 30, 1990 order in this proceeding (51 FERC ¶ 61,244).

WNG states that in order to provide the Commission with adequate time to act by final order on WNG's and any other requests for rehearing before WNG increases its rates through its PGA (and, concomitantly, decreases its Order No. 500 charges) WNG proposes, pursuant to Ordering Paragraph (A)(2) of the May 30 order, to file, upon the issuance of such final order, the appropriate revisions to its rates so as to include on a prospective basis the finally determined level of settlement costs in the company's PGA and, at the same time, to revise its Order No. 500 charges and to make refunds accordingly.

WNG states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before August 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17839 Filed 7-31-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Eenrgy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Eenrgy (DOE) announces the procedures for the disbursement of $283,962.91, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Diamond Industries, Inc. The subsidiaries of Diamond Industries, Inc. that are also involved in this proceeding include Keystone Fuel Oil Company, Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Meadford-Dunleavy, Inc. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Applications for Refund submitted for a portion of the consent order funds must be filed in duplicate, postmarked no later than July 31, 1991. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All Applications for Refund should display a reference to case number KEF-0130.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282 (b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a July 22, 1986 consent order between Diamond Industries, Inc. (Diamond) and the DOE. The consent order settled possible pricing violations concerning certain sales of kerosene and No. 2 fuel oil by Diamond's subsidiary Keystone Fuel Oil Company (Keystone). Other subsidiaries of Diamond Industries, Inc. that are involved in this proceeding include Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvnaia and Meadford-Dunleavy, Inc.

The Decision and Order sets forth the procedures that the DOE has formulated to distribute the $283,962.91 received

from Diamond pursuant to the consent order. The funds are currently in an interest bearing escrow account. Under the procedures adopted, the funds will be made available for disbursement to 40 identified and certain unidentified purchasers of Ketystone kerosene and No. 2 fuel oil. The indentified customers and their pro-rata shares of the consent order funds are listed in the Appendix to the Decision and Order. The unidentified purchasers would have made purchases of Keystone No. 2 fuel oil from the Diamond subsidiaries listed above. The specific requirements for making a claim are set forth in the Decision and Order.

Applications for refund must be postmarked no later than July 31, 1991 to meet the filing deadline. All Applications for Refund will be available for public inspection between 1 and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Indpendence Avenue SW., Washington, DC 20585.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

July 25, 1990.

Name of Firm: Diamond Industries, Inc.
Date of Filing: April 27, 1989
Case Number: KEF-0130

In this determination, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the formal opening of the Diamond Industries, Inc. refund claim proceeding.

On April 27, 1989, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained by the DOE through a Consent Order that settled enforcement proceedings involving Keystone Fuel Oil Company (Keystone), a subsidiary of Diamond Industries, Inc. (Diamond). 10 CFR part 205, subpart V. On April 3, 1990, the OHA issued a Proposed Decision and Order (PDO) that tentatively set forth procedures for disbursement of the Consent Order funds. 55 FR 13653 (April 11, 1990). We established a 30-day period for the submission of comments regarding the proposed procedures. However, we received no comments. Accordingly, this Decision adopts the proposed procedures as final procedures for the distribution of the Diamond Industries, Inc. Consent Order funds. These procedures will also apply to three other subsidiaries of Diamond. These subsidiaries are Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Meadford-Dunleavy, Inc. See Footnote 4.

I. Background

Keystone was a "reseller" of No. 2 fuel oil and kerosene as that term was defined in 6 CFR 150.352 and 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period August 19, 1973 through June 30, 1975 (the Consent Order period), the ERA alleged that Keystone overcharged specific customers in certain sales of No. 2 fuel oil and kerosene and on March 31, 1980 the ERA issued a Proposed Remedial Order (PRO) to Keystone.[1] The PRO alleged that these overcharges amounted to $2,950,026. Keystone vigorously contested the allegations in the PRO in proceedings before the OHA. On March 29, 1984, the ERA submitted to the OHA revised exhibits that recalculated the alleged individual overcharge amounts and thereby reduced the alleged violation amount to $2,782,521. On July 13, 1984 the OHA issued a Remedial Order (RO) which found that Keystone had overcharged forty-three of its customers during the period from August 19, 1973 through April 8, 1974.[2] The RO found that Keystone was in violation of the Mandatory Petroleum Price Regulations in specific sales of 41,349,825 gallons of No. 2 fuel oil and kerosene. Keystone appealed the OHA's determination to the Federal Energy Regulatory Commission (FERC). FERC upheld in part and reversed in part the OHA's decision, and by Order of December 12, 1985 remanded the matter to the OHA. Keystone Fuel Oil Co., 33 FERC ¶ 61,353 (1985). Keystone and the DOE assert that their respective positions on the outstanding legal issues underlying the RO are meritorious. However, in order to settle the matters in dispute concerning the RO, Keystone and the DOE entered into a Consent Order that became final on July 22, 1986.[3] By entering into this Consent Order Diamond has made no admission, nor the DOE any finding, that Keystone violated any statute or regulation.

This Decision and Order sets forth the OHA's final procedures for the distribution of the $283,962.91, plus accrued interest, that Diamond remitted to the DOE for direct restitution to Keystone's identified customers. The PRO and the RO identify all of the allegedly overcharged customers as resellers. The appendix attached to this Decision sets forth the names of these Keystone customers, the volume purchased and the amount that each customer was allegedly overcharged by Keystone.[4] Accordingly, the potential

[1] The Commonwealth of Virginia purchased all of the 924,639 gallons of kerosene that were at issue in the PRO and RO. The RO found a total of $305,778 in overcharges on Keystone's sale of kerosene to the Commonwealth of Virginia.

[2] The RO found that Keystone had overcharged these customers for a total of $2,714,453. It appears, from a review of the calculations made in the RO, that the OHA mistakenly subtracted $68,068 from the violation amount. These reductions were for refunds that Keystone had previously made to several of the overcharged customers. It appears that the ERA's March 29, 1984 revised violation amount of $2,782,521 already reflected a reduction of the $68,068. See Keystone Fuel Oil Co., 12 DOE ¶ 83,011 at 86,170 (1984); see also PRO Exhibits. However, the ERA should have reduced the alleged violation amount by only $42,721, rather than $68,068, because $25,347 was refunded to a company for violations that were not included in the ERA's revised violations. See PRO Exhibits. Accordingly, we believe the actual revised violation amount is $2,807,868.

[3] The Consent Order covers the whole audit period, August 19, 1973 through June 30, 1975. However, all of the alleged violations were found by the RO to have occurred between August 19, 1973 through April 8, 1974. Because the Consent Order specifically states that it resolves "the dispute between DOE and Keystone * * * concerning the Remedial Order ("RO") issued to Keystone on July 13, 1984 * * *", only the specific overcharges found by the RO are actually covered by this Decision and Order.

[4] Three of the firms bound by the RO to have been overcharged are wholly owned subsidiaries of Diamond. These firms are Diamond Ice & Fuel Co. of Delaware, Diamond Ice & Fuel Co. of Chester, Pennsylvania and Medford-Dunleavy, Inc. The OHA considers a parent and subsidiary as the same firm for purposes of a special refund proceeding. Thus, granting a refund to a subsidiary of a Consent Order firm would effectively disburse a portion of the benefit of a refund to the Consent Order firm. Accordingly, we have decided that these firms are ineligible for a refund in this proceeding. *E.g.*, Gulf Oil Corp./Lewis Oil Co., Inc., 18 DOE ¶ 85,133 (1988); see also Bayside Fuel Oil Depot Corp., 13 DOE ¶ 85,139 (1985). However, firms that purchased from these three subsidiaries may apply for a refund for gallons of No. 2 fuel oil purchased from these subsidiaries during the Consent Order period. Such claimants may apply using the same presumptions established for the customers listed in the appendix. These claimants must establish that the volumes of No. 2 fuel oil claimed originated with Keystone or that a given percentage of their No. 2 fuel oil purchases were likely to have originated from Keystone. In addition, such claimants must establish their relative share of a subsidiary's total sales of Keystone No. 2 fuel oil to allow the OHA to determine their appropriate share of the Consent Order funds allocated to that subsidiary.

refund claimants in this proceeding are the customers listed in the appendix to this Decision. The Consent Order funds have been placed in an interest-bearing escrow account maintained by the Department of Treasury pending distribution by the DOE.[5]

II. Refund Procedures

As indicated above, the Keystone customers listed in the appendix of this Decision (and unknown customers of the three subsidiary firms) constitute the set of potential refund claimants. Therefore, we will consider refund applications only from these customers. Because the Consent Order funds are substantially less than the amount of the violations found by the RO, it was necessary to recalculate each purchaser's potential refund amount. We have calculated the per dollar percentage of the alleged overcharge represented by the Consent Order funds and have multiplied that percentage by the amount of the overcharge allocated to each allegedly overcharged customer in the revised exhibits to the PRO. These amounts are listed as the Pro-Rata Shre next to each potential claimant's name in the appendix. We recognize that any eligible firm could have been overcharged in amounts greater than the overcharges specified in the appendix to this Decision. However, an applicant must demonstrate that the proportions we used to allocate the Consent Order funds are not reflective of the overcharges that it sustained as a result of these specific transactions with Keystone in order to receive a refund in excess of its pro-rata share of the Consent Order funds.

The allocation of potential refund amounts to claimants is only the first step in the distribution process. In order to receive a refund, an applicant must also demonstrate that it did not pass on the alleged overcharges to its customers. *E.g.*, Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981). As we have done in many prior refund cases, we are adopting specific injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Keystone's alleged overcharges. We will discuss these presumptions in section II.A. below.

A. Refund Claimants

1. Reseller Applicants Seeking Principal Refunds of $5,000 or Less

We are adopting a presumption, as we have in many previous proceedings, that resellers seeking small refunds were injured by Keystone's pricing practices. E.g., E.D.G., Inc., 17 DOE ¶ 85,679 (1988). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a total principal refund of $5,000 or less will not be required to submit any evidence of injury beyond certifying that it purchased, during the alleged overcharge period, the volume of Keystone No. 2 fuel oil or kerosene listed for it in the appendix. Applicants seeking principal refunds in excess of $5,000 must follow the procedures that are outlined below.

2. Reseller Applicants Seeking Larger Refunds

If a firm's principal claim exceeds $5,000, it will be required to provide a detailed demonstration of its injury. Such a claimant will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, such a claimant must show that market conditions would not permit it to pass through those increased costs. E.g., Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co., 10 DOE ¶ 85,051 at 88,265 (1983).[6] If a reseller that is eligible for a principal refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000, plus accrued interest.

3. Regulated Firms And Cooperatives

Agricultural cooperatives and regulated firms, such as public utilities, that are required to pass on the benefit of any refund received to their customers will be exempted from the requirement that they make a detailed showing of injury. E.g., Tenneco Oil Co./Farmland Industries, Inc., 9 DOE ¶ 82,597 (1982). Instead those firms or cooperatives will be required to certify that they purchased, during the alleged overcharge period, the volume of Keystone No. 2 fuel oil or kerosene listed for them in the Appendix. They must also certify that they will pass any refund received through to their customers, provide us with a full explanation of the manner in which they plan to accomplish this restitution to their customers and certify that they will notify the appropriate regulatory or membership body of the receipt of the refund money. Any public utility claiming a principal refund of $5,000 or less will not be required to certify that it will pass the refund through to its customers. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers.

4. Other Applicants

If one of the firms listed in the Appendix of this Decision (or any customers of the three subsidiaries) was not a reseller, it is still eligible to apply for a refund in this proceding. We are adopting the presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry, were injured by Keystone's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the Consent Order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. E.g., Dorchester Gas Corp., 14 DOE ¶ 85,240 at 88,450 (1986). Therefore, if any Keystone customer listed in the appendix is an end-user, it must rebut the RO's finding that it was a reseller and establish that it was an ultimate consumer of Keystone No. 2 fuel oil or kerosene, during the alleged overcharge period, and certify that it purchased the volume listed in the appendix in order to receive its maximum refund amount.

III. General Refund Application Requirements for the Refined Products Pool

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased controlled refined petroleum

[5] Pursuant to the Consent Order, Diamond agreed to pay $250,000 to the DOE in eighteen monthly installments. On March 20, 1989, Diamond remitted the final payment, bringing the total payment to $283,962.91 in principal and interest to the DOE. This total of $283,962.91, which includes principal and interest accrued on the previously unpaid principal balance, will be treated as principal. Any successful claimants in this proceeding will be awarded a pro-rata share of the $283,962.91, plus a pro-rata share of the interest that has accrued on the remitted funds since October 14, 1986, the date that the first payment was remitted.

[6] In a recent Decision, the Temporary Emergency Court of Appeals affirmed the OHA's standards for a demonstration of injury. The court specifically upheld the method used to evaluate comparative market price and thereby determine competitive disadvantage. *Behm Family Corp.* v. *DOE*, No. 8-22 slip op. (T.E.C.A. April 30, 1990).

products sold by Keystone during the period between August 19, 1973 through April 8, 1974. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the Consent Order firm, Diamond Industries, Inc., the case number (KEF-0130) and the applicant's name should be prominently displayed on the first page.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the Keystone refined product(s) by the applicant, i.e., reseller, end-user, public utility or cooperative.

(4) If the applicant is claiming a refund of $5,000 or less, it should provide a certification that it is one of the allegedly overcharged entities and that it purchased the No. 2 fuel oil or kerosene listed in the appendix.

(5) If the applicant purchased from one of the three Diamond subsidiaries, it should submit information that establishes that the product originated from Keystone during the refund period. Such an applicant must also establish their relative share of the subsidiary's total sales of Keystone No. 2 fuel oil. See Footnote 4 above.

(6) If the applicant is a reseller whose principal pro-rata share exceeds $5,000, it must indicate whether it elects to receive a principal refund of $5,000 under the small claims presumption of injury. If it does not elect the presumption of injury, it must submit a detailed showing that it was injured by the alleged overcharges. Such a showing should include monthly schedules of the applicant's purchases of Keystone's No. 2 fuel oil or kerosene during the period from August 19, 1973 through April 8, 1974. Monthly schedules should be based upon actual, contemporaneous business records. See section II.A.2.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Diamond Industries, Inc. proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) A statement whether the applicant was in any way affiliated with Diamond Industries, Inc. If so, the applicant should explain the nature of the affiliation.

(9) A statement whether there has been any change in ownership of the entity that purchased the Keystone covered products at any time during or after the Consent Order period. If so, the name and address of the current (or former) owner should be provided.

(10) A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(11) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001.

All Applications for Refund must be filed in duplicate and must be filed no later than July 31, 1991. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: Diamond Industries Inc., Refund Proceeding, Case No. KEF-0130; Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

IV. Distribution of the Remainder of the Consent Order Funds Attributable to Keystone's Sales of No. 2 Fuel Oil and Kerosene

In the event that money remains after all refund claims from the Diamond fund have been analyzed, those funds in that account will be discharged in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, (PODRA). 15 U.S.C.A. 4501-4507 (West Supp. 1990).

It is therefore ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Diamond Industries, Inc. pursuant to the Consent Order executed on July 22, 1986, may now be filed.

(2) Applications for Refund from the Diamond Industries, Inc. Consent Order funds must be postmarked no later than July 31, 1991.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Name	Volume	Alleged overcharge	Pro-rata share
Bedford County Oil	432,904	$20,462	$2,069
Bell Fuel Oil	730,311	10,020	1,013
Calypso Coal Storage	46,170	1,372	139
City Coal	563,145	13,433	1,358
Commander	274,663	6,510	658
Commonwealth of Virginia	2,955,753	1,304,970	131,973
Delchester Oil	81,325	1,116	113
* Diamond Ice & Fuel Co. of Chester, Pennsylvania	8,678,272	77,091	7,796
* Diamond Ice & Fuel Co. of Delaware	4,446,510	48,632	4,918
Energy Inc	2,694,424	77,440	7,832
Great Valley Oil	481,992	14,545	1,471
Hammond & Taylor	74,772	1,080	109
Jones Fuel Oil	587,339	10,844	1,097
Keller's Coal Yard	4,090	237	24
Kent & Sussex Company	54,403	1,578	160
Kirshner Brothers	248,962	6,548	662
Carlos Leffler, Inc	875,455	43,461	4,395
Lehigh Valley Oil Company	61,925	1,593	161
* Medford-Dunleavy	1,811,509	22,899	2,316

APPENDIX—Continued

Name	Volume	Alleged overcharge	Pro-rata share
National Heat and Power	4,198,270	75,925	7,678
A.R. Nikolson	92,312	2,428	246
Paragon Oil	3,170,810	57,392	5,804
Park Oil	24,558	305	31
Penn Independent Oil	24,002	439	44
Pennsylvania Delaware Supply	55,007	633	64
Peoples	384,283	8,877	898
R.J. Peppleman	155,881	2,589	262
Petroleum Heating	51,373	1,672	169
Saber Petroleum Corporation/McBride Trucking	1,375,001	504,488	51,019
R & S Fuel	68,613	1,438	145
Servco Company, Inc	148,616	2,927	296
Smyrna-Clayton Co-op	62,479	1,643	166
Southern States Cooperative	1,284,727	407,130	41,173
Speer Brothers	23,333	236	24
Supreme Petroleum	148,724	892	90
Tauber Oil Company	4,502,240	67,776	6,854
Duffy Tingue	29,138	349	35
Town & Country	73,810	1,579	160
United Fuel	121,368	1,226	124
Vernon & Vernon	139,257	2,351	238
Ralph D. Weaver	41,600	536	54
G. Wolper	24,549	780	79
Wright Fuel Oil	45,950	426	43
	41,349,825	$2,807,868	$283,962

* Wholly owned subsidiary of Diamond Industries, Inc.

[FR Doc. 90-17921 Filed 7-31-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,999,670.96, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with Fletcher Oil & Refining Company, Inc. (Fletcher), Case No. LEF-0010. The OHA has determined that one-half of the funds ($999,835.48) will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, and the other one-half of the funds ($999,835.48) to customers which purchased refined petroleum products from Fletcher during the period August 19, 1973 through January 27, 1981.

DATES AND ADDRESSES: Applications for Refund to either the crude oil or refined product pool must be filed in duplicate, addressed to "Subpart V Crude Oil Overcharge Funds" or "Fletcher Special Refund Proceeding" as appropriate, and sent to:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applications to the *crude oil* pool must be postmarked by March 31, 1991. Applications to the *refined product* pool should display a prominent reference to case number "LEF-0010" and be postmarked by July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2094.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given to the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,999,670.96, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Fletcher Oil & Refining Company, Inc. (Fletcher) which became effective on August 1, 1983. The funds are paid by Fletcher towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations during the period August 19, 1973 through January 27, 1981 (the consent order period).

The OHA will divide the Fletcher consent order fund into two equal refund pools based on alleged crude oil overcharges and alleged refined petroleum product overcharges.

For the crude oil refund pool ($1,999,835.84), the OHA has determined that these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

With respect to the refined product refund pool ($1,999,835.48), the OHA has determined that it will distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Fletcher who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in section VI of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from Fletcher.

If any funds remain in the refined products refund pool after valid claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the

Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund to the crude oil pool must be postmarked by March 31, 1991. Any claimant which has already filed a subpart V crude oil refund application need not file another application, as the prior application will be deemed to be filed in this crude oil refund proceeding. Purchasers of regulated petroleum products from Fletcher during the period August 19, 1973 through January 27, 1981, may file Applications for Refund from the refined products pool. The refined product refund applications must be postmarked by July 31, 1991. Instructions for the completion of crude oil and refined product refund applications are set forth in the Decision that immediately follows this notice. Crude oil and refined product refund claims should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

July 25, 1990.

Name of Firm: Fletcher Oil & Refining Company, Inc.

Date of Filing: February 8, 1990

Case Number: LEF–0010

On February 8, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Fletcher Oil & Refining Company, Inc. (Fletcher) remitted to the DOE pursuant to a 1983 consent order between the DOE and Fletcher. Fletcher has remitted $1,367,918.52 pursuant to the consent order, to which $631,752.44 in interest has accrued as of June 30, 1990. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations resolved by the Fletcher consent order.

I. Background

Fletcher operated a crude oil refinery, and it sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* Fletcher was a "refiner" subject to the price regulations set forth at 10 CFR part 212, Subpart E, between 1973 and January 27, 1981. During a portion of this period, Fletcher was also subject to the Domestic Crude Oil Allocation Program (the Entitlements Program), codified at 10 CFR 211.67.

During the period of petroleum price controls, the ERA conducted several audits of Fletcher's operations to determine its compliance with the DOE regulations. As a result of these audits, the ERA issued Notices of Probable Violation (NOPVs) alleging that Fletcher had not complied with the refiner price regulations in its refined product sales and the Entitlements Program in its crude oil refiney operations.

Fletcher entered into a consent order with the DOE resolving issues of its alleged violation of the DOE regulations between August 19, 1973, and January 27, 1981 (the consent order period) which became effective on August 1, 1983. Without admitting any violations of these regulations, Fletcher remitted $1,367,918.52 to the DOE, to which $631,752.44 in interest has accrued as of June 30, 1990. Therefore, a total of $1,999,670.96 is available for disbursement pursuant to the consent order between the DOE and Fletcher. These funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

II. Jurisdiction and Authority

The regulations codified in Subpart V establish general guidelines which the OHA may utilize in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of Subpart V and the authority of the OHA to design refund procedures may be found in Office of Enforcement, 9 DOE ¶ 82,508 (1981) and in Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition for the implementation of refund procedures under the Subpart V mechanism with respect to the Fletcher consent order fund and have determined that such refund procedures are appropriate. The present Decision and Order establishes the OHA's plans to distribute this fund.

III. Proposed Decision and Order

On April 25, 1990, the DOE issued a Proposed Decision and Order establishing tentative refund procedures for the distribution of the Fletcher consent order fund. Although this Proposed Decision and Order was published in the Federal Register and a 30-day period was provided for the submission of comments regarding our proposed refund plan, no interested parties filed comments with regard to the Proposed Decision. Therefore, we will adopt the refund procedures of the Proposed Decision and Order, set forth below, in final form.

IV. Division of the Fletcher Consent Order Fund

The 1983 consent order between the DOE and Fletcher settled issues of Fletcher's alleged violation of regulations governing the Entitlements Program and the sale of refined petroleum products. These issues were based upon a 1980 NOPV alleging circumvention of the Entitlements Program in a crude oil processing agreement, and a Proposed Remedial Order drafted in 1982, following another 1980 NOPV, alleging that Fletcher did not properly calculate its resulted product selling prices under the refiner price rule. Since our review of the enforcement record indicates that the alleged violations were attributable, in approximately equal amounts, to Fletcher's crude oil and refined product operations, we believe that it is most equitable to direct one-half of the Fletcher consent order fund ($999,835.48) into a crude oil refund pool and one-half ($999,835.48) into a refined product refund pool.

V. Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The portion of the Fletcher consent order monies in the crude oil pool will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In Re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be refunded to

the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of thirty days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance materials to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, e.g., Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel).

B. Refund Claims

We will adopt the DOE's standard procedures to distribute the crude oil portion of the Fletcher consent order fund. As mentioned above, $999,835.48 and any interest accruing on this amount between July 1, 1990, and the date of its disbursement, is the amount covered by the crude oil portion of this Decision. We have chosen to initially reserve twenty percent of these funds ($199,967.10), and accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the EPAA. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. Shell at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. Shell at 88,406. These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act Section 3003(b)(2), 15 U.S.C. 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In Re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

Refunds to eligible claimants that purchased refined petroleum products will be calculated on the basis of a volumetric amount obtained by dividing the crude oil refund monies involved in this determination ($999,835.48) by the total U.S. consumption of petroleum products during the price control period (2,020,997,335,000 gallons). Mountain Fuel at 88,868n.4. The calculation results in a volumetric refund amount of $0.00000049472 per gallon for the Fletcher crude oil pool. This method reflects the fact that crude oil overcharges were spread evenly throughout the domestic petroleum refining industry by the Entitlements Program.[1]

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, *e.g.*, A. Tarricone, Inc., 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date.

The deadline for claims to the first pool of crude oil overcharge funds was June 30, 1988, and this pool contained funds covered by determinations up to and including Shell. A second pool of crude oil overcharge funds, obtained pursuant to the determinations beginning with World Oil Co., 17 DOE ¶ 85,568, *modified*, 17 DOE ¶ 85,669 (1988) and ending with Texaco Inc., 19 DOE ¶ 85,200, *modified*, 19 DOE ¶ 85,236 (1989), was established with an application deadline of October 31, 1989. The application deadline for the third crude oil overcharge pool, covering the present determination, is March 31, 1991. See Bi-Petro, Inc., 20 DOE ¶ 85,071 (1990); Cibro Sales Corp., Inc., 20 DOE ¶ 85,036 (1990). The volumetric refund amount from the third pool of crude oil funds will rise as additional crude oil overcharge monies become available. Applicants may be required to submit additional information to support their refund claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register**.

C. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should recieve any refund check;

[1] The Entitlement Program equalized the effects, among all domestic refiners and their downstream customers, of overcharges occurring due to crude oil miscertifications by requiring the exchange of "entitlements" payments between refiners.

(2) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application. If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(8) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(9) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

D. Payments to the Federal Government and the States

Using the procedures of the MSRP, 80 percent of the alleged crude oil overcharge amounts covered by this Decision ($799,686.38), and accrued interest, will be disbursed, in equal shares, to the Federal Government and the States for indirect restitution. The refunds disbursed to the States will be in proportion to each State's consumption of petroleum products during the price control period. The specific ratio or share of the funds which each State will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90, 509 at 90,687. These funds will controlled by the same guidelines and reporting requirements as all other crude oil monies received by the States under the Settlement Agreement.

VI. Refined Product Refund Procedures

We will implement a two-stage refund procedure for the refined product portion of the Fletcher consent order fund ($999,835.48), and accrued interest. Purchasers of refined petroleum products from Fletcher during the consent order period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be dispersed to the State governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of (1) end-users, (2) regulated entities, such as public utilities and cooperatives, and (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers"). The submission of a refund application for a share of the Fletcher crude oil pool will not be considered as a request for a refund from the Fletcher refined product pool; hence, a separate refined product application must be submitted.

A. Claims Based on Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Fletcher during the August 19, 1973 through January 27, 1981 consent order period. If the petroleum products were not purchased directly from Fletcher, the claimant must establish that they originated from Fletcher. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Fletcher's alleged overcharges. The two distinct elements generally required in such an injury showing are (1) the existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through costs of the alleged overcharges.[2] *See Vickers Energy Corp./Hutchens Oil Co., Inc.*, 11 DOE ¶ 85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Fletcher. *See National Helium Corporation/Atlantic Richfield Company*, 11 DOE ¶ 85,257 (1984), *affirmed sub nom. Atlantic Richfield Company* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring

[2] Claimants which have previously relied upon their banked costs to obtain refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. *See Standard Oil Co. (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. *See Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

burdensome expenses, and aids in the efficient evaluation of refund claims. See, e.g., Texaco Inc., 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent Subpart V regulations at 10 CFR 205.282(e). Accordingly, we adopt the presumptions described below.

a. *Calculation of Refunds.* We will adopt a presumption that the alleged overcharges were dispersed equally in all of Fletcher's sales of regulated (covered) refined petroleum products during the consent order period and, thereby, refunds will be made on a per gallon, or "volumetric," basis.[3] In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices.

Under this volumetric method, a claimant's "allocable share" of the refined product portion of the consent order fund is equal to the number of gallons of covered petroleum products which it purchased from Fletcher during the consent order (refund) period multiplied by the per gallon (volumetric) refund amount.[4] In the present refund proceeding, we have computed the per gallon refund amount to be $0.000877.[5] Using this volumetric amount, a claimant would be eligible for a refund of $877 per one million gallons purchased. In addition to the principal refund, a claimant whose application is granted to this refund proceeding will receive a pro rata share of the interest that has accrued on the Fletcher refined product pool since its deposit in the appropriate escrow account.[6]

We also propose to adopt various presumptions concerning a claimant's injury, which are listed below.

b. *End-Users.* In accordance with prior subpart V refund proceedings, we will adopt the presumption that end-users of Fletcher petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Fletcher's alleged overcharges. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. See TOGCO at 88,209. Accordingly, we propose that end-users will only be required to establish their purchase volumes of covered Fletcher petroleum products during the refund period to make a showing sufficient to receive refunds.

c. *Regulated Bodies and Cooperatives.*—A claimant whose prices for goods and services are regulated by a govenmental body (e.g., public utilities), or an agricultural cooperative, need only submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certifiy that it will (1) pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. See Exxon at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its cutomers and member-customers, respectively. Accordingly, these firms will not be required to make a detailed demonstration of injury to receive a refund.[7]

d. *Retailers, Resellers, and Refiners*—i. *Small Claims Presumption.* We will adopt a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Fletcher petroleum products and possesses an allocable share of the refined product pool of $5,000 or less, exclusive of interest, was injured by the alleged overcharges. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Fletcher petroleum products. See TOGCO at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the large number of routine refund claims expected.[8]

ii. *Mid-Level Claims Presumption.*—Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Fletcher refined product pool exceeds $5,000, exclusive of interest, may elect to receive either $5,000 or 40 percent of its allocable share, whichever is greater, up to $50,000, also exclusive of interest.[9] The use of this presumption

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[3] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Fletcher's alleged overcharges. *See, e.g.*, Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] The petroleum products sold by Fletcher which were subject to the petroleum price regulations and their respective decontrol dates are as follows:

Residual Fuel and Low Sulphur Fuel Oil.	June 1, 1976.
Diesel Fuel and No. 2 Fuel Oil.	July 1, 1976.
Jet Fuel	February 26, 1989.
Butane	January 1, 1980.
Motor Gasoline and Propane.	January 28, 1981.

[5] We obtained the per gallon refund figure by dividing the refined product portion of the Fletcher consent order fund ($999,835.48) by the approximate volume of refined petroleum products sold by Fletcher between the beginning of the refund period (August 19, 1973) and the dates of decontrol for the relevant products (1,139,827,413 gallons).

[6] As in prior cases, we propose to establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 17,104 gallons of petroleum products from Fletcher would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. See Exxon Corp., 17 DOE ¶ 85,590 at 89,150 (1988) (Exxon).

[7] A cooperative's purchases of Fletcher petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc., 19 DOE ¶ 85,215 (1989).

[8] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 5,701,255 gallons of Fletcher petroleum products during the refund period.

[9] Under the mid-level injury presumption, a claimant which purchased between 5,701,255 gallons and 14,253,138 gallons of Fletcher petroleum products would be eligible to receive a principal (exclusive of interest) refund of $5,000. A claimant purchasing between 14,253,139 gallons and 142,531,375 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 142,531,375 gallons would be eligible for a principal refund of $50,000.

reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Fletcher's alleged overcharges. See Total Petroleum, Inc., 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we have determined product-specific levels of injury through detailed evaluations. See, e.g., Getty Oil Co., 15 DOE ¶ 85,064 (1988). However, in Gulf Oil Corp., 16 DOE ¶ 85,381 at 88,737 (1987) (Gulf), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the Gulf determination is sound and, accordingly, we will utilize, in the present refund proceeding, a 40 percent presumtive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Fletcher petroleum products to be eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater, up to $50,000.[10]

iii. *Spot Purchasers.*—We will adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Fletcher did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. See, e.g., Vickers at 85,396–97. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Fletcher.[11]

[10] If a claimant attempts to make a detailed injury showing for the purpose of obtaining 100 percent of its allocable share but, instead, submits evidence leading us to conclude that it passed through all of the alleged overcharges, or would be eligible for a refund of less than the appropriate presumptive injury level, it may not then be eligible for a refund under an injury presumption. Such a claimant would be granted a refund reflecting the level of injury exhibited in its injury showing. No refund will be granted if its submission shows that it was not injured in its purchases from Fletcher. See Exxon at 89,150n.10.

[11] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss.

B. Allocation Claims

We may also receive claims based upon Fletcher's alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations, 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in Subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as Mobil Oil Corp./Aromalene Oil Co., 20 DOE ¶ 85,155 (1990); Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) the existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 CFR part 205, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Fletcher. See Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989), action for review pending, No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Fletcher. In determining the amount of any allocation refund, we will utilize any available information regarding the portion of the Fletcher consent order fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the Fletcher consent order is the result of a negotiated settlement of the issues identified in the enforcement proceedings against Fletcher and the amount of the consent order is less than Fletcher's potential liability in those proceedings, we will prorate allocation refunds which would otherwise be disproportionately large in relation to the consent order fund.

C. Refined Product Application Requirements

To apply for a refund from the Fletcher Oil & Refining Company, Inc. refined product pool, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the Fletcher petroleum products: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) For each petroleum product which the applicant purchased from Fletcher, a separate monthly purchase schedule covering the period between the beginning of the refund period (August 19, 1973) and the date of decontrol of the petroleum product. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Fletcher, it should provide its customer number. If the applicant was an indirect purchaser from Fletcher (e.g., it purchased Fletcher petroleum products through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by Fletcher;

(5) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $5,000 (i.e., whose purchases equal or exceed 5,701,255

gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Fletcher's alleged overcharges. See section VI.A *supra;*

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Fletcher refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant is or was partically or entirely owned by Fletcher, it should explain this affiliation, including the years in which it was affiliated with Fletcher; [12]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to a public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Fletcher Special Refund Proceeding, Case NO. LEF-0010." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than July 31, 1991, and sent to: Fletcher Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

D. Distribution of Funds Remaining After the First Stage

Any funds reamaining in the refined product pool of the Fletcher consent order fund after the payment of all valid first-stage claims will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-7. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to meet the claims of injured parties in Subpart V refund proceedings and make those funds available to state governments for use in four identified energy conservation programs. The Secretary has delegated these duties to the OHA, and any funds in the Fletcher refined product pool that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It is therefore ordered, that:

(1) Applications for Refund from the crude oil pool, remitted to the Department of Energy by Fletcher Oil & Refining Company, Inc. pursuant to Consent Order Nos. N00S90145, N00S98074, and 960S00100, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall take appropriate action to transfer the funds specified in Paragraphs (4), (5), and (6) below from the subaccount denominated "Fletcher Oil & Refining Company, Inc." Account No. 960S00100Z.

(4) The Director of Special Accounts and Payroll shall transfer $399,934.19 (and accrued interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $399,934.19 (and accrued interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $199,967.10 (and accrued interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated "Crude Tracking-Claimants 3," Account No. 999DOE009Z.

(7) Applications for Refund from the refined product pool, remitted by Fletcher Oil & Refining Company, Inc. pursuant to Consent Order Nos. N00S90145, N00S98074, and 960S00100, may now be filed.

(8) Applications for Refund from the refined product pool must be postmarked no later than July 31, 1991.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

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[12] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates or subsidiaries of Fletcher were not injured by Fletcher's Propane Co., 15 DOE ¶ 85,288 (1987). This is so because Fletcher presumably would not have sold petroleum products to an affiliate or subsidiary if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), *amended claim denied,* 17 DOE ¶ 85,291 (1988), *reconsideration denied,* 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate or subsidiary of Fletcher was granted a refund, Fletcher woudl be indirectly compensated from a consent order fund remitted to settle its own alleged violations.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $450,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with the Quantum Chemical Corporation (Quantum), formerly the National Distillers and Chemical Corporation. The subsidiaries of Quantum involved in this proceeding include National Hydrocarbons, Inc. and U.S. Industrial Chemicals Company. The OHA has determined that the funds will be distributed in accordance with the

DOE's special refund procedures, 10 CFR part 295, subpart V.

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number LEF-0011. Applications for Refund by individuals who purchased natural gasoline directly from Quantum must be postmarked no later than December 31, 1990. Applications for Refund by indirect purchasers of Quantum natural gasoline must be postmarked no later than November 30, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas L Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585 (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $450,000 that has been remitted by Quantum Chemical Corporation (formerly National Distillers and Chemical Corporation) to the DOE to settle possible pricing violations with respect to its sales of natural gasoline during the period August 1, 1973 through January 27, 1981. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

As the Decision and Order indicates, National Hydrocarbons, Inc. and U.S. Industrial Chemicals Company are the subsidiaries of Quantum Chemical Corporation involved in this proceeding. The sole direct purchaser of Quantum natural gasoline was the Phillips Petroleum Company, which blended the natural gasoline into its motor gasoline or resold the natural gasoline to the Marathon Petroleum Company.

Applications for refund may not be filed by injured purchasers of Quantum natural gasoline. The Application for Refund by the Phillips Petroleum Company must be postmarked no later than December 31, 1990. Applications for Refund by indirect purchasers of quantum natural gasoline must be postmarked no later than November 30, 1991. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

July 25, 1990.

Name of Firm: Quantum Chemical Corporation.

Date of Filing: February 8, 1990.

Case Number: LEF-0011.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on February 8, 1990. In its Petition, the ERA requested that the OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order between the DOE and Quantum Chemical Corporation, formerly National Distillers and Chemical Corporation (referred to herein as Quantum).

I. Background

Since the early 1950's, Quantum has owned and operated an integrated petrochemical facility at Tuscola, Illinois. Specifically, this facility has been owned by National Hydrocarbons, Inc. (NHI), a wholly-owned subsidiary of Quantum, and has been operated by U.S. Industrial Chemicals Company (USIC), Quantum's chemical division. The facility is adjacent to the main natural gas pipeline system of the Panhandle Eastern Pipeline Company (Panhandle). At this plant, Quantum produced from Panhandle's gas stream a mixed natural gas liquid (NGL) stream which was then further fractionated into its component products, including natural gasoline. Panhandle was paid for the volume of natural gas "shrinkage" of its gas stream and the balance of that stream was returned to Panhandle. According to the ERA, virtually all of the NGL products produced by Quantum at the Tuscola plant were sold to the Phillips Petroleum Company (Phillips) under a series of long term contracts. The natural gasoline produced at the Tuscola plant was sold to Phillips on a cents-per-gallon basis.

On the basis of an audit of Quantum's pricing practices, the ERA issued a Proposed Remedial Order (PRO) alleging that Quantum overcharged its purchasers of NGL products, including natural gasoline, by $65,565,237 during the period September 1973 through August 1978. On January 27, 1987, DOE issued a Remedial Order (RO) to Quantum, upholding the allegations contained in the PRO. National Distillers and Chemical Corporation, 15 DOE ¶ 83,015 (1987). On March 25, 1988, Quantum and the DOE entered into a Consent Order to resolve all matters relating to Quantum's compliance with the regulations concerning its sales of natural gasoline during the period August 1, 1973 through January 27, 1981. Quantum's sales of other NGL products were not covered by the terms of the Consent Order.* Pursuant to the Consent Order, the DOE received a payment of $450,000 from Quantum on April 25, 1988. These funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE through subpart V.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. It is the DOE's policy to use the Subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see Office of Enforcement, 9 DOE ¶ 82,553 (1982); Office of Enforcement, 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

On May 11, 1990, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Quantum consent order fund to qualified purchasers of Quantum's natural gasoline. The OHA tentatively concluded that these funds should be distributed in accordance with the general guidelines for formulating and implementing a plan of distribution of funds set forth in 10 CFR part 205, subpart V of the DOE procedural regulations. The OHA

* With respect to NGL products other than natural gasoline, Quantum continued to pursue its appeal of the DOE's Remedial Order before the Federal Energy Regulatory Commission (FERC). In an order dated April 8, 1988, the FERC found that the theory upon which these alleged violations were based was incorrect, and the Remedial Order was remanded to the DOE. National Distillers and Chemical Corporation, 43 FERC ¶ 61,060 (1988). Consistent with this decision, the ERA now has concluded that there are no further overcharges related to natural gas products and that the Consent Order concerning natural gasoline sales resolved and settled all disputes between Quantum and the DOE.

proposed to make the entire settlement amount of $450,000, plus accrued interest, available for distribution to purchasers of Quantum natural gasoline who can show that they were injured by Quantum's pricing practices during the Consent Order period. The PD&O provided that in the event that money remains after all meritorious refund applications have been processed, the funds in the Quantum escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA), 15 U.S.C.A. 4501–4501 (West Supp. 1989).

In the PD&O, the OHA proposed to require applicants for refunds to document their direct purchases of natural gasoline from Quantum, and to prove that they were injured by the overcharges. The PD&O stated that indirect purchasers of Quantum's natural gasoline would also be permitted to apply for refunds, and could be found eligible for a refund if the previous purchasers of Quantum's natural gasoline passed through Quantum's alleged overcharges. We also proposed to adopt a small claims presumption that purchasers seeking refunds of $5,000 or less were injured by Quantum's pricing practices. The PD&O further stated that we would adopt the presumption that end-users, *i.e.*, ultimate consumers, whose businesses were unrelated to the petroleum industry, were injured by Quantum's alleged overcharges, as were claimants whose prices for goods and services were regulated by a government agency or by the terms of a cooperative agreement. Finally, we proposed to adopt the rebuttable presumption that a claimant who made only spot purchases from Quantum was not injured as a result of those purchases. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, derived by dividing the $450,000 received from Quantum by our estimate of the total volume of natural gasoline sold by Quantum during the Consent Order period.

Comments were solicited regarding the tentative distribution process set forth in the PD&O. The OHA has received no comments concerning the PD&O. Accordingly, we have concluded that the Quantum Consent Order fund, plus accrued interest, should be distributed in accordance with the presumptions of injury set forth in the PD&O. However, since the issuance of the PD&O, Quantum has provided us with its estimate of the total volume of natural gasoline sold by Quantum during the period covered by the Consent Order. Accordingly, we will recalculate the proposed volumetric refund amount using the sales volume figure provided by Quantum. Quantum has also stated that all of its sales of natural gasoline during this period were to Phillips. We therefore have determined that Phillips, being the sole direct purchaser of Quantum natural gasoline, should be required to submit its refund claim no later than December 31, 1990, while indirect purchasers (*i.e.*, Phillips' customers) will be afforded until November 30, 1991 to submit their claims. The procedures and presumptions of injury governing this proceeding are set forth below.

IV. The Refund Procedures

A. Calculation of Refund Amount

The settlement amount of $450,000, plus accrued interest, will be available for distribution to purchasers of Quantum natural gasoline who can show that they were injured by Quantum's pricing practices during the Consent Order period. We will adopt a volumetric method to apportion the Quantum escrow account. We will derive the volumetric figure by dividing the $450,000 received from Quantum by the total volume of natural gasoline sold by Quantum during the Consent Order period.

In the PD&O, we estimated Quantum's total volume of sales of natural gasoline, based on information available in the PRO audit file, at approximately 75,181,050 gallons during the entire period of the Consent Order. This estimate of total gallonage yielded a volumetric refund amount of $.00599 per gallon, exclusive of interest.

In a letter to Quantum's legal representative, the OHA requested that the firm provide us with an accurate estimate concerning the volumes of natural gasoline that Quantum sold during the Consent Order period. See Letter dated March 22, 1990 from Thomas L. Wieker, Deputy Director, OHA to John P Mathis of the law firm of Baker & Botts. In a response dated July 16, 1990, Mr. Mathis stated that Quantum had reviewed its records for the period in question and estimated that its total sales volume of natural gasoline was 78,500,000. Using this estimate of total gallonage, we have calculated a revised volumetric refund amount of $.00573 per gallon, exclusive of interest. We will use this revised volumetric amount to apportion refunds in this proceeding.

The volumetric method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by Quantum during the months when the alleged overcharges occurred. Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of natural gasoline purchased from Quantum and its subsidiaries during the Consent Order period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Quantum funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. See Uban Oil Co., 9 DOE ¶ 82,541 at 85,225 (1982) (Uban).

B. Eligibility for Refunds

1. Showing of Injury

Each claimant will be required to document its purchases of Quantum's natural gasoline during the Consent Order period, when Quantum's alleged overcharges may have occurred. In addition, we will require an applicant to demonstrate that it was injured by the alleged overcharges. In order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with Quantum's alleged overcharges, a claimant will be required to show that it maintained banks of unrecovered product costs. We realize that some applicants may be unable to provide actual cost bank records for the period covered by this proceeding. We are therefore willing to accept information establishing with reasonable likelihood that a claimant had banks. See Seminole Refining Inc., 12 DOE ¶ 85,197 (1985); Bayou State Oil Corp., 12 DOE ¶ 85,197 (1985). The maintenance of banks does not establish injury. See Tenneco Oil Co./Chevron U.S.A., Inc., 10 DOE ¶ 85,014 (1982). In order to demonstrate injury a claimant must show that market conditions would not permit it to pass through those increased costs to its customers. See American Pacific International, 14 DOE ¶ 85,158 at 88,295 (1986) (*API*). Such a showing might be made through a demonstration of a competitive disadvantage, lowered profit margin, decreased market share or depressed sales volumes during the period of purchases of Quantum natural gasoline. See Gulf Oil Corporation, 16 DOE ¶ 85,381 at 88,740 (1987).

2. Indirect Purchasers

As we noted above, Quantum now states that Phillips was its only direct purchaser of natural gasoline during the

Consent Order period. See July 16, 1990 letter from John Mathis to Thomas L. Wieker. In a letter received on June 20, 1990, counsel for Phillips responded to our inquiry concerning that firm's disposition of the natural gasoline that it purchased from Quantum. According to this letter, all of the natural gasoline that Phillips purchased from Quantum through January 1974 was sold to the Marathon Petroleum Company (Marathon). From February 1974 through December 1979, Phillips asserts that it moved the natural gasoline obtained from Quantum to its East St. Louis pipeline terminal, where it was blended into Phillips' regular gasoline.

Under these circumstances, firms which made indirect purchases of Quantum natural gasoline during the Consent Order period may also be eligible to receive refunds if Phillips cannot establish that it absorbed the alleged overcharges arising from its purchases of natural gasoline from Quantum. In prior refund proceedings, we have held that indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the direct purchaser from a firm subject to a settlement agreement is found to have passed through the alleged overcharges to its customers. See Dorchester Gas Corp., 14 DOE ¶ 85,240 at 88,451 (1986).

With respect to potential applicants who purchased motor gasoline from Phillips during the period February 1975 through December 1979 (when Quantum natural gasoline was used as an ingredient), we note that only large volume purchasers of this motor gasoline would qualify for a refund. We estimate that Phillips sold approximately 24,770,000,000 gallons of motor gasoline in the United States during the price control period. Even if we include interest on the Consent Order fund accrued to date, this yields a volumetric refund amount of only $.0000214 per gallon. Accordingly, a claimant must have purchased almost 750,000 gallons of motor gasoline from Phillips in order to qualify for the minimum refund amount of $15.

Because the eligibility of indirect purchasers is contingent on Phillips passing through Quantum's alleged overcharges, we will require Phillips to submit its claim no later than December 31, 1990 so that this determination can be made expeditiously. Indirect purchasers may submit their claims as late as November 30, 1991. If Phillips fails to submit a refund claim in a timely manner or is found to have passed through the alleged overcharges to Marathon or its purchasers of motor gasoline, indirect purchasers will be eligible for a refund.

3. Small Claims Presumption

We presume, as we have in many cases, that purchasers seeking refunds of $5,000 or less were injured by Quantum's pricing practices. See Uban, 9 DOE at 85,223–24. We recognize that the cost to the applicant of gathering evidence of injury to support a refund claim of $5,000 or less could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. For example, some firms may have limited accounting and data-retrieval capabilities, and may therefore be unable to produce the records necessary to prove either the existence of banks of unrecovered costs, or that they did not pass the alleged overcharges on to their own customers. We also seek to insure that the cost to the applicant and to the government of compiling and analyzing information sufficient to establish a claim does not exceed the amount of the refund. See Marion Corp., 12 DOE ¶ 85,014 (1984). Under the small claims presumption, an applicant seeking total refunds of $5,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of Quantum natural gasoline or derived products during the months of the Consent Order period.

4. End-Users

We presume that end-users, i.e. ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by Quantum's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users were generally not subject to price controls during the period covered by this proceeding, and were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See id.*, 12 DOE at 88,030; see also Thornton Oil Corp., 12 DOE ¶ 85,112 (1984). We therefore propose that end users of Quantum natural gasoline need only document their purchase volumes during the Consent Order period to make a sufficient showing of injury.

5. Regulated Firms and Cooperatives

Claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, are presumed to have absorbed the alleged overcharges. Accordingly, such claimants need only document the volume of covered products purchased by them, during the months when the alleged overcharges occurred, in order to receive a full volumetric refund. These firms would have routinely passed price increases through to their customers, and will now pass on the benefits of the refund to their customers. Accordingly, these firms will not be required to make a detailed demonstration of injury. However, regulated firms and cooperatives are required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. See Marathon Petroleum Co., 14 DOE ¶ 85,269 at 88,514 (1986); Office of Special Counsel, 9 DOE ¶ 82,538 at 85,203 (1982). We do not require a public utility seeking a refund of $5,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

6. Spot Purchasers

Assuming that purchasers of Quantum natural gasoline or derived products are otherwise eligible for refunds, we are adopting the rebuttable presumption that claimants who made only spot purchases of product were not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of natural gasoline, motor gasoline or other products. This proposal is based on our determination that spot purchasers tend to have considerable discretion as to the timing of purchases and the market in which to make purchases. Accordingly, they generally would not have made spot purchases at increased prices unless they were able to pass through the full amount of any price increases to their own customers. See Office of Enforcement, 8 DOE ¶82,597 at 85,396–97 (1981).

Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases.

V. Distribution of Refunds Remaining After Consideration of All Refund Applications

In the event that money remains after all meritorious refund applications have been processed, the funds in the Quantum escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA), 15 U.S.C.A. 4501–4507 (West Supp. 1989).

VI. Refund Application Requirements

We will now accept applications for refund from all direct and indirect purchasers of Quantum natural gasoline. Purchasers of natural gasoline or motor gasoline from Phillips may wait to submit their refund applications until after the OHA has reached a determination concerning Phillips' claim and the extent to which that firm passed through the alleged overcharges. To apply for a refund, a claimant should submit an application for refund that contains the following information:

(1) A conspicuous reference to "Quantum Refund Proceeding—Case No. LEF–0011" and the applicant's name, address, and social security number or employer identification number, as well as an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used the Quantum natural gasoline or derived products that it purchased. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the number of gallons of Quantum natural gasoline or derived products which the applicant purchased during the period August 1, 1973 through January 27, 1981.

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (*i.e.* that the applicant did not pass through the overcharges to its own customers);

(7) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers; and

(8) The application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund:

I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of the entire application which will be placed in the OHA Public Reference Room.

All applications must be sent to the following address: Quantum Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It is therefore ordered that:

Applications for Refund from the alleged overcharge funds remitted by Quantum Chemical Corporation (formerly National Distillers and Chemical Corporation) may now be filed. The Phillips Petroleum Company must submit its application no later than December 31, 1990. Indirect purchasers of Quantum natural gasoline, including purchasers of Phillips motor gasoline, must submit their applications no later than November 30, 1991. In order to qualify for the minimum refund in this proceeding, Phillips motor gasoline customers must document purchase volumes of approximately 750,000 gallons.

Dated: July 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–17923 Filed 7–31–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3815–9]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption; Class I Hazardous Waste Injection; IMC Fertilizer, Inc., Sterlington, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to IMC Fertilizer, Inc. for the Class I injection wells located at Sterlington, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by IMC Fertilizer, Inc., of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Sterlington, Louisiana specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice as issued May 10, 1990. A public hearing was held June 12, 1990, and a public comment period ended on July 2, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

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

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

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

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90–17898 Filed 7–31–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66143; FRL 3794–8]

Cadmium Chloride; Receipt of Request to Cancel Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt.

SUMMARY: This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a request, from the sole registrant of a cadmium chloride pesticide product, to voluntarily cancel its registration. This request seeks a provision for the disposition of existing stocks of the affected product. Such provisions as requested are described in this notice. Additionally, this notice announces that EPA intends to approve and give effect to this request, thus cancelling the product registration. The Agency's determination on existing stocks is also described.

EPA's approval will be effective August 13, 1990. As of that date, all future sale or distribution of this cadmium chloride product shall be in accordance with the terms and conditions described herein.

DATES: The cancellation or modification of registration shall be effective August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lou Kerestesy, Review Manager, Special Review Branch, Special Review and Registration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg., 2805 Jefferson Davis Highway, Arlington, VA, (703) 308–8032.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June 22, 1990, and received by EPA July 9, 1990, W. A. Cleary Chemical Corporation, the sole registrant of the only registered cadmium chloride pesticide product, submitted its request to EPA asking that its product registration be cancelled. The product is EPA Registration No. 1001–10, Caddy Liquid Cadmium Turf Fungicide, a fungicide registered for treatment of a variety of turf diseases on golf course tees and greens.

The registrant submitted a request seeking a provision for the disposition of existing stocks with its voluntary cancellation request. W. A. Cleary requested that it be allowed to sell existing stocks of its product to distributors until July 31, 1991; that its distributors be allowed to distribute its product to end-users until December 31, 1991; and that no time restrictions be placed on end-users to use products purchased before January 1, 1992. A copy of the registrant's letter requesting cancellation of cadmium chloride has been included in the public docket (OPP–30000/20) for the Cadmium Chloride Special Review.

II. Existing Stocks Determination

The EPA has reviewed the registrant's existing stocks request and has considered the amounts of stock represented to be in existence and under the control of the registrant. EPA has concluded that the registrant and its dealers may proceed according to the plan described in its request for cancellation, and that existing stocks may not be sold or distributed except as provided for in this notice. No cadmium chloride product subject to this notice may be sold, distributed, or released for shipment by the registrant or its agents after July 31, 1991, and no cadmium chloride product subject to this notice may be sold or distributed by a retailer, dealer, or any person after December 31, 1991. Golf courses or end-users may not obtain or take possession of the cadmium chloride product after December 31, 1991, and supplies in their possession as of December 31, 1991 may be used until exhausted.

III. Conclusion

EPA has received and expects to approve the request described above effective [insert date 10 days after date of publication in the **Federal Register**], incorporating the requested action and the decision governing the existing stocks provision as described above.

IV. List of Affected Registrations

Active Ingredient	Registrant	Product Number
Cadmium chloride	W. A. Cleary	1001–10

Dated: July 20, 1990.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 90–17785 Filed 7–31–90; 8:45 a.m.]

BILLING CODE 6560–50–F

[OPTS–59893; FRL 3794–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90–246, July 22, 1990.
Y 90–247, July 23, 1990.
Y 90–248, July 25, 1990.
Y 90–249, July 29, 1990.
Y 90–250, 90–251, August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90–246

Manufacturer. Confidential.

Chemical. (G) 2,2'-Thiobisethanol; dihydro-2-hypron-2,6-dione.

Use/Production. (G) Contained use in an article. Prod. range: 2,600–4,400 kg/yr.

Toxicity Data. Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

Y 90–247

Manufacturer. Owens-Corning Fiberglass Corporative.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Molding. Prod. range: Confidential.

Y 90–248

Importer. Metal Coating International Inc.

Chemical. (G) Alkyl acrylate copolymer.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 90-249

Importer. Mitsubishi Yuka America, Inc.

Chemical. (G) Styrene polymer with alkane, reaction product with organic anhydride.

Use/Import. (G) Coating agent. Import range: 10,000–30,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

Y 90-250

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Nondispersive use. Prod. range: Confidential.

Y 90-251

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (G) Nondispersive use. Prod. range: Confidential.

Dated: July 20 1990.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-17790 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3815-8]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Alta Plating, Inc., located at 1733 S Street, Sacramento, California and 1433 18th Street, Oakland, California; EPA Docket No. CWA-IX-FY90-20; filed on July 24, 1990, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 1235 Mission St., San Francisco, California 94103, (415) 556-5997; proposed penalty of $25,000 for failure to comply with the categorical pretreatment standards and requirements for existing source job-shop electroplaters (40 CFR part 413).

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Guidance, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: July 20, 1990.

Steve Pardieck,

Acting Director, Water Management Division.

[FR Doc. 90-17900 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Jenken & Company, 13 Chateau Court, So. San Francisco, CA 94080, Officer: Virgilio A. Camota, Sole Proprietor.

Royal Sea Services, Inc., 6100 NW 84th Ave., Miami, FL 33166, Officers: George N. Pappas, President, Christopher L. Pappas, Vice President, Nancy Pappas, Vice President.

European & General Shipping, Inc., 7950 NW 53rd St., Suite 208, Miami, FL 33166, Officers: Alan Dee, President, Michael Dedomenici, Vice President, Ronale Brian Peter Peto, Secretary/Treasurer/Director.

John Kevin Lee, 685 Undercliff Ave., Edgewater, NJ 07020, Sole Proprietor.

Freight Forwarders Inc., 6001 Gulf Freeway, C-135, Houston, TX 77023, Officers: Faber F. McMullen, III, President, Gregory E. Hall, Vice President/Treasurer, James D. Farasey, Secretary/General Manager.

D & B Auto Expediters, Inc., 8740 Northpark Blvd., Suite 215, North Charleston, SC 29418, Officers: William G. Brenner, President, Edwin Spencer Dempsey, Vice President.

Dirman International, 97-11 63rd Drive, Rego Park, NY 11374, Officer: Tom Usbay, Sole Proprietor.

U.S. Group Consolidator, Inc., 4849 North Scott Street, Suite 12, Schiller Park, IL 60176. Officers: Barry Chue, President, Andy C. Wu, Secretary, Cindy Wu, Treasurer, Michael P. Foley, Vice President.

Osowski & Company International, Ltd., 800 W. Mapel Lane, Bensenvile, IL 60106, Officers: Eugene F. Osowski, President/Director, Raymond G. Osowski, Vice President/Director, Kathleen A. Snodell, Asst., Vice President/Director, Sharon A. Osowski, Secretary.

Azuma Multi-Trans U.S.A., Inc., 1001 Fourth Ave., Suite 2305, Seattle, WA 98154, Officers: Kazuya Yamamura, President, Masahiro Yoshimoto, V. President/Secr./Treas./Dir.

Honeybee & Hammond International Forwarding, 5680 Ayala Ave., Irwindale, CA 91706, Officer: Samih Salim Abushousheh, President/Director.

Dated: July 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17806 Filed 7-31-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of

the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or 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 and protests are found in § 560.602 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-011088-004

Title: The City of Los Angeles/Matson Terminals, Inc., Terminal Agreement

Parties: The City of Los Angeles, Matson Terminals, Inc.

Filing Party: Mr. Jonathan P. Nave, Deputy City Attorney, City of Los Angeles, 425 S. Palos Verdes St., P.O. Box 151, San Pedro, CA 90733-0151

Synopsis: The Agreement amends basic agreement to reduce the size of the assigned premises by 2.1 acres and adjust the required rental on a pro rata basis.

By Order of the Federal Maritime Commission.

Dated: July 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17856 Filed 7-31-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BB&T Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 24, 1990.

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

1. *BB&T Financial Corporation,* Wilson, North Carolina; First Union Corporation, Charlotte, North Carolina; First Wachovia Corporation, Winston-Salem, North Carolina; NCNB Corporation, Charlotte, North Carolina; South Carolina National Corporation, Columbia, South Carolina; Southern National Corporation, Lumberton, North Carolina; and Sovran Financial Corporation, Norfolk, Virginia; to acquire Southeast Switch, Inc., Maitland, Florida, successor by merger to Florida Interchange Group, Inc., Maitland, Florida; Georgia Interchange Network, Inc., Atlanta, Geogria; and Mid Atlantic Exchange, Inc., Raleigh, North Carolina; and thereby engage in offering and providing data processing and transmission services to federally insured depository institutions and their affiliates pursuant to § 225.25(b)(7); and providing consulting services to member and non-member depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Universal Bancorp,* Bloomfield, Indiana; to retain Geneva Leasing Associates, Inc., St. Charles, Illinois, and thereby engage in lending activities pursuant to § 225.25(b)(1); and leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirsTier Financial, Inc.,* Omaha, Nebraska; to acquire FirsTier Savings Bank II, F.S.B., Omaha, Nebraska, a newly chartered thrift which will acquire, through merger, the Kearney, Fremont, and Blair branches (all in Nebraska) of FirsTier's current subsidiary, FirsTier Savings Bank, F.S.B., Omaha. FirsTier Savings Bank II will then be merged into FirsTier's subsidiary, FirsTier Bank, N.A., Omaha, and thereby engage in the operation of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17845 Filed 7-31-90; 8:45 am]

BILLING CODE 6210-01-M

Bank of Lenawee Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be recieved not later than August 15, 1990.

A. Federal Reserve Bank of Chicago (Dabid S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Lenawee Employee Stock Ownership Trust,* to acquire 19.2 percent

of the voting shares of Bank of Lenawee, Adrian, Michigan.

2. *Merlin E. Zitzner*, Baraboo, Wisconsin; to acquire 2.23 percent of the voting shares of The Baraboo Bancorporation, Inc., Baraboo, Wisconsin, and thereby indirectly acquire The Baraboo National Bank, Baraboo, Wisconsin; Green Lake State Bank, Green Lake, Wisconsin; and The State Bank of Viroqua, Viroqua, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Edward F. Merkel*, Glenwood, Missouri; to acquire an additional 4.69 percent of the voting shares of Mega Bancshares, Inc., Chesterfield, Missouri, and thereby indirectly acquire Mega Bank of St. Louis County, Chesterfield, Missouri; Mega Bank of St. Ann, St. Ann, Missouri, and Mega Bank of St. Charles County, St. Charles, Missouri.

2. *Mr. and Mrs. Myron A. Roeyer*, Valmeyer, Illinois; to acquire an additional 8.07 percent of the voting shares of Farmers Bancshares, Inc., Valmeyer, Illinois, and thereby indirectly acquire State Bank of Breese, Breese, Illinois; First State Bank of Patoka, Patoka, Illinois; The Ramsey National Bank, Ramsey, Illinois; and Farmers State Bank of Valmeyer, Valmeyer, Illinois.

c. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Earl Eugene Kelly*, Severy, Kansas; to acquire an additional 16.7 percent; Neal Franklin and Phyllis Ann Osborn, Elk Falls, Kansas, to acquire an additional 5.3 percent; and Sarah Elizabeth Bryan, Wichita, Kansas, to acquire an additional 5.7 percent of the voting shares of Elk County Bancshares, Inc., Howard, Kansas, and thereby indirectly acquire Howard State Bank, Howard, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Donald Ray Horton*, Forth Worth, Texas, to acquire 51.21 percent; Terrill James Horton, Colleyville, Texas, to acquire 9.07 percent; and Wanda Lee Boyd Martin, Fort Worth, Texas, to acquire 4.54 percent of the voting shares of Provident Bancorp of Texas, Inc., Dallas, Texas, and thereby indirectly acquire Provident Bank, Dallas, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard M. Kahler*, San Leandro, California; to acquire between 7.7 percent and 13.05 percent of the voting shares of Bay Commercial Services, San Leandro, California, and thereby indirectly acquire Bay Bank of Commerce, San Leandro, California.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17846 Filed 7-31-90; 8:45 am]

BILLING CODE 6210-01-M

Nebraska Bankshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebraska Bankshares, Inc.*, Farnam, Nebraska; to acquire 50 percent of the voting shares of Nebraska State Bank, Cozad, Nebraska, which engages in the sale of life and accident and health insurance directly related to extensions of credit by bank.

In connection with this application, Applicant also proposes to acquire 50 percent of Cozad Interim Federal Savings Bank, Cozad, Nebraska, and thereby engage in the operation of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. *Stockmen's Management Co.*, Rushville, Nebraska; to acquire 50 percent of the voting shares of Nebraska State Bank, Cozad, Nebraska, which engages in the sale of life and accident and health insurance directly related to extensions of credit by bank.

In connection with this application, Applicant also proposes to acquire 50 percent of Cozad Interim Federal Savings Bank, Cozad, Nebraska, and thereby engage in the operation of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17847 Filed 7-31-90; 8:45 am]

BILLING CODE 6210-01-M

Texas Commerce Equity Holdings, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical Banking Corporation*, New York, New York, and Texas Commerce Bancshars, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Texas Commerce Equity Holdings, Inc., Wilmington, Delaware.

2. *Texas Commerce Equity Holdings, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The Stone Fort National Bank of Nacogdoches, Nacogdoches, Texas; Texas Commerce Bank NA, Lubbock, Texas; Texas Commerce Bank NA, Houston, Texas; Texas Commerce Bank-Rio Grande Valley NA, Brownsville, Texas; Texas Commerce Bank-Amarillo NA, Amarillo, Texas; Texas Commerce Bank-Arlington NA, Arlington, Texas; Texas Commerce Bank-Austin, NA, Austin, Texas; Texas Commerce Bank-Beaumont, NA, Beaumont, Texas; Texas Commerce Bank-Conroe NA, Conroe Texas; Texas Commerce Bank-Corpus Christi, NA, Corpus Christi, Texas; Texas Commerce Bank-Dallas NA, Dallas, Texas; Texas Commerce Bank-El Paso NA, El Paso, Texas; Texas Commerce Bank-Fort Worth NA, Hurst, Texas; Texas Commerce Bank-Friendswood NA, Friendswood, Texas; Texas Commerce Bank-Longview, NA, Longview, Texas; Texas Commerce Bank-McAllen, NA, McAllen, Texas; Texas Commerce Bank-Midland, NA, Midland, Texas; Texas Commerce Bank-New Braunfels, NA, New Braundfels, Texas; Texas Commerce Bank-Odessa NA, Odessa, Texas; Texas Commerce Banks-San Angelo NA, San Angelo, Texas; Texas Commerce Bank-San Antonio NA, San Antonio, Texas; Texas Commerce Bank-Sugar Land NA, Sugar Land, Texas.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNB Bancorp*, Attica, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Central National Bank & Trust Company, Attica, Indiana.

2. *First Farmers Financial Crop.*, Converse, Indiana; to acquire 100 percent of the voting shares of Union State Bank, Windfall, Indiana.

3. *First Northbrook Bancorp, Inc.*, Riverwoods, Illinois; to acquire 100 percent of the voting shares of First Security Bank of Gurnee, Gurnee, Illinois, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locus Street, St. Louis, Missouri 63166:

1. *Southwest Bancshares, Inc.*, Trumann, Arkansas; to become a bank holding company by acquiring 96.48 percent of the voting shares of First National Bank of Poinsett County, Trumann, Arkansas.

D. Federal Reserve Bank of Minneaspolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank Bystem, Inc.*, Minneapolis, Minnesota; to merge with Northern Cities Bancorporation, Inc., Anoka, Minnesota, and thereby indirectly acquire The Northern Bank, Anoka, Minnesota, and The Northern National Bank of Forest Lake, Forest Lake, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64193:

1. *First State Management Corporation, Inc.*, Salina, Kansas; to merge with Kanapolis Bankshares, Inc., Kanapolis, Kansas, and thereby indirectly acquire Kanapolis State Bank, Kanapolis, Kansas.

2. *Catherine Stuart Schomoker Family Partnership*, James Stuart, Jr., Family Partnership, Scott Stuart Family Partnership, Stuart Family Partnership, and First Commerce Bancshares, Inc., all of Lincoln, Nebraska; to acquire through their subsidiary, National Bank of Commerce, Lincoln, Nebraska, 5.15 percent of the voting shares of Minden Exchange Company, Minden, Nebraska, in a fiduciary capacity, with sole discretionary voting power, and thereby indirectly acquire Minden Exchange Bank and Trust Company, Minden, Nebraska.

F. Federal Reserve Bank of Dallas (W Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Central Community Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Temple, Texas.

2. *Silsbee Financial Corporation*, Silsbee, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Silsbee State Bank, Silsbee, Texas.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire through its subsidiary, U.S. Bancrop Financial Services, Inc., Portland, Oregon, 100 percent of the voting shares of U.S. Bank, N.A., Beaverton, Oregon, a *de novo* bank. In connection with this application, U.S. Bancorp Financial Services, Inc. has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17848 Filed 7-31-90; 8:45 am]

BILLING CODE 6210-01-M

U.S. Trust Corp., et al; Application To Engage de Novo in Permissible Nonbanking Activities

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

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *U.S. Trust Corporation*, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company of Texas, Dallas, Texas, in trust company activities, including activities of a fiduciary, investment advisory, agency and custodial nature pursuant to §§ 225.25(b)(3) and 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, July 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-17843 Filed 7-31-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Grants for Health Care for the Homeless

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the President's budget for Fiscal Year 1991 includes $33.6 million for grants to provide primary health and substance abuse services to homeless individuals. Should funds be appropriated, the grants will be awarded under section 340 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 256. This announcement is made prior to an appropriation of funds to allow new and competing continuation applicants sufficient time to establish active and broad-based community coalitions, to prepare applications, and to enable timely award of the grants in consideration of the special needs of homeless individuals. While this solicitation of applications in advance of an appropriation is an extraordinary action, it will enable the award of appropriated grant funds in the most expeditious manner and allow prompt provision of services to homeless individuals. On the basis of the President's budget, it is anticipated that approximately 109 competing continuation grants will be awarded to serve homeless individuals in urban and rural areas. New applications will be supported only if sufficient funds are made available. All applicants should understand, however, that final appropriation action will be necessary in order for HRSA to fund any applications.

DATES: To receive consideration, grant applications must be received by the appropriate Grants Management Office by September 15, 1990. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant.

ADDRESSES: Application kits (Form PHS 5161-1 with revised face sheet Standard Form 424, as approved by the Office of Management and Budget under control number 0937-0189) may be obtained from, and completed applications should be mailed to the appropriate Regional Grants Management Officer (see Appendix A). For further information on this program, please contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, telephone (301) 443-8134. Please contact the Regional Grant Management Officers on business management issues.

SUPPLEMENTARY INFORMATION: Section 340(a) of the PHS Act authorizes the Secretary to award grants to enable grantees, directly or through contracts, to provide for the delivery of primary health services and substance abuse services to homeless individuals. Eligible applicants are nonprofit private organizations and public entities, including State and local governmental agencies. Grantees and other organizations with whom they may contract for services under this program must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement.

Preference will be given to qualified applicants that (1) (A) are experienced in the direct delivery of primary health services to homeless individuals or medically underserved populations or (B) are experienced in the treatment of substance abuse in homeless individuals or medically underserved populations; and (2) agree to provide for primary health and substance abuse services to homeless individuals through both public entities and private organizations.

For applicants not previously funded under section 340(a), the amount of Federal grant funds awarded may not exceed 75 percent of the costs of providing primary health and substance abuse services under the grant. Such newly funded applicants must make available non-Federal contributions equal to the remainder of the costs. For continuation applicants, the amount of Federal grant funds awarded may not exceed 66⅔ percent of the costs of providing primary health an substance abuse services under the grant. The contribution applicant, if funded, must make available non-Federal contributions equal to the remainder of the costs. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of the non-Federal contribution. Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services). The Secretary may waive the matching requirement if the grantee is a nonprofit private entity and the Secretary determines that it is not feasible for the grantee to comply with the requirement.

The grant may be used to continue to provide services listed below for up to 12 months to individuals who have obtained premanent housing if services were provided to these individuals when they were homeless. For the purpose of this program, the term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that

provides temporary living accommodations, or an individual who is a resident in transitional housing.

Project Requirements

A. The following services must be provided, directly or through contract:

1. Primary health care and substance abuse services at locations accessible to homeless individuals;

2. 24-hour emergency primary health and substance abuse services to homeless individuals;

3. Referral of homeless individuals as appropriate to medical facilities for necessary hospital services;

4. Referral of homeless individuals who are mentally ill to entities that provide mental health services, unless the applicant will provide such services directly;

5. Outreach services to inform homeless individuals of the availability of primary health and substance abuse services;

6. Aid to homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs. Podiatry, dental (including dentures), and vision services are supplemental services and may be provided where medically necessary, to the extent that the level of delivery of the required services is not diminished.

b. Restrictions on the use of grant funds are as follows:

1. Grant funds may not be used to pay for inpatient services, except for residential treatment for substance abuse provided in settings other than hospitals.

2. Grants funds may not be used to make cash payments to intended recipients of primary health and substance abuse services or mental health services.

3. Grant funds may not be used to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment. However, upon request by the applicant demonstrating that the purposes of the project cannot otherwise be carried out, the Secretary may waive these restrictions.

c. The grantee must, directly or through contract, provide primary health and substance abuse services without regard to ability to pay for the services. If a charge is imposed for the delivery of primary health and substance abuse services, such charge (1) will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any homeless individual with an income less than the official poverty level (The nonfarm income official poverty line defined by the Office of Management and Budget.); and (3) will be adjusted to reflect the income and resources of the homeless individual involved.

d. The grantee may not expend more than 10 percent of the Federal grant for the purpose of administrating the grant.

e. The grantee may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under the Act, to systems that provide advocacy services under the Act.

f. The grantee may provide services through contracts with nonprofit self-help organizations that are established and managed by current and former recipients of mental health or substance abuse services, who have been homeless individuals; and that have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and qualify to recieve payments under the agreement.

Criteria for Evaluating Applications

An objective review of applications that are received in a timely manner will be conducted. In addition to the preferences in making grants described above, the review of applications for grant support will consider the following:

a. Progress in achieving stated goals and objectives.

b. Compliance with the requirements of Section 340 of the PHS Act and other programmatic requirements.

c. Experience in providing primary health or substance abuse services to homeless individuals or medically underserved populations.

d. Extend to which the applicant has identified the homeless population in the service area, including the social and demographic characteristics of the population and the extent to which their health needs are not being met;

e. Adequacy of the applicant's outreach plan to serve the homeless population;

f. Extent to which primary health and substance abuse services are to be provided to homeless individuals in a linked and integrated manner;

g. Extent to which the applicant has the ability to involve appropriate community representatives to ensure that the program is culturally appropriate and accommodates the needs of homeless individuals in the service area;

h. Qualifications and experience of the proposed project staff; i.e., the staff size and skills necessary to carry out an effective program;

i. Adquacy of the proposed budget; i.e., detailed estimates of revenue and costs in accordance with grant application instructions;

j. Evidence of administrative procedures for fiscal control and fund accounting procedures which provide for reasonable financial administration of Federal and non-Federal funds;

k. Evidence of an ongoing program of quality assurance with respect to health services provided under the grant;

l. Evidence of a reasonable plan for communicating with non-English speaking homeless individuals provided health services under the grant.

Grant awards will be made subject to the provisions of the Public Health Services Grants Policy Statement.

Other Award Information

The program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a point of contact in each State for the review. Since 60 days are allowed for this review, applicants are advised to discuss projects with, and provide copies of their applications to, contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Grants Management Officer.

The OMB "Catalog of Federal Domestic Assistance" number for this program is 13.151.

Dated: June 20, 1990.

Robert G. Harmon,

Administrator.

Appendix A

Region I (CT, ME, MA, NH, RI, VT)
Grants Management Officer, PHS Office of Grants Management, John F. Kennedy Federal Bldg. #1400, Boston, Massachusetts 02203, (617) 565–1482

Region II (NJ, NY, PR, VI)
Grants Management Officer, PHS Office of Grants Management, 26 Federal Plaza #3337, New York, New York 10278 (212) 264–4496

Region III (DE, DC, MD, PA, VA, WV)
Grants Management Officer, PHS Office of Grants Management, 3535 Market Street #10–140, Philadelphia, Pennsylvania 19101, (215) 596–6653

Region IV (AL, FL, GA KY, MS, NC, SC, TN)

Grants Management Officer, PHS Office of Grants Management, 101 Marietta Tower, Suite 1121, Atlanta, Georgia 30323, (404) 331-2597

Region V (IL, IN, MI, MN, OH, WI)
Grants Management Officer, PHS Office of Grants Management, 105 West Adams, 17th Floor, Chicago, Illinois 60603, (312) 353-8700

Region VI (AR, LA, NM, OK, TX)
Grants Management Officer, PHS Office of Grants Management, 1200 Main Tower Bldg. #1800, Dallas, Texas 75202, (214) 767-3885

Region VII (IA, KS, MO, NE)
Grants Management Officer, PHS Office of Grants Management, 601 East 12th Street #501, Kansas City, Missouri 64106, (816) 426-5841

Region VIII (CO, MT, ND, SD, UT, WY)
Grants Management Officer, PHS Office of Grants Management, 1961 Stout St., Fed. Bldg. #492, Denver, Colorado 80294, (303) 844-4461

Region XI (AS, AZ, CA, GU, HI, NV, TT)
Grants Management Officer, PHS Office of Grants Management, 50 United Nations Plaza #331, San Francisco, California 94102, (415) 556-2595

Region X (AK, ID, WA)
Grants Management Officer, PHS Office of Grants Management, 2201 6th Avenue, #710, Seattle, Washington 98121, (206) 442-7997

[FR Doc. 90-17804 Filed 7-31-90; 8:45 am]
BILLING CODE 4160-15-M

Program Announcement, Funding Priorities and Grant Orientation Conferences for Health Careers Opportunity Program

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Public Law 100-607.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine, and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. Assistance authorized by the section includes: Recruitment, preliminary education, facilitating entry and retention in health and allied health professions schools, and counseling and advice on financial aid.

The Administration's FY 1991 budget request for this program is $25,262,000. This amount could support an estimated 37 competitive awards at an average of $140,000 in addition to the continuation of multi-year projects approved in prior years. There is, however, no assurance of HCOP funding for FY 1991 at the level of the budget request or any other level.

The statute requires that of the amounts appropriated for any fiscal year, 20 percent shall be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of medicine, osteopathic medicine, or dentistry; 10 percent shall be obligated to community-based programs; and 70 percent shall be obligated for grants or contracts to institutions of higher education. Not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

Public Law 100-607 requires the Secretary to give priority in funding to the following schools, beginning in fiscal year 1992:

1. A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 by the end of 3 years from the date of the award of the HCOP grant; and

2. A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987, over any period of time.

To receive HCOP support, applicants must meet the requirements of the program regulations specified in 42 CFR part 57, subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following mechanism may be applied in determining the funding of applications.

Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

Funding Priorities for Fiscal Year 1991

The following funding priorities will govern the distribution of grant awards to approved HCOP grant applicants for FY 1991. These funding priorities were established in FY 1990 after public comment and the Administration is extending these priorities again in FY 1991:

1. A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 35 percent or more; documentation (over the past 3-year period) of a 20 percent increase in the number of first-year enrollees who are disadvantaged; or documentation of a 90 percent retention rate of disadvantaged students of the most recent graduating class.

2. A funding priority will be given to applicant educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school (who applied over the past three years to a health or allied health professions school) were enrolled in such schools.

These funding priorities do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the priorities are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority in which the applicant wishes consideration. However, the final determination of the category of funding priority will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one funding priority.

Definitions

As used in this notice.

Community-based Program means a program whose organizational headquarters is located in and which primarily serves, a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area; a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

Health Professions Schools means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometery, podiatric medicine, veterinary medicine, public health, chiropractic, graduate programs in health administration, or graduate programs in clinical psychology, as defined in section 701(4) of the Act and as accredited in section 701(5) of the Act.

Individual from a Disadvantaged background means an individual who comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for FY 1991:

Size of parents' family [1]	Level [2]
1	$8,300
2	10,800
3	12,800
4	16,400
5	19,400
6 or more	21,800

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1989, rounded to $100.

Training Center for Allied Health Professions means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

(a) Provides educational program leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree
- Clinical Psychologist

Master's Degree
- Biostatistician
- Nutritionist
- Social Worker
- Speech Pathologist/Audiologist

Bachelor's Degree
- Biomedical Engineer
- Blood Bank Technologist
- Community Health Educator
- Corrective Therapist
- Cytogenetic Counselor
- Dental Hygienist
- Dietitian (Coordinated undergraduate program)
- Health Physicist
- Health Services Administrator
- Medical Illustrator
- Medical Records Administrator
- Medical Technologist
- Microbiology Technologist
- Occupational Therapist
- Physical Therapist
- Primary Care Physician Assistant
- Recreational Therapist
- Rehabilitation Counselor
- Sanitarian (Environmental Health)

Associate Degree
- Clinical Dietetic Technician
- Cytotechnologist
- Dental Assistant
- Dental Hygienist
- Dental Laboratory Technician
- EKG/EEG Technologist
- Medical Assistant
- Medical Laboratory Technician
- Medical Records Technician
- Occupational Therapy Assistant
- Ophthalmic Medical Assistant
- Ophthalmic Technologist
- Optometric Technician
- Orthopedic Technologist
- Physical Therapy Assistant
- Radiologic Technologist
- Respiratory Therapist
- Sanitarian Technician
- Surgical Technologist

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this defintion and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through three program technical assistance conferences. The conferences scheduled during September 1990 are for the benefit of potential applicants and current grants.

The three conferences will be held as follows:

September 6–7, 1990, Western Peachtree Plaza, Peachtree & International Blvd., Atlanta, Georgia 30343–9986, (404) 659–1400, (800) 228–3000

September 10–11, 1990, Hyatt Regency—Buffalo, Two Fountain Plaza, Buffalo, New York 14202–USA, (716) 856–1234, (800) 233–1234

September 13–14, 1990, The Sands Hotel, 345 N. Arlington Avenue, Reno, Nevada 89501, (702) 348–2200, (800) 648–3553.

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Application preparation (competitive and continuation); and grants management information. Additional focus of the conferences will be directed toward:

1. A discussion of the Congressionally-mandated HCOP tracking system;

2. Evaluation of HCOP program data; and

3. A discussion of two new HCOP related programs (the Community-Based Recruitment and Support Program and the Health Professions Institutional Development Program).

Participation in the technical assistance meetings does not ensure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. Darl W. Stephens, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building,

Room 8A-08, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4493.

The application deadline date is November 2, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.822 in the "Catalaog of Federal Domestic Assistance." It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 29, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-17805 Filed 7-31-90; 8:45 am]

BILLING CODE 4160-15-M

Final Proposals for Grants for Health Education and Training Centers

The Health Resources and Services Administration (HRSA) announces the final proposals for fiscal year (FY) 1990 Grants for Health Education and Training Centers (HETC) Programs under the authority of section 781(f) of the Public Health Service Act (the Act). Section 781(f) was added by the Health Professions Reauthorization Act of 1988 (title VI of Pub. L. 100-607, the Health Omnibus Programs Extension Act).

Eligible applicants are schools of allopathic or osteopathic medicine, or the parent institution on behalf of these schools, or a consortium of them. Assistance is for planning, developing, establishing, maintaining, and operating Health Education and Training Centers. Such support is designed to improve the supply, distribution, quality, and efficiency of personnel providing in the U.S. health services along the border between the United States and Mexico or providing, in other urban and rural areas (including frontier areas) of the United States, health services to any population group, including Hispanic and recent refugees individuals, that have demonstrated serious unmet health care needs. Assistance is also to encourage health promotion and disease prevention through public education.

Statutory Project Requirements

Each project must meet the following requirements:

(a) Establish an advisory group comprised of health service providers, educators and consumers from the service area and of faculty from participating schools;

(b) Develop a plan for carrying out the Health Education and Training Centers Program after consultation with the advisory group required in item (a) above;

(c) Enter into contracts, as needed, with other institutions or entities to carry out the plans as required in item (b) above;

(d) Enter into a contract or other written agreement with one or more public or nonprofit private entities in the State which have expertise in providing health education to the public;

(e) Be responsible for the evaluation of the program;

(f) Evaluate the specific service needs for health personnel in the service area;

(g) Assist in the planning, development, and conduct of training programs to meet the needs determined under item (f) above;

(h) Conduct or support not less than one training and education program for physicians and one program for nurses for at least a portion of the clinical training of such students;

(i) Conduct or support training in health education services, including training to prepare community health workers to implement health education programs in communities, health departments, health clinics, and public schools that are located in the service area;

(j) Conduct or support continuing medical education programs for physicians and other health professionals (including allied health personnel) practicing in the service area;

(k) Support health career educational opportunities designed to provide students residing in the service area with counseling, education, and training in the health professions;

(l) With respect to Border HETCs, assist in coordinating their activities and programs with any similar activities and programs carried out in Mexico along the border between the United States and Mexico;

(m) Make available technical assistance in the service area in the aspects of health care organization, financing and delivery; and

(n) Encourage health promotion and disease prevention through health education in the service area.

Grant Funds

Grants are to assist in meeting the costs of the program which cannot be met from other sources. The following restrictions apply to all funding:

(a) A grantee must spend not less than 75 percent of the total funds provided to a school or schools of allopathic or osteopathic medicine in the development and operation of the health education and training center in the service area of such program;

(b) To the maximum extent feasible, the grantee will obtain from non-Federal sources the amount of the total operating funds for the HETC program which are not provided by HRSA;

(c) No grant or contract shall provide funds solely for the planning or development of an HETC Program for a period in excess of two years;

(d) Not more than 10 percent of the annual budget of each program may be used for the renovation and equipping of clinical teaching sites; and

(e) No grant or contract shall provide funds to be used outside the United States except as HRSA may prescribe for travel and communications purposes related to the conduct of a Border Health Education and Training Center. Applicants may apply for up to three years of support for a project period.

Statutory Definitions

Border Health Education and Training Center means an entity that is a recipient of an award under section 781(f)(1) and which is located in a county (or other political subdivision) of a State in close proximity to the Border between the United States and Mexico.

Community Health Center means an entity as defined in section 330(a) of the Act and in regulations at 42 CFR 51c.102(c).

Health Education and Training Center or "center" means an entity that is the recipient of an HETC award under section 781(f)(1).

Migrant Health Center means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

Service area means the geographic area designated for the center to carry out the HETC program, as designated by HRSA. It is located entirely within the State in which the center is located.

School of Medicine or Osteopathic Medicine means a school as described in section 701(4) and which is accredited as provided in section 701(5) of the Act.

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana

Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Statutory Funding Preference

In making awards for Fiscal Year 1990, the Secretary shall make available 50 percent of the appropriated funds for approved applications for Border Health Education and Training Centers. The remaining 50 percent shall be made available for approved applications for HETCs from non-Border areas (both urban and rural). If funds remain available after all approved applications in one category are funded, the balance shall be utilized for approved applications in the other category. This addresses the statutory funding requirements while allowing maximum flexibility in the use of funds.

The following proposed definitions, project requirements, criteria for designating geographic service areas, review criteria, funding priorities and formula were published in the Federal Register on May 16, 1990 for public comment. Two letters were received regarding the 300 mile limit for Border areas eligible for funding under the Border Health Education and Training Center allocation. In each case, the commentors felt that areas which have a high concentration of Hispanics outside the 300 mile limit should also be eligible. Upon careful review, it was determined that the 300 mile limit was a reasonable definition within the language of the law and that other areas outside the 300 miles should be considered for funding under the other half of the Health Education and Training Center authority.

Therefore, the final established proposals for the HETC program for fiscal year 1990 are:

Final Definitions

Close proximity to the Border means a county, in a State, any portion of which lies within three hundred (300) statute miles of the Border between the United States and Mexico. This definition addresses the legislative intent of section 781(f) to assist areas of the Border states which have a high concentration of medically underserved Hispanic immigrants.

Frontier area means those areas with a population density of less than seven individuals per square mile. This definition is set forth in section 799A(g) of the Act for grants for health care for rural areas, also administered by HRSA.

Health professional means any physician, dentist, optometrist, podiatrist, pharmacist, nurse, nurse practitioner, nurse mid-wife, physician assistant or allied health personnel. This definition is consistent with the use of the term within other Title VII programs.

Final Project Requirements

In order to assure effective program administration and assessment, the following project requirements will be used in addition to the above listed statutory project requirements.

Each grantee must:

(a) Have a project director who holds a faculty appointment at an allopathic or osteopathic medical school and who is responsible for the overall direction of the project;

(b) Provide faculty to assist in the conduct of community-based educational programs and training activities;

(c) Be responsible for the quality of the community-based educational programs and training activities, and the evaluation of trainees;

(d) Provide for active participation of individuals who are associated with the administration of the medical school, and staff and faculty members of departments of family medicine, internal medicine, pediatrics, and obstetrics and gynecology; and

(e) Provide an annual evaluation of the project, including an assessment of the educational programs and the trainees.

Final Criteria for Designating Geographic Service Areas

The following considerations will be used in designating geographic service areas:

1. Low-income population for the specific county(ies) in the service areas;
2. Percent change in low-income population for the specific county(ies) during the period 1980–86;
3. Ratio of primary care physicians per 100,000 population for the specific county(ies); and
4. Infant mortality rate for the specific county(ies) in the service area.

These considerations are consistent with the criteria prescribed by section 781(f) for the allocation of funding to the Border Area.

Final Review Criteria

The Health Resources and Services Administratiion will review applications taking into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the intent of section 781(f);
2. The extent to which the proposed project adequately provides for the project requirements;
3. The extent to which the proposed project explains and documents the need for the project in the geographic area to be served, including relevant socio-economic and cultural characteristics of the population to be served;
4. The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;
5. The evaluative strategy to assess the project and the trainees in terms of effectiveness and proposed outcomes;
6. The extent of coordination of HETC training and education with similar activities in the areas involved; and
7. The potential of the proposed project to continue on a self-sustaining basis.

These types of criteria are consistent with those used in other Title VII programs administered by HRSA.

Final Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applicatons, a funding priority will be given to:

1. Applications proposing centers in which substantial training experience is in a PHS 332 health manpower shortage area, and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded AHEC, or State designated clinic/center serving an underserved population.
2. Applications proposing centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics and recent refugees, than exist in the general population in the United States.

Border Area Funding

Section 781(f) requires that certain criteria relative to the service area be considered by the Secretary in the establishment of a formula for allocating funds for each approved application for a Border Health Education and Training Center. Specifically, these criteria are:

1. The low-income population, including Hispanic individuals, and the growth rate of such population along the Border between the United States and Mexico;
2. The need of the low-income population referenced in Item 1 above for additional personnel to provide health care services along such borders; and
3. The most current information concerning mortality and morbidity and other indicators of health status for such population.

Final Formula for Allocating Border Area Funds

Considering the criteria in the statute, the following formula will be used for awarding Border Area funds in Fiscal Year 1990, to be applied to the counties included in the service area of the center on behalf of which the application is made:

$$P \times (1 + C) \times N \times I \times 100{,}000 = F$$

Where:

(P) = Low-income population in the county
(C) = Percent change of population in the county
(N) = Need for primary care physicians in the county
(I) = Infant mortality rate in the county
(F) = Factor for each county in close proximity to the Border

For this program (HETC), project support recommended for future years will be subject to enabling legislation, appropriations, satisfactory progress, adjustment (up or down) based upon changes in data utilized in the above formula, and any changes in the scope of the project, as approved.

Formula Definitions and Data Sources

(P) *Low-income population:* The population in the county classified by the United States Bureau of the Census as having an average income at or below 125 percent of the poverty level.

Data source: U.S. Bureau of the Census Population, 1980, Table 181.

(C) *Percent change of population:* The number of births minus the number of all deaths, plus or minus net migration in the county for the period 1980–1986, divided by the 1980 county population.

Data source: County and City Data Book, 1988, U.S. Bureau of the Census.

(N) *Need for primary care physicians:* The ratio of primary care physicians per 100,000 population in all 236 counties in close proximity to the Border, divided by the ratio of primary care physicians to 100,000 population in the county.

Data source: Area Resource File (ARF) System. (Most recent data available)

(I) *Infant mortality rate:* The five-year infant mortality rate for the county, divided by the average of the five-year infant mortality rate in all 236 counties in close proximity to the Border.

Data source: Area Resource File (ARF) System. (Most recent data available)

(F) *Factor for each county:* A factor for each of the 236 counties in close proximity to the Border is calculated from the formula. The factor will be recalculated each year to reflect more recent data.

Location of Border Area Counties

The 236 counties in close proximity (within 300 miles) of the Border between the United States and Mexico are located in the four States contiguous to the Border: Arizona, California, New Mexico, and Texas.

The *Catalog of Federal Domestic Assistance* number for this program is 13.189. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 26, 1990.

Robert B. Harmon,

Administrator.

[FR Doc. 90–17852 Filed 7–31–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Practitioner Data Bank; Announcement of Opening Date

AGENCY: Public Health Service, HHS.

ACTION: Notice of opening.

SUMMARY: The Health Resources and Services Administration, Public Health Service, Department of Health and Human Services (DHHS), is announcing the opening date of the National Practitioner Data Bank (Data Bank), as authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660 as amended (42 U.S.C. 11101 et seq.).

DATES: The Data Bank is scheduled to open on September 1, 1990. Effective that date, individuals and entities must begin reporting to and querying the Data Bank.

FOR FURTHER INFORMATION CONTACT: Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–2300.

SUPPLEMENTARY INFORMATION: Regulations governing the National Practitioner Data Bank, codified at 45 CFR part 60, and published in the Federal Register on October 17, 1989, set forth criteria and procedures for information to be reported to and released by the Data Bank.

These regulations govern the collection and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and

(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

Before the Data Bank opens, forms and accompanying instructions regarding reporting and requests for information, as well as the "National Practitioner Data Bank Guidebook", will be sent out by the Data Bank to hospitals, other health care entities, boards of medical and dental examiners, and medical and dental professional societies at the State and local levels.

Entities responsible for reporting to or querying the Data Bank must use DHHS-prescribed forms. Entities that do not receive the forms, instructions, and Guidebook prior to the opening date of the Data Bank may request these items from the Data Bank at the following address: National Practitioner Data Bank, Post Office Box 6048, Camarillo, California 93011–6048.

Since July 18, 1990, the toll-free number (1–800–767–6732) has been available for Data Bank users to assist in (1) Filing complete and accurate medical malpractice payment and adverse action reports, (2) requesting information about the Data Bank, and (3) complying with Data Bank regulations and policies and procedures.

Dated: July 25, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–17706 Filed 7–31–90; 8:45 am]

BILLING CODE 4160–15–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzaldehyde

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of benzaldehyde, an aromatic aldehyde used in the food, beverage, pharmaceutical, perfume, soap and dyestuff industries.

Two-year toxicology and carcinogenesis studies were conducted by administering 0, 200, or 400 mg/kg benzaldehyde in corn oil by gavage, 5 days per week for 103 weeks to groups of 50 male and 50 female rats and for 104 weeks to groups of 50 male mice. Groups of 50 female mice were administered 0, 300, or 600 mg/kg benzaldehyde for 103 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence

of carcinogenic activity[1] of benzaldehyde for male or female F344/N rats receiving 200 or 400 mg/kg per day. There was some evidence of carcinogenic activity of benzaldehyde for male or female B6C3F1 mice as indicated by increased incidences of squamous cell papillomas and hyperplasia of the forestomach.

The study scientist for these studies is Dr. Jack Bishop. Questions or comments about this Technical Report should be directed to Dr. Bishop at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-1876.

Copies of Toxicology and Carcinogenesis Studies of benzaldehyde in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 378) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: July 25, 1990.

David P. Rall,

Director.

[FR Doc. 90-17829 Filed 7-31-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2-Chloroacetophenone

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of 2-chloroacetophenone, a potent lacrimator that has been used as a riot control agent and in tear gas formulations for personal protection devices.

In these two-year studies, groups of 60 rats of each sex were exposed to a vapor of 0, 1, or 2 mg/m^3 2-chloroacetophenone, 6 hours per day, 5 days per week for 103 weeks. Groups of 60 mice of each sex were exposed to 0, 2, or 4 mg/m^3 on the same schedule.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenic activity [1] of 2-chloroacetophenone, for male rats exposed to 1 or 2 mg/m^3. There was equivocal evidence of carcinogenic activity for female F344/N rats, based on a marginal increase in fibroadenomas of the mammary gland. There was no evidence of carcinogenic activity for male or female B6C3F1 mice exposed to 2 or 4 mg/m^3 2-chloroacetophenone.

The study scientist for these studies is Dr. Ronald Melnick. Questions or comments about this Technical Report should be directed to Dr. Melnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-4142.

Copies of Toxicology and Cacinogenesis Studies of 2-Chloroacetophenone in F344/N Rats and B6C3F1 Mice (Inhalation Studies) (TR 379) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: July 25, 1990.

David P. Rall,

Director.

[FR Doc. 90-17830 Filed 7-31-90; 8:45 am]

BILLING CODE 4140-01-M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-90-3100; FR-2680-N-01]

User Fee Schedule for the Technical Suitability of Products Program—Revisions in the User Fees Assessed Manufacturers of Products and Materials

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

ACTION: Notice.

SUMMARY: This Notice revises the user fee schedule for the Technical Suitability of Products Program published in the final rule of August 9, 1984 and later revised in a notice published on January 22, 1985, that also added a fee for revisions to Truss Connector Bulletins (TCBs). Today's revised schedule increases the fees listed in the notice of January 22, 1985.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, Room 6270, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-0718. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department promulgated a final rule on August 9, 1984 (see 49 FR 31854) establishing a system of fees to be charged manufacturers of products and materials to be used on structures approved for mortgages or loans insured under the National Housing Act. (That rule is now codified at 24 CFR 200.934.) Under the rule, manufacturers that seek HUD acceptance of their products and materials under the Technical Suitability of Products Program (Section 521 of the National Housing Act, 12 U.S.C. 1735e) will be charged fees for initial applications, renewals, and revisions with respect to documents for technical suitability. Paragraph (c) of 24 CFR 200.934 provides, in relevant part, that "the Department will establish and amend the fee schedule by publication of a Notice in the **Federal Register.**"

The present fee schedule has not been modified since its publication on August 9, 1984, except for the publication on January 22, 1985 of a user fee for Truss Connector Bulletins (TCBs). The income received as a result of the present user fee schedule does not maintain the current minimum level of support for the ongoing Technical Suitability of Products (TSP) program. As the Department indicated in the final rule of August 9, 1984, citing the authority of section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)) for instituting a system of fees to cover the costs of the TSP program, "The fee system would partially shift the costs associated with the program to the recipients of the program's benefits." 49 FR 31854, 31855. Because salaries and expenses have substantially exceeded the fees collected, a fee increase is essential to maintain the partial recovery of program costs, thereby assuring the continued soundness of the TSP program during FY 1990 and future years.

Accordingly, notice is hereby given that the Department is revising the fee schedule published in the notice of January 22, 1985. Additionally, the designation "Area Letter of Acceptance" ("ALA") has been modified to "Regional Letter of Acceptance ("RLA"). This modification reflects a change in Department procedures which authorize the Regional Offices, in lieu of the Area Offices, to issue RLAs. This notice also makes clear that the renewal fee applies to SEBs, MEBs, TCBs, MRs, and RLAs only. The complete fee schedule, as revised, is as follows:

(i) *Initial Applications.*

Structural Engineering Bulletins (SEBs)	$3,000.00
Mechanical Engineering Bulletins (MEBs)	$3,000.00
Truss Connector Bulletins (TCBs)	$1,000.00
Materials Releases (MRs)	$3,000.00
Regional Letters of Acceptance (RLA)	$1,000.00
Administrator Review for Acceptance (ARA)	$1,000.00

(ii) *Revisions.*

Structural Engineering Bulletins (SEBs)	$1,500.00
Mechanical Engineering Bulletins (MEBs)	$1,500.00
Trust Connector Bulletins (TCBs)	$500.00
Materials Releases (MRs)	$500.00
Regional Letter of Acceptance (RLA)	$400.00

(iii) *Basic Renewal Fee Without Revision.*

[Assessed $200.00 every three years for renewal of SEBs, MEBs, TCBs, MRs, and RLAs.]

Authority: Sections 7 (d) and (j), Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j), and 24 CFR 200.934(c).

Dated: July 19, 1990.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 90-17831 Filed 7-31-90; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3126; FR-2844-N-01]

Requirements for Nonprofit Corporations To Qualify for Section 312 Rehabilitation Loans at Three and One-quarter Percent for Rental Housing

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of interest rate change.

SUMMARY: This Notice announces the availability, under stated conditions, of a new category of low-interest loans for rental housing properties owned by non-profit corporations.

DATES: Effective August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Burk, Director, Rehabilitation Loans and Homesteading, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-1367. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-2565.

(These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. Background

Section 312(b)(3) of the Housing Act of 1964, as amended, 42 U.S.C. 1452b, currently provides for the following two-tier interest rate structure:

a. A three percent loan to an owner occupant of a one- to four-unit property whose family income does not exceed 80 percent of the median income for the area adjusted to family size, and a cooperative 80 percent of whose residents must have family incomes below 80 percent of the median income for the area at the time of initial occupancy; and

b. A loan, whose interest rate may range from above three percent to a minimum of the current average market yield on treasury securities of comparable maturity, for all other classes of borrowers, i.e., investor-owners, higher income owners, etc.

2. Purpose

The purpose of the Notice is to announce the availability of loans at, three and one-quarter (3.25) percent to non-profit corporations that own rental housing projects, and to set forth the requirements that a non-profit corporation must meet to qualify for a section 312 rehabilitation loan at the new three and one-quarter (3.25) percent rate. (These requirements are in addition to the standard criteria for underwriting loans to investor-owners contained in section 7-6 of the section 312 Handbook.

3. Requirements

The additional requirements are as follows:

a. Financial Capacity and Equity

To qualify for the maximum 90 percent loan-to-value ratio afforded other investor-owner borrowers, the non-profit corporation is required to have a minimum of 10 percent of the total project costs available through an irrevocable letter of credit or cash deposited in the Local Processing Agent's (LPA's) escrow account, to be used (if necessary) for the project.

If the non-profit corporation cannot meet this 10 percent equity requirement, the section 312 loan and all superior liens cannot exceed 80 percent of the appraised after-rehabilitation value of the property.

b. Construction

The non-profit corporation is required to contract, with an experienced general contractor, to complete the rehabilitation of the project.

Sweat equity or self-help agreements to complete the rehabilitation may not constitute more than ten (10) percent of the total cost of rehabilitation.

4. Application Processing

The non-profit corporation is required to use the Application for section 312 Rehabilitation Loans for Investor Properties (HUD 6243). In addition to its normal review, HUD will closely evaluate the non-profit's experience and management capability as stated in exhibits responding to Item Y in Section K of the Application.

Specifically, HUD is interested to determine whether the non-profit has successfully rehabilitated similar types of projects in terms of number of units and complexity of rehabilitation and, if there are five or more units, that it has contracted with an experienced property management firm or has demonstrated that the corporation has the capacity (both in experience and financing) to handle management activities.

Dated: July 26, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90-17981 Filed 7-31-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the office of Management and Budget for approval under the provisions of the Parerwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Interior Department Desk Officer, Washington DC 20503, telephone 202-395-7340.

Title: Map Requirements Survey.

Abstract: OMB Circular A-16 mandates coordination of mapping and digital cartographic data activities with Federal agencies. Those States where mapping and digital cartographic data activities are financed in whole or in part by Federal funds are included. The Circular is intended to reduce dpulication of effort and facilitate

effective coordination of mapping programs. The U.S. Geological Survey uses the collected information to determine priorities for effective production management.

Bureau form number: None.

Frequency: Annually.

Description of respondents: State and local governments.

Estimated completion time: 37 hours.

Annual responses: 48.

Annual burden hours: 1776 hours.

Bureau clearance officer: Geraldine A. Wilson, 703-648-7309.

Dated: July 16, 1990.

Lowell E. Starr,

Chief, National Mapping Division.

[FR Doc. 90-17810 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[OR-080-00-6310-12: GPO-329]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a field trip meeting of the Salem District Advisory Council will commence at 8 a.m., Wednesday, September 19, 1990, at the Bureau of Land Management Salem District Office at 1717 Fabry Road, SE., Salem, Oregon. The tour of the Salem District's Santiam Resource Area will cover wild and scenic river planning, multiple-use on the Green Peter peninsula, old growth management, an environmentally sensitive timber sale, recreation use at Dogwood and Yellowbottom Recreation Sites and road maintenance.

The tour is open to the public. Interested persons must provide their own transportation. Individuals may make oral statements to the Council or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1717 Fabry Road, SE., Salem, OR 97306, by the end of the business day on Monday, September 19. A time limit may be established by the District Manager.

FOR FURTHER INFORMATION CONTACT: Van W. Manning, BLM Salem District Office, 1717 Fabry Road, SE., Salem, Oregon 97306 (Telephone 503/399-5646).

Van W. Manning,

District Manager.

[FR Doc. 90-17807 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-00-4314-11; MTM 41949]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that 33.86 acres of land withdrawn for military purposes be continued for an additional 50 years. These lands would be opened to mineral leasing, but would remain closed to appropriation of the general land laws, including mining.

DATES: Comments should be received on or before October 1, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2925.

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by Executive Order of February 19, 1877, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, insofar as it affects the following described lands:

Principal Meridian, Montana

T. 13 N., R. 19 W.,

Sec. 31, A tract of land located in the NW¼ described as follows:

From the cor. of secs. 25, 30, 31, and 36, Township 13 North, Ranges 19 and 20 West, S. 47°55'23" E., 879.10 ft. to the point of beginning; thence S. 88°47'58" E., 12.42 ft.; thence S. 88°47'58" E., 192.96 ft.; thence S. 1°12'02" W., 186.14 ft.; thence N. 88°47'58" W., 205.96 ft.; thence N. 1°12'02" E., 185.65 ft.; thence N. 51°21'17" E., 0.76 ft. to the point of beginning, containing 0.88 acres, more or less;

A tract of land located in the W½, described as follows:

From the cor. of secs. 25, 30, 31, and 36, Township 13 North, Ranges 19 and 20 West, S. 21°02'54" E., 1,733.55 ft. to the point of beginning; thence S. 57°30'00" E., 12.79 ft.; thence
S. 57°30'00" E., 539.79 ft.; thence
S. 31°58'44" E., 489.55 ft.; thence
S. 80°09'06" E., 226.83 ft.; thence
S. 80°09'06" E., 132.79 ft.; thence
S. 17°25'31" W., 265.67 ft.; thence
S. 17°25'31" W., 302.28 ft.; thence
N. 71°26'49" W., 162.64 ft.; thence
S. 17°12'42" W., 208.41 ft.; thence
N. 72°30'55" W., 328.94 ft.; thence
S. 17°31'13" W., 366.49 ft.; thence
N. 72°05'57" W., 326.29 ft.; thence
N. 17°31'04" E., 247.11 ft.; thence
S. 89°32'56" W., 196.92 ft.; thence
S. 81°56'46" W., 305.13 ft.; thence
N. 17°36'01" E., 1,055.10 ft.; thence
N. 17°36'01" E., 354.12 ft. to the point of beginning, containing 31.94 acres, more or less;

A tract of land located in the N½SW¼ described as follows:

From the cor. of secs. 25, 30, 31, and 36, Township 13 North, Ranges 19 and 20 West, S. 20°14'42" E., 3,682.23 ft. to the point of beginning; thence S. 11°15'39" W., 57.84 ft.; thence S. 78°44'21" E., 54.29 ft.; thence N. 11°15'39" E., 57.84 ft.; thence N. 78°44'21" W., 54.29 ft. to the point of beginning, containing 0.07 acres, more or less; and

A tract of land located in the S½SW¼ described as follows:

From the cor. of secs. 25, 30, 31, and 36, Township 13 North, Ranges 19 and 20 West, S. 11°53'02" E., 4,325.85 ft. to the point of beginning; thence S. 56°12'52" E., 90.06 ft.; thence N. 80°01'07" E., 63.69 ft.; thence N. 35°30'07" E., 82.19 ft.; thence N. 8°38'03" W., 150.27 ft.; thence N. 54°28'13" W., 41.90 ft.; thence S. 80°46'55" W., 121.42 ft.; thence S. 36°05'03" W., 60.68 ft.; thence S. 10°02'23" E., 131.65 ft.; thence S. 56°12'52" E., 4.80 ft. to the point of beginning, containing 0.97 acres, more or less.

The areas described aggregate 33.86 acres in Missoula County.

The purpose of the withdrawal is to protect Fort Missoula, a cemetery, a water well, and a power substation. The withdrawal segregates the lands from operation of the general land laws, including the mining and mineral leasing laws. The segregation from mineral leasing would be terminated.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: July 20, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-17817 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of environmental documents prepared for Outer Continental Shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this Notice.

Proposal

ARCO Alaska, Inc. (designated as the operator by the lessees, Shell Western Exploration and Production, Inc., Union Oil Company of California, and AMOCO Production Company) proposes to drill up to two wells in 1990 and 1991 to explore two leases in the Alaska Beaufort Sea Sale 71 area.

Location

Lease	Block(s)
OCS-Y 0267	NR 5-2 883
OCS-Y 0268	NR 5-2 884

Environmental Assessment

EA No. AK 90-01.

FONSI Date

May 25, 1990.

Proposal

Texaco, as operator for itself and others, proposes to drill one or two wells per year to explore 13 prospects on leases acquired from Lease Sales 97 (March 1988) and 109 (May 1988). All leases are in the Chukchi Sea. Leases are located in the eastern Chukchi Sea, 40 to 170 miles offshore in approximately 100 to 170 feet of water. Sale 97 leases that constitute the Diamond Prospect are the first priority. Should ice conditions preclude operations in the northern sale area, operations would be conducted at the southern prospect, Emerald. The wells will be drilled during the open-water season, generally June through November, from the BeauDril Limited Kulluk a conically shaped ice-strengthened semisubmersible, beginning as early as 1991. Drilling operations will occur after the spring bowhead whale migration period.

Location

LEASE AND BLOCK NUMBERS

Lease	Block(s)
OCS-Y 1235	NS-308 976
OCS-Y 1234	NS-308 975
OCS-Y 1279	NR-301 182
OCS-Y 1268	NR-301 137
OCS-Y 1281	NR-301 184
OCS-Y 1270	NR-301 139
OCS-Y 1263	NR-301 105
OCS-Y 1264	NR-301 106
OCS-Y 1275	NR-301 150
OCS-Y 1262	NR-301 104
OCS-Y 1265	NR-301 107
OCS-Y 1261	NR-301 103
OCS-Y 1253	NR-301 59
OCS-Y 1276	NR-301 151
OCS-Y 1440	NR-303 8
OCS-Y 1372	NR-301 977
OCS-Y 0995	NR-401 619
OCS-Y 0990	NR-401 575
OCS-Y 0996	NR-401 620
OCS-Y 1004	NR-401 665
OCS-Y 1003	NR-401 664
OCS-Y 1019	NR-401 754
OCS-Y 1425	NR-302 770
OCS-Y 1409	NR-302 681
OCS-Y 1432	NR-302 814
OCS-Y 1381	NR-302 106
OCS-Y 1238	NR-308 984
OCS-Y 1236	NR-308 982
OCS-Y 1239	NS-308 989
OCS-Y 1384	NR-302 150
OCS-Y 1182	NS-208 990
OCS-Y 1242	NR-202 65
OCS-Y 1211	NS-307 674
OCS-Y 1209	NS-307 631
OCS-Y 1206	NS-307 587
OCS-Y 1457	NR-303 110
OCS-Y 1449	NS-303 67
OCS-Y 1332	NR-301 672
OCS-Y 1340	NR-301 716
OCS-Y 1323	NR-301 628
OCS-Y 1348	NR-301 760
OCS-Y 1369	NR-301 889
OCS-Y 1361	NR-301 845
OCS-Y 1324	NR-301 629
OCS-Y 1339	NR-301 715
OCS-Y 1329	NR-301 635
OCS-Y 1337	NR-301 678
OCS-Y 1509	NR-306 2
OCS-Y 1523	NR-306 134
OCS-Y 1514	NR-306 45

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the Alaska OCS Regional office of MMS.

The FONSI's and associated EA's are available for public inspection between the hours of 7:45 a.m., and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of envrionmental documents required under the NEPA regulations.

Dated: July 20, 1990.

Regional Director,

Alaska OCS Region.

[FR Doc. 90-17811 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Meeting of the Advisory Committee on Mining and Mineral Resources Research

The Advisory Committee on Mining and Mineral Resources Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Wednesday, September 12, 1990, in Centennial Hall A, University Center East, University of Missouri—Rolla.

The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of June 5, 1990.
3. Status of 1990 legislation.
4. Status of Committee initiatives.
5. Status of 1990 grants.
6. Approval of the Report on the Review of the Mine Systems Design and Ground Control Generic Center.
7. Review of the Interim Report on the Mineral Industry Waste Treatment and Recovery Generic Mineral Technology Center.
8. Review of the Pyrometallurgy Generic Mineral Technology Center.
9. Update to the National Plan.
10. New Business.

This meeting is open to the public and seating for a limited number of visitors will be available on a first-come, first-served basis. Written statements concerning agenda subjects and the operation of the mineral institutes program are welcome.

Visitors who expect to attend or who have written statements to put before the Committee should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, MS 1020, 2401 E Street NW., Washington, DC 20241, phone (202) 634-1328, FAX (202) 634-2208, BITNET MININSTS & GWUVM, no later than noon, Monday, September 10, 1990.

Dated: July 26, 1990.

Robert E. Doyle,

Acting Director.

[FR Doc. 90-17851 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-53-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, 30 CFR part 778.

OMB Number: 1029-0034.

Abstract: Section 507(b) of the Surface Mining Control and Reclamation Act of 1977 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property to be affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 1,037.

Annual Burden Hours: 41,198.

Estimated Completion Time: 40 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: June 20, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-17819 Filed 7-31-90; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended, the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The proposed information collection is a "generic clearance" under which the Commission can issue questionnaires for the following types of investigations: countervailing duty, antidumping, escape clause, escape clause review, market disruption, and "interference with programs of the USDA."

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: three

(2) Title of forms: *Sample Producers', Sample Importers', and Sample Purchasers' questionnaires* i.e., the "samples" are an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance.)

(3) Type of request: Extension

(4) Description of respondents: Businesses of farms that produce, import, or purchase products under investigation

(5) Estimated reporting burden:

	Producers	Importers	Purchasers
Estimated average burden (hours) per response	68.99	57.03	26.71
Proposed frequency of response	1	1	1
Estimated number of respondents	442	572	445
Estimated total annual burden (hours)	30,492	32,620	11,888

Information obtained from the forms that qualifies as business proprietary information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from Bonnie Noreen, (USITC, tel. no. 202-252-1167). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washinghton, DC 20503, Attention: Mr. Marshall Mills, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaires of study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

SUBMISSION OF COMMENTS: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Mr. Mills telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street, SW., Washington DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-252-1810.

By order of the Commission.

Issued: July 27, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17927 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-305]

Notice of Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

In the Matter of certain aramid Fiber Honeycomb, unexpanded block on slice precursors of such aramid Fiber Honeycomb, and carved or contoured blocks or bonded assemblies of such Aramid Fiber Honeycomb.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Euro-Composites, S.A., Euro-Composites Corp., and Dr. Guy Weinand.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on July 23, 1990.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202-252-1805.

Issued: July 23, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17924 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-463 (Preliminary)]

Benzyl Paraben From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On July 16, 1990, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigation (ChemDesign Corp., Fitchburg, MA) withdrawing its petition. We are informed that Commerce will not initiate an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning benzyl p-hydroxybenzoate (benzyl paraben) from the United Kindgom (investigation No. 731-TA-463 (Preliminary)) is discontinued.

EFFECTIVE DATE: July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Issued: July 24, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17930 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

Report to the President on Investigation No. TA-201-62; Certain Cameras

Determination [1]

On the basis of the information developed in the subject investigation, the Commission unanimously determines that certain cameras [2] are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.[3]

Background

Following receipt of a petition filed on March 29, 1990, on behalf of Keystone Camera Company, Clifton, NY, the United States International Trade Commission instituted investigation No. TA-201-62 under section 202 of the Trade Act of 1974 to determine whether certain cameras are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The petitioner alleged that critical circumstances exist within the meaning of section 203(b)(3)(B) of the Trade Act and sought provisional relief.

Notice of the institution of the Commission's investigation and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 18, 1990 (55 FR 14488). The hearing in connection with the injury phase of the investigation was held in Washington, DC, on June 20, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel. The hearing on the remedy phase scheduled for August 14, 1990, was canceled because the Commission made a negative injury determination and accordingly did not reach the question of remedy. The Commission will transmit a report to the President on this investigation, including its determination and views, by no later than September 28, 1990.

By order of the Commission.

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[1] This determination became final on July 27, 1990.

[2] The imported articles covered by this investigation include two categories of photographic (other than cinematographic) cameras for roll film: all fixed-focus, hand-held, 110 cameras (subheading 9006.52.10 of the Harmonized Tariff Schedule of the United States (HTS)); and all hand-held, 35mm cameras other than single-lens-reflex ("SLR") cameras (subheading 9006.53.00 of the HTS).

[3] Having made a negative injury determination, the Commission did not make a determination with respect to whether critical circumstances exist within the meaning of section 203(b)(3)(B) of the Trade Act of 1974.

Issued: July 27, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17931 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-302 (Final)]

Fresh and Chilled Atlantic Salmon From Norway; Countervailing Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-302 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the Untied States is materially retarded, by reason of imports from Norway of fresh and chilled Atlantic salmon,[1] provided for in subheading 0302.12.00 of the Harmonized Tariff Schedule of the United States (previously under item 110.20 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Norway. The Commission will make its final injury determination within forty-five days after notification of Commerce's final subsidy determination (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility inmpairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instititued as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters in Norway of fresh Atlantic salmon. The investigation was requested in a petition filed on February 28, 1990, by the Coalition for Fair Atlantic Salmon Trade. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 17507, April 25, 1990).

Participation in the investigation.—Persons wishing to particiapte in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the enty.

Public service list.—Pursuant to secion 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entires of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclsure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Hearing, staff report, and written submissions.—The Commission will hold a hearing in connection with this investigation at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC; the time and date of the hearing will be announced at a later date. The prehearing staff report in this investigation will be placed in the nonpublic record, and a public version will be issued thereafter, both prior to the hearing, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21). The dates for filing briefs and other written submissions will also be announced at a later date.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 23, 1990.

[FR Doc. 90-17932 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-283]

Japan's Distribution System and Options for Improving U.S. Access

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions of statements on Phase II of the study.

EFFECTIVE DATE: July 13, 1990

FOR FURTHER INFORMATION CONTACT: Diane Manifold, Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436, (202) 252-1271.

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[1] Atlantic salmon is the species Salmo salar. The product "fresh and chilled Atlantic salmon" refers to fresh whole or nearly whole Atlantic salmon, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on, and packed in ice ("chilled"). Excluded from the investigation are fresh Atlantic salmon that has been cut into fillets, steaks, etc.; Atlantic salmon that is frozen, canned, smoked, or otherwise processed; and other species of fish, including other species of salmon.

BACKGROUND: The Commission instituted investigation No. 332-283 following receipt of a letter on October 23, 1989 from the House Committee on Ways and Means, requesting that the Commission conduct an investigation, in two phases, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to Japan's distribution system and options for improving U.S. access to that system. The Commission submitted phase I of the report on June 22, 1990. The Committee has requested Phase II of the report by October 23, 1990.

Phase I of the Commission's study provided an overview of the Japanese distribution system, including a discussion of its structural features, official policies and practices affecting it, and business practices. The first phase of the study also analyzed the composition of Japanese imports from the United States and other countries (e.g., capital goods, consumer goods), with a view to determining which types of changes in Japan's distribution system are most likely to benefit U.S. exporters.

Phase II of the study will seek experts' views on options for improving U.S. access to the Japanese distribution system, including, but not limited to: (1) Experiences of U.S. and foreign businesses with the distribution system; (2) political, industry, or consumer forces likely to promote or oppose reform of the distribution system; (3) products or services most likely to benefit from improved access to the distribution systems; and (4) prospects for increased access to Japan's distribution system as a result of the recent Structural Impediments Initiative (SII).

WRITTEN SUBMISSIONS: 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 § 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 31, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office, 500 E Street, SW., Washington, DC, 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-252-1107.

Issued: July 23, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17928 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 490]

Grain Car Supply; Conference of Interested Parties

AGENCY: Interstate Commerce Commission.

ACTION: Institution of Proceeding.

SUMMARY: The Commission is instituting a proceeding to enable rail carriers and shippers to discuss, and attempt to resolve among themselves, issues concerning adequate supply of rail cars to haul grain.

DATES: Notice of intent to participate should be filed by August 20, 1990. A meeting of interested persons is scheduled for September 18, 1990.

ADDRESSES: Send notice of intent to participate referring to Ex Parte No. 490 to: Case Control Branch, Office of the Secretary Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.).

This action will not significantly affect the quality of the human environment or conservation of energy resources. This action will not substantially affect a significant number of small entities. This action will not require additional record keeping or report filings by small entities.

The Commission is instituting this proceeding to facilitate private sector solutions to the periodic undersupply of rail cars to haul grain. The Commission hopes that interested persons will participate to suggest and explore solutions that do not involve comprehensive regulation or adjudication.

A meeting of persons interested in grain car supply is set for 10 a.m., September 18, 1990 before the Commission. The anticipated agenda for the meeting is: (1) to identify the nature and extent of problems in supplying an adequate number of cars to haul grain, with a focus on the periodic nature of the problem; (2) to develop ways to add a sufficient number of grain cars to the national supply; and (3) to facilitate a means of allocating cars to grain shippers that is fair to all and easy to understand and administer.

Authority: 49 U.S.C. 11121-11123.

Decided: July 25, 1990.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-17891 Filed 7-31-90; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Proposed Amendment to the Rules of Criminal Procedure of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of a proposed amendment to criminal rule 35.

SUMMARY: The Judicial Conference Advisory Committee on the Federal Rules of Criminal Procedure, has proposed an amendment to Rule 35 of the Federal Rules of Criminal Procedure by adding a new subsection c, and has requested that the proposal be submitted for expedited public comment.

Those interested in commenting, and desiring a copy of the proposed amendment, should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, no later than October 31, 1990.

Dated: July 26, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90-17844 Filed 7-31-90; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Radian Corp.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 1990, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, TX 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
3,4-methlenedioxymethamphetamine (MDMA) (7405).	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Methadone (9250)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 31, 1990.

Dated: July 23, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-17821 Filed 7-31-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application, Sterling Drug, Inc.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 12, 1990, Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance pethidine (9230). Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 31, 1990.

Dated: July 25, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-17822 Filed 7-31-90; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Wildlife Laboratories, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 20, 1990, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, CO 80524, made application to the Drug Enforcement Administration to be registered as an importer of Carfentanil (9743) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 31, 1990.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 19, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-17820 Filed 7-31-90; 8:45 am]

BILLING CODE 4410-09-M

Bureau of Justice Assistance

Discretionary Grant Program Announcement for Denial of Federal Benefits Demonstration Project

AGENCY: Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Public Announcement of availability of funds under the Discretionary Grant Programs of the Edward Byrne Memorial State and Local Law Enforcement Assistance program authorized under section 510(a)(3) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3760(a)(3).

SUMMARY: The Bureau of Justice Assistance is publishing this notice to

announce the availability of funds under a new program initiative entitled: Denial of Federal Benefits Demonstration Project.

DATES: The deadline for receipt of applications is 5 p.m. EDT on August 31, 1990.

ADDRESSES: BJA, Central Control Desk, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Michael J. Dalich, Denial of Federal Benefits Project, (202) 307–0630, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Program Description
III. Eligibility Requirements
IV. Application Requirements
V. Procedures and Criteria for Selection
VI. Submission Requirements
VII. Civil Rights Requirements

I. Introduction

This program will demonstrate the implementation and operation of a program (pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 853a) to deny Federal benefits to persons convicted of drug trafficking and drug possession.

Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a), (hereafter referred to as section 5301) provides that an individual convicted of State or Federal drug trafficking or posession offenses may be denied certain Federal benefits by State courts. Under a separate program, the National Center for State Courts was awarded a grant to coordinate the program with State Chief Justices and State Court Administrators. This program is to provide actual demonstrations of the implementation and operation of a program to deny Federal benefits under section 5301 in two jurisdictions.

II. Program Description

This program in intended to test and demonstrate two different approaches to the implementation and operation of a program at the local level to impose sanctions under section 5301. The program is intended to result in documentation which will assist other jurisdictions in implementation of a similar program.

Since this is a new law and there is no experience in effective utilization of this alternative sentencing technique, the actual program structure is left to the discretion of the applicant. However, applicants must:

- Be an agency of local government having a substantial impact upon the sentencing decision or a coordinating or planning agency with ability to administratively manage the program;
- Include the written agreement of the chief prosecuting attorney and the chief judge of the court to participation in the demonstration; and
- Be prepared to include a detailed written report on the experience of the program, including area of success and failure, which can be used by other jurisdictions in the implementation of this program and recommendation for legislative changes, if any, that could improve the program.

Two grants will be awarded under this program demonstrating approaches to implementation of sentences involving the denial of Federal benefits. Awards up to $100,000 for each site selected will be made for a 12 month period.

III. Eligibility Requirements

Applicants are invited from public agencies having a substantial involvement in the sentencing decision, or from coordinating or planning agencies.

Applicants must demonstrate that they have the management capability to administer a Federal grant.

IV. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative, and an evaluation plan to document the results of the program.

In accordance with Executive Order No. 12459, 28 CFR 67.510, applicants must also certify that they have not been debarred (voluntarily or involuntarily) from receipt of Federal funds. OJP Form 4061/2, which will be supplied with the application package, must be submitted with the application.

Other certifications required with the application include:

(1) Drug-Free Workpace. OJP Form 4601/3, Lobbying Certification and disclosure from SF LLL (if appropriate). Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

An application kit is available, upon request, containing the required forms and additional background material on Section 5301. The Application Kit may be requested by telephone from the Denial of Federal Benefits Project as (202) 307–0630.

V. Procedures and Criteria for Selection

These grants will be competitively awarded based on an evaluation of all applicants using the following criteria:

Applications will be reviewed by a panel which will make recommendations to the Director, BJA for funding. Letters will be sent to all applicants notifying them that their proposal has been selected or the reasons it was not selected. BJA will negotiate the terms of award with the selected applicants.

The following criteria will be used to select the successful applicants:

- Demonstrated ability to manage a Federal grant. (15 points)
- Documented past cooperation between the district attorney, courts, and others involved in the sentencing decision. (30 points)
- Clarity of the application. (10 points)
- Existence of specific goals and timetable documenting the imposition of sentences under Section 5301. (20 points)
- A showing that the jurisdiction is demographically representative of benefit availability. (10 points)
- Potential for replication of the program elsewhere. (15 points).

VI. Submission Requirements

A completed Standard Form 424 (signed original and three copies) including the required assurances and certifications must be received by 5 p.m. EDT on the date above mentioned.

Those applications sent by mail should be addressed to BJA, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to BJA, 633 Indiana Avenue, NW., Room 1042, Washington, DC 20531 between the hours of 8 a.m. and 5 p.m. (EDT) except Saturdays, Sundays, or Federal holidays.

Applicants will be notified in writing of receipt of their applications. Every effort will be made to review applications in a timely manner.

VII. Civil Rights Requirements

No person in any State shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any programs or activity funded in whole or in part with funds made available under the Anti-Drug Abuse Act of 1988.

Recipients of funds under the Anti-Drug Abuse Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; section 504 of the

Rehabilitation Act of 1974, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 90-17918 Filed 7-31-90; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7776 et al.]

Proposed Exemptions; Mutual Life Insurance Co. of New York (Mony), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restiction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1086 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interests in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of the 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Mutual Life Insurance Company of New York (MONY) Located in New York, New York

[(Application No. D-7776)]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471), April 28, 1975). If the exemption is granted, the restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by Pooled Account No. 7 (PA-7), a pooled equity real estate account maintained by MONY for pension plan investors, of its interest in a parcel of commercial real estate to MONY; provided that the terms and conditions of the Sale are at least as favorable to PA-7 as those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. MONY is a mutual insurance company organized under the laws of the State of New York and subject to regulation and supervision by the New York State Department of Insurance. MONY was established in 1843 and as of December 31, 1987, had assets of approximately $22 billion. MONY provides a wide range of services to employee benefit plans, including investment management of pension plan assets. Among the investment management services offered by MONY to pension plans is participation in PA-7.

MONY has been involved in real estate mortgage investing for more than125 years and in equity real estate investing for more than 30 years. It employs a staff of 85 full-time real estate professionals and has a network of seven regional and two divisional offices around the country. MONY currently has more than $5 billion in real estate investments under management for its own account (the General Account) and for others, including pension plans. Approximately $1 billion of that amount is invested in equity real estate investments.

2. PA-7 is an open-end, pooled, equity real estate separate account. PA-7 was established in 1981 as an equity real estate investment vehicle for pension plans. As of January 4, 1988, there were 49 plans participating in PA-7, including MONY's Retirement Income Security Plan for Employees. As of December 31, 1987, PA-7 had a net equity of $64,626,035. Investment decisions with respect to the assets of PA-7 are made by MONY's Pension Investment Committee. The Pension Investment Committee consists of nine individuals, all of whom have substantial experiences in investment matters and are officers of MONY or its direct or indirect subsidiaries.

'lans participating in PA-7 are required to make a minimum investment of $100,000. Withdrawals from PA-7 by investing plans are permitted on written notice thirty (30) days prior to the quarterly valuation date. Amounts which may be withdrawn may be limited by the cash available in PA-7.

3. The investments objective of PA-7 is to invest in properties which provide a favorable cash return and have a good prospect for significant appreciation in value. The assets held by MONY on behalf of PA-7 consist of equity interests in a geographically diverse portfolio of 16 offices, retail and warehouse properties (the Properties) ranging in size from 75,000 to 257,000 square feet.

The day-to-day property management functions for the PA-7 Properties are performed by unaffiliated local property managers who are selected and supervised by MONY. PA-7 holds the

entire beneficial interest in certain of the Properties. With respect to other properties, a portion of the beneficial interest has been allocated to PA-7 and the remainder allocated to the General Account.

4. Two of PA-7's Properties are multi-tenant office buildings located on East Hampton Avenue in Denver, Colorado (the Buildings). The Buildings are each six stories in height and, with a combined area of 257,000 square feet, constitute the largest project in whch PA-7 owns an interest. MONY acquired the Buildings in 1984 at a cost of $29,635,935, subject to a mortgage (mortgage lender unrelated to MONY) of $4,091,140. PA-7 was allocated a 19.58 percent interest in the Buildings and the remaining 80.42 percent interest was held by MONY in its General Account [1] PA-7's interest cost $5,805,043 (of which $5,003,998 was in cash and $801,045 was the assumption of the mortgage obligation).

5. MONY represents that the real estate market in Denver has been in a depressed condition during the past few years. As a result, the Buildings have experienced a low occupancy rate, have not produced income from operation at the rate anticipated at the time of their acquisition and have depreciated in value. MONY does not believe that the occupancy rate, income from operations and value of the Building are likely to increase significantly in the near future. MONY further represents that PA-7's holdings of its interest in the Buildings has had and will continue to have an adverse effect on the performance of PA-7 for the foreseeable future.

6. In light of the disappointing performance of the Buildings, MONY has determined that it would be in the best interest of PA-7 to sell its investment. MONY believes that, because of the depressed conditions in the Denver real estate market, it may be difficult for PA-7 to realize the fair market value of the Buildings in a sale of its interest to an unrelated party. In view of its existing interest in the Buildings, MONY considers itself to be an appropriate purchaser of the subject real estate and has proposed to buy PA-7's interest in the Buildings at its appraised fair market value at the time of the Sale.[2]

7. Karsten Realty Advisers (Karsten) was selected by MONY to act as an independent fiduciary on behalf of the PA-7 in connection with the Sale. In this regard, Karsten has acknowledged that it is a fiduciary with respect to PA-7 and that it will discharge its duties with respect thereto solely in interest of PA-7. Karsten, a nation-wide real estate investment management firm for approximately 19 years, has substantial experience in the acquisition, sale, management and leasing of office building properties in the Denver area. MONY owns no interest in Karsten and Karsten owns no interest in MONY. Karsten has not had any previous business relationships with MONY.

8. The responsibilities of Karsten with respect to PA-7 were set forth in a letter agreement (the Agreement) dated March 28, 1988. Under the Agreement, Karsten has assumed responsibility on behalf of PA-7 to review the terms of the Sale and to approve or disapprove the transaction. In particular, Karsten has assumed the responsibility to determine whether or not the transaction is in the best interest of PA-7 and whether the terms and conditions of the Sale are as favorable to PA-7 as it could in a transaction with an unrelated party.

9. Under the terms of Agreement, Karsten approved both the conditions of the appraisal assignment and the selection of GA Partners (GAP) as appraiser to determine the Buildings' fair market value. GAP has substantial experience in appraising all types of commercial properties. GAP has been a subsidiary of Arthur Anderson & Company (AAC) since September 30, 1988. During the time period covering September 30, 1988 to the present, AAC received less than one percent of its income from MONY.

GAP performed an independent appraisal of the Buildings as of June 30, 1988. GAP determined the fair market value of the Buildings as of that date to be $21,500,000, with an outstanding mortgage of $2,900,000, or $18, 600,000 net. Accordingly, PA-7's 19.58% interest in the Buildings would be worth $3,641,880 (i.e., 18,600,000 × 19.58%).

10. In addition to reviewing the independent appraisal of GAP, Karsten also conducted the following activities:

a. Inspected the Buildings;

b. Interviewed the on-site property managers, leasing agent and building engineer;

c. Inspected competing office properties, as well as office building properties identified in the GAP appraisal as comparable-sale properties;

d. Inspected additional comparable sale properties which in Karsten's opinion were relevant to valuation of the Building;

e. Discussed Denver office market leasing and sales trends with Denver based leasing and sales agents and with owners of Denver area office buildings;

f. Reviewed data and reports on comparable office building sales and listings;

g. Interviewed the MONY account officer responsible for the Buildings;

h. Reviewed relevent property documentation and reports from MONY's files, including but not limited to the two independent fee appraisals of the Buildings prepared most immediately prior to the above described GAP appraisal, annual operating statements for the Buildings for the last two years plus the current year-to-date operating statement, the current balance sheet for the Buildings, the current annual operating budget and management plan for the Buildings, the current rent role, schedules of current lease prospects and lease negotiation/renewal status, title policy, and the most recent three internal MONY asset management status reports; and

i. Prepared numerous computerized valuation and cash flow analyses and models in order to evaluate and test the valuation analyses contained in the GAP appraisal.

11. Based on the independent appraisal and the inspection review, research and analyses described above, Karsten concluded that the Sale is as favorable to PA-7 as it could obtain in a transaction with an unrelated party. Moreover, Karsten concluded that it would be in the best interest of PA-7 to complete this transaction in the near term rather that to retain its interest in the Buildings.

12. The individual at Karsten with overall responsibility for the discharge for Karsten's duties as independent fiduciary was Steve Morrison (Mr. Morrison), until recently a principal and officer of Karsten. Mr. Morrison recently left Karsten to form Morrison, Karsten, Ramzy & Arthur, Inc. (MKRA). MKRA is a real estate investment management and advisory firm, which operates on a nation-wide basis. MKRA is not affiliated with MONY in any way, nor does it derive any of its income from MONY.

[1] In this regard, see the preamble to the Proposed Exemption for certain transactions involving the Equitable Life Assurance Society of the United States [52 FR 30965, August 18, 1987] for a discussion concerning the sharing of real estate investments among two or more accounts maintained by Equitable, at lease one of which is an account for plan investors. The Department notes that MONY has not requested and the Department is not proposing an exemption for the sharing of the investment in the Properties between PA-7 and MONY.

[2] The Department notes that the proposed exemption is specifically limited to the sale of the Buildings by PA-7 contractholders to MONY. The Department is offering no opinion as to whether the acquisition and continued holding of the Buildings with the resultant losses to plans participating in PA-7, satisfied the fiduciary responsibility standards set forth in part 4 of Title I.

Since Mr. Morrison was already familiar with the Property, MONY has determined that PA-7 should retain MKRA as independent fiduciary in connection with the proposed sale. In this regard, MKRA has agreed to assume responsibility for the continuing duties as independent fiduciary on behalf of PA-7.

13. As noted above, MONY proposes to purchase PA-7's interest in the Buildings at its appraised fair market value. In this connection, within sixty (60) days of the granting of a final exemption, MKRA will cause GAP to perform an updated valuation of the Buildings. MKRA will adjust the purchase price of the Buildings in accordance with any change in value of the Buildings resulting from the updated valuation.[3] MKRA will give its final approval of the Sale on behalf of PA-7 only if it determines that the final terms and conditions of the transaction are as favorable to PA-7 as it could obtain in an arm's length transaction with an unrelated party. The purchase price will be paid in cash and no fees, commissions or other costs will be paid by PA-7 in connection with the transaction. PA-7 will not be required to give any representations, warranties or guarantees regarding the Buildings.

14. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act have been satisfied because:

a. The Sale will be a one-time transaction consummated for cash;

b. The Sale will allow PA-7 to liquidate an unprofitable investment for its current appraised fair market value;

c. PA-7 will not pay any fees, commissions or other expenses in connection with the proposed Sale;

d. The terms of the Sale, including the price to be paid for the Buildings, will be approved by Karsten acting an independent fiduciary for PA-7; and

e. MKRA will, within sixty (60) days of the final grant of the proposed exemption cause an updated valuation to be performed and determine whether the Sale is favorable to PA-7 as it could obtain in an arm's-length transaction with an unrelated party and whether such Sale would be in the best interest of PA-7.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number).

E. William Meyer, Inc. Pension Trust (the Plan), Located in Stateline, NV

[Application No. D-8279]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to Landis Hoffman (the Partnership), a disqualified person with respect to the Plan, for the greater of: (a) The fair market value of such Property as of the date of the sale; or (b) the original acquisition price for the Property and all holding costs incurred by the Plan during its ownership of the Property plus reasonable interest computed from the initial acquisition date until the time escrow is closed.[4]

Summary of Facts and Representatives

1. The Plan is a defined contribution plan having net assets of $462,565 as of December 31, 1988 and Mr. Meyer, a retiree, as the sole participant. The trustees of the Plan are Mr. Meyer, his wife, Mrs. Mariel R. Meyer (Mrs. Meyer) and their two sons, Messrs. Dennis Meyer and Ron Meyer. Investment decisions for the Plan are made exclusively by Mr. Meyer.

2. The Plan is sponsored by E. William Meyer, Inc. (the Employer) of Los Altos, California. The Employer, which is engaged in construction activity, is one hundred percent owned by Mr. and Mrs. Meyer.

3. The Partnership was formed in September 1989 for the purpose of holding and developing real property. The Partnership is a general partnership whose partners are Mr. Meyer and his two sons (the Partners). Each Partner has a one-third interest in the capital and profits of the Partnership. The Partnership is located in Auburn, California.

4. On August 17, 1989, the Plan acquired, for investment purposes, a parcel of real property located at 679 Mikkelsen Drive, Auburn, California. The Property is legally described as "Apn. 1-020-26" and it consists of an approximately one-half acre parcel of raw land. The Plan purchased the Property for $159,480 from Messrs. Dirk Delmon, Todd Lamont and Michael L. Flores, all of whom were unrelated parties. The Plan paid the consideration in cash. The Property is not contiguous to any other property owned by either the Employer, the Partnership or members of the Meyer Family. At present, the Property is not subject to any liens or mortgages nor has it been used by or leased to anyone, including disqualified persons during the time it has been owned by the Plan. Also since the time of its ownership of the Property, the Plan has expended a total of $1,615 in real estate taxes.

5. Mr. Meyer no longer considers it appropriate for the Plan to hold the Property for investment purposes because he believes his age and health may be limiting factors in supervising the Property's management and development. In addition, Mr. Meyer believes that too high a percentage of the Plan's assets are currently invested in the Property which may be subject to market fluctuations and possibly, to a further decrease in value. Therefore, Mr. Meyer requests an administrative exemption from the Department in order to permit the Plan to sell the Property to the Partnership.

6. The Partnership will purchase the Property from the Plan for a cash amount representing the greater of: (a) The fair market value of the Property as of the date of the sale; or (b) the original acquisition price and all holding costs incurred by the Plan during its ownership of the Property plus reasonable interest computed from the date of the Plan acquired the Property until the date escrow is closed. The Plan will not be required to pay any real estate of fees or commissions in connection with the proposed sale. Appropriate determinations of interest during the period of time the Plan has held the Property will be calculated by Mr. Meyer.

7. The Property has been appraised by Mr. Steven Wardwell (Mr. Wardwell), RM Canada, an independent appraiser from Auburn, California. Mr. Wardwell has appraised single family and multi-family residential properties, commercial property, raw land and rural acreage. In an appraisal report dated

[3] The applicant represents that the fair market value of the Buildings has continued to decline since the June 30, 1988, independent appraisal. In this regard, the Department originally suggested that MONY's general account pay the greater of the fair market value of the Buildings at the time of the sale, or the appraised value as of June 30, 1988. The applicant responded by submitting a letter from the Insurance Department of the State of New York dated March 2, 1990. The New York Insurance Department indicated in its letter that, in view of the further substantial depreciation in the value of the Buildings and, in order to protect the interests of all contract holders, the purchase price should be based solely on the current appraised value.

[4] Because Mr. E. William Meyer (Mr. Meyer) is the sole participant in the Plan, there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

April 30, 1990, Mr. Wardwell has placed the fair market value of the Property at $15,000 per buildable unit or an aggregate fair market value of $120,000. Mr. Wardwell explains that he has considered sales of properties in the Auburn, California area that are comparable to the subject Property. However, he notes that sales of higher density residential land such as the Property would indicate a lower per unit value whereas low density sales would indicate a higher per unit value. Mr. Waldwell also notes that although the Property has good access and terrain, it was overpriced at the time it was acquired by the Plan inasmuch as it appeared to be without market support.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The sale will be one-time transaction for cash; (b) the Plan will receive a cash amount from the Partnership which is equal to the greater of: (1) The fair market value of the Property as of the date of the sale; or (2) the original acquisition price and the total holding costs expended by the Plan during its ownership of the Property plus reasonable interest computed from the time of acquisition until the date escrow is closed; (c) the Property has been appraised by Mr. Wardwell, a qualified, independent appraiser; (d) the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale; and (e) the Plan will be able to divest itself of an asset which produces no income.

Notice to Interested Persons

Because Mr. Meyer is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interest persons. Accordingly, all written comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan. D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Donald J. Keune Profit Sharing Plan (the Plan), Located in Toledo, Ohio

[Application No. [D-8287]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of not more than $22,000 to Donald J. Keune (Mr. Keune) the owner and sole proprietor of the Plan sponsor, and to his wife, Mary L. Keune, by Mr. Keune's account in the Plan, provided that the terms and conditions of the Loan are no less favorable to Mr. Keune's account in the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the Loan.[5]

Summary of Facts and Representations

1. The Plan is a Keogh plan of which Mr. Keune is the sole participant. As of November 30, 1989, the Plan has total assets credited to Mr. Keune's segregated account of $119,381.52.

It is proposed that Mr. Keune's indivudual account lend not more than $22,000 to Mr. Keune and his wife, parties in interest with respect to the Plan, for the purpose of refinancing their law condominium office (the Office) located at 2727 N. Holland-Sylvania Road, Lucas County, Toledo, Ohio. The Loan will be at a fixed rate of 11% per annum for a five-year period with monthly payments of principal and interest. The Loan would be secured by a first mortgage on the Office and recorded with the county recorder for Lucas County, Ohio. The applicant represents that if the value of the collateral should decline, additional collateral will be made available to keep the collateral at no less than 150% of the outstanding principal balance of the Loan at all times.

3. On April 17, 1990, P. James Brunor, Jr., ASA, an independent and qualified appraiser, of Brunor Realty Company in Toledo, Ohio, estimated the fair market value of the Office as of April 6, 1990, to be $75,000.

On March 29, 1990, John A. Wooddall, Banking Office Manager with the Huntington National Bank of Toledo, Ohio, stated that his bank would make the Loan to the applicant on the same terms and conditions.

4. In summary, the applicant represents that the proposed transaction will satisfy the provisions of section 4975(c)(2) of the Code because: (a) The Loan will be adequately secured at all times; (b) No more than 25% of the Plan's assets will be invested in the Loan; and (c) Mr. Keune, the owner and sole proprietor of the Plan sponsor and the sole participant under the Plan desires that the transaction be consummated.

Notice to Interest Persons: Because Mr. Keune is the only participant in the Plan, it has been determined that there is no need to distribute the Notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Operating Engineers Pension Trust (the Plan), Located in Pasadena, California

[Application No. D-8348]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the proposed leasing (the Lease) of office space (the Office Space) by the Plan to Buss-Shelger & Associates (BSA), a party in interest with respect to the Plan, including a possible extension of credit by the Plan to BSA under the terms of the Lease, provided all the terms of the Lease are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multi-employer pension benefit plan administered by a joint labor management board of trustees. As of March 14, 1990, the Plan had 37,885 participants and assets of approximately one billion dollars.

2. BSA is the real estate investment advisor of the Plan and is, therefore, a party in interest and fiduciary of the Plan. The Plan proposes to lease to BSA the Office Space, which consists of 3,200 square feet in a 12 story building (the Building) located at 3055 Wilshire Boulevard in Los Angeles, California. The Building was valued as of June 1989 at $29,350,000, or approximately 3% of the Plan's total assets. Since the Office Space represents less than 2% of the

[5] The applicant represents that Mr. Keune is the sole participant under the Plan. Hence, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Building, the Lease involves approximately .06% of the Plan's assets. The terms of the Lease were negotiated by the Plan's Fund Manager, Leo Majich, and BSA's President, Ronald Buss, and are within the guidelines established by the Plan's Board of Trustees for leases with new tenants. Neither Mr. Buss nor anyone representing BSA has participated in the determination by the Plan's trustees to approve the terms of the Lease. No real estate broker was involved in representing either the Plan or BSA.

3. Under the terms of the Lease, BSA would rent the 3,200 square feet at the rate of $1.35 per square foot per month, after a five month period of free rent. The Lease would be for a term of five years and five months, with a renewal option exercisable by BSA for an additional five years. The rental rate for the option period would be at the fair market rental value, as determined by the Plan, at the time the option is to be exercised. BSA may either continue the lease or vacate the premises. BSA would pay a security deposit in an amount equal to one month's rent, and would pay the first month's rent upon execution of the Lease. During the term of the Lease, BSA would pay its pro rata share of any increase in the Building's operating expenses and taxes. In addition to the Office Space, BSA would be entitled to rent nine parking spaces in the Building's parking structure at the monthly rate of $60 per space for unreserved parking and $70 for reserved parking. These are the same rates other tenants pay. The parking structure is also owned by the Plan.

4. BSA would be provided a total tenant improvement allowance of $20 per rentable square foot. The allowance would be used to pay for the cost to construct all tenant improvements, including design services, engineering services, clean-up, elevators, hoists, building services, permits, licenses, fees and all other related costs necessary to prepare the space to suit BSA's specific design needs. In addition, the Plan would fund on behalf of BSA a maximum of $15 per rentable square foot for actual tenant improvements over and above the $20 allowance. BSA would repay the funded amount of over-standard tenant improvements in equal monthly payments over the term of the Lease with amortized interest at the prime interest rate set by a Local commercial bank.

5. The applicant represents that the Plan will incur no brokerage fees by leasing the Office Space to BSA. The usual and customary brokerage fee relating to such a lease would be approximately $10,368. The Plan will administer the Lease in the same manner as it administers leases for dozens of other tenants in five office buildings owned by the Plan.

6. Mr. James J. Hawk, Vice President of Hoffman Associates, Incorporated, an independent real estate consultant in Los Angeles, has represented that the terms of the Lease represent fair market value terms. Mr. Hawk represents that building managers leasing office space comparable to that in the Building are currently offering 5 to 8 months of free rent and tenant improvement allowances that range from $20 to $40 per square foot.

7. Mr. Jefferson Ford, the Property Manager for the Plan, represents that he has primary responsibility for finding tenants and negotiating leases for the Building and for other office buildings owned by the Plan. Mr. Ford represents that the Plan has taken out advertisements offering the Office Space and other space in the Building in the two leading publications in Los Angeles that specialize in commercial real estate. These are "Black's Guide to Commercial Real Estate in Los Angeles" and "Building Owners and Managers Association Guide to Commercial Real Estate in Los Angeles". These advertisements have run continuously for approximately two years, and the only offer for the Office Space has been by BSA. Mr. Ford further represents that before the Plan offered the Office Space to BSA, it offered the Office Space to Daily & Associates (Dailey), an existing tenant in the Building, on terms comparable to those offered to BSA. Daily declined to rent the Office Space. In addition, Mr. Ford showed the Office Space to commercial real estate brokers from Bailes & Associates, Charles Dunn Co., and Coldwell Banker, as well as to other individuals. Lease rates, free monthly rent and tenant improvement allowances comparable to those offered to BSA were discussed with all these brokers and individuals, and none of them made an offer to rent the Office Space or any other available space in the Building. The applicant represents that the last four leases entered into with unrelated parties by the Plan for space in its properties, all within the last six months, involve free rent and tenant improvement allowances more favorable to the tenants than the terms offered to BSA.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Lease involves Office Space representing approximately .06% of the Plan's assets; (b) Mr. Hawk, an independent third party appraiser, has represented that the terms of the proposed Lease are at fair market terms; (c) the Plan has advertised the Office Space in two commercial real estate trade journals at terms comparable to those offered to BSA for almost two years, and no one has offered to rent the Office Space; (d) the Plan's Property Manager, Mr. Ford, has offered the Office Space to various brokers at terms comparable to those offered to BSA, and none has made an offer to lease the Office Space; and (e) the last four leases entered into by the Plan with unrelated parties for office space in its properties have offered terms more favorable to those third parties than those offered to BSA for the subject transaction.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Wiethop Truck Sales, Inc. Employees Retirement Plan and Trust; Wiethop Truck Sales, Inc. Employees Profit Sharing Plan; and Wiethop Truck Sales, Inc. Employees Retirement Plan (together, the Plans), Located in Cape Girardeau, Missouri

[Application Nos. D-8312, D-8313 and D-8314]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plans of a building (the Building) to Wiethop Truck Sales, Inc. (Wiethop), a party in interest with respect to the Plans, for $145,000 in cash, provided such amount is not less than the fair market value of the Building on the date of the sale.

Summary of Facts and Representations

1. Wiethop, the Plans' sponsor, is in the business of selling, maintaining and supplying parts for semi-tractors and trailers. The Plans are a money purchase pension plan, a profit sharing plan, and a frozen money purchase pension plan. All three of the Plans have a common trust (the Trust). The Trust currently has assets having a fair market value of

approximately $425,000. There are 10 participants in each Plan.

2. On August 1, 1972, the Trust leased a parcel of property (the Property) located at 2350 Independence, Cape Girardeau, Missouri, from Wiethop. The Trust entered into that lease for the purpose of constructing the Building, a shop and parts building, on the Property. Pursuant to an agreement also entered in to on August 1, 1972, the Trust caused the Building to be constructed on the Property and leased to Wiethop. The lease for the Building was for a period of 20 years, commencing November 1, 1972. Construction on the Building was started September 1, 1972, and was completed January 28, 1975. The cost of the Building to the Trust was $118,051.

3. For the period from November 1, 1972, through July 31, 1974, Wiethop paid the Trust $1,000 per month in rent for the Building. From August 1, 1974 through July 31, 1975, Wiethop paid annual rent of $16,224 to the Trust. From August 1, 1975 to the present Wiethop has paid $17,023 to the Trust in annual rent for the Building. On August 1, 1976, the Trust started paying Wiethop $1,200 per year in rent for the Property, and has continued paying that amount in annual rent to the present time.

4. The leases have remained in effect since 1972. The applicant represents that the lease satisifed the requirements statutorily from the prohibitions of sections 406 and 407 of the Act through June 30, 1984.[6]

5. Wiethop now desires to terminate the Plans and to distribute the accounts under these Plans to their participants. However, approximately 30% of the assets of the Trust are represented by the Building. In order to facilitate the distribution of the account balances under the Plans involved in the Trust, the trustees desire to convert all of the assets of the Trust to cash, including the Building.

6. Wiethop has requested an exemption to permit the purchase of the Building from the Trust for cash. Wiethop has offered to pay $145,000 in cash for the Building. Two independent appraisers have been retained to establish a current fair market value for the Building. Mr. Robert L. Adams of Adams Appraisal Service, Jackson, Missouri, has appraised the Building as having a fair market value of $145,000 as of December 15, 1989. Mr. William P. Dockins of Dockins Valuation Company, Cape Girardeau, Missouri, appraised the Building as having a fair market value of $140,000 as of December 1, 1989. Both appraisers represent that the fair market value was determined without discount for the fact that the Building is encumbered by a lease, and that they considered the premium value of the Building to Wiethop in determining its fair market value.

7. The applicant acknowledges that the continuation of the leases of the Building and the Property beyond June 30, 1984 constituted prohibited transactions under the Act. Accordingly, Wiethop represents that it will pay to the Internal Revenue Service any excise taxes which apply from July 1, 1984 to the effective date of the exemption proposed herein in connection with the two leases within 60 days of the publication in the **Federal Register** of the granting of this proposed exemption. Further, Wiethop represents that if the Plans received less than the fair market rental from Wiethop for the Building or paid more than the fair market rental to Wiethop for the Property, for the period from July 1, 1984 to the present, Wiethop will pay such difference to the Plans, plus interest at the appropriate market rate within 60 days of the granting of the exemption proposed herein. Wiethop represents that it will retain an independent appraiser to determine the fair market rental value for the Property and for the Building for the period from July 1, 1984 to the present.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash, and no Commission will be paid upon the sale; (2) the Trust will be receiving the fair market value of the Building, as determined by the higher of two independent appraisals; (3) Wiethop will pay all applicable excise taxes which are due by reason of the lease of the Property and the Building within 60 days of the publication in the **Federal Register** of the exemption proposed herein; and (4) Wiethop will make up any shortfall in rent for the Building and return any amount above fair market rental charged to the Plans for the Property for the period from July 1, 1984 to the present, together with interest at the appropriate market rate, within 60 days of the date of granting the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[6] In this proposed exemption, the Department expresses no opinion as to whether the leases satisfied the requirements of section 414(c)(2) of the Act.

Holiday Oil Employee Profit Sharing Plan (the Plan), Located in Salt Lake City, Utah

[Application No. D-8365]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption if granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain real property located in West Jordan, Utah (the Property) to Jerald Wagstaff, the trustee of the Plan (the Trustee); provided that the price paid for the Property is no less than the greater of $125,000 or the Property's fair market value as of the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 103 participants and total assets of $1,135,356.36 as of December 31, 1989. The Plan is sponsored by the Holiday Oil Company (the Employer), a Utah corporation which owns and operates 27 gas station-convenience stores in Salt Lake and Utah counties in the state of Utah, with its corporate headquarters in Salt Lake City. The Trustee is the principal shareholder of the Employer and is assisted in making investment decisions on behalf of the Plan by an investment committee (the Committee) comprised of officers and/or employees of the Employer.

2. Among the assets of the Plan is the Property, an approximately one-acre parcel of vacant, unimproved land located at 8975 South 1300 West in West Jordan, Utah, in the metropolitan area of Salt Lake City. The Trustee purchased the Property on behalf of the Plan in 1981 for $125,000 cash and represents that it was purchased from an unrelated party for its investment potential. The Trustee represents that the Property was selected as a Plan investment because of its close proximity to a proposed large retail shopping mall which was planned for development at that time. It was intended that the mall development would rapidly enhance the value of the properties located nearby and that the Plan could realize a favorable return by selling the Property after land values in the area had risen. The Trustee represents that his judgment and decision in this regard were supported

and encouraged by the members of the Committee.

Since acquisition of the Property, however, the circumstances surrounding the Property have changed and the Trustee represents that the Property now constitutes an unfavorable investment of Plan assets. Specifically, the Trustee maintains that the proposed large retail mall did not develop as planned and that a reduced-scale retail development in its place failed to have the enhancing effect on the Property's value which had been expected by the Trustee and Committee. Further, the broader economy of the region experienced general depression after the Property's acquisition by the Plan, according to the Trustee. The Property had a fair market value of $110,000 as of February 9, 1990, according to Paul W. Throndsen, MAI (Throndsen), an independent professional real estate appraiser located in Salt Lake City. Throndsen represents that the market in which the Property is situated continues in a stagnant trend which emerged after the early 1980's and that no change is yet indicated with respect to future growth and demand. The Trustee represents that these adverse developments explain the failures of numerous efforts to sell the Property, efforts which included the following: the posting of advertising signs on the Property at various times over the past nine years, an exclusive listing of the Property with a local realtor, Prowswood Development, for over one year, consulting and working with owners of adjacent parcels, and for the past year enlisting the services of a local sales agency, Pentad Properties, Inc. (Pentad) of Salt Lake City. Rick Sessions, a sales agent for Pentad, represents as of January 11, 1990 that he has been unable to generate any serious interest in the Property and that the depressed market in which the Property is situated is unlikely to improve for a few years due to excessive development and diminished demand. The Trustee represents that the Property has remained idle and unproductive since its acquisition by the Plan and that notice was recently received of an increase in the county taxes on the Property.[7]

3. The Trustee proposes to divest the Plan of the Property by purchasing it from the Plan and he is requesting an exemption to permit such purchase transaction. The Trustee proposes to pay the Plan cash for the Property in the amount of $125,000. No commissions or fees will be paid with respect to the sale and the Trustee will bear any expenses related to the transaction.

4. The Trustee represents that the proposed purchase price of $125,000 will enable the Plan to recoup its investment in the Property and to prevent an absolute loss which the Plan presently could expect in an arm's-length transaction with an unrelated party, since the Property's fair market value is less than the Plan's initial investment in the Property. While acknowledging that the Property is adjacent to a parcel of real property which is already owned by the Trustee and leased to the Employer, the Trustee represents that his purchase of the Property from the Plan is proposed exclusively to enable the Plan to divest of the Property without any expenses and without risking further depreciation in the Property's value. The Trustee represents that neither he nor the Employer have any interest in retaining or developing the Property and that after purchasing it from the Plan the Trustee will immediately renew the efforts to sell the Property. Throndsen represents that he is aware of the Trustee's ownership of adjacent property and that in his opinion such adjacent ownership by the Trustee does not have any effect on the fair market value of the Property to the Trustee as a potential purchaser, as opposed to an unrelated third party purchaser.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plan will divest of an unproductive, depreciating asset and will be able to replace it with an income-producing asset; (2) The Plan will receive cash for the Property in an amount which is not less than the greater of the Property's fair market value of $125,000; and (3) The Plan will pay no commissions or fees or any expenses related to the transaction.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Gibson Distributing Company, Inc.—Permian Basin, Employee Profit Sharing Plan (the Plan), Located in Lubbock, Texas

[Application No. D-8334]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved real property located in El Paso, Texas (the Property) to Furr's, Inc. (Furr's), the successor in interest to the original sponsor of the Plan; provided that the purchase price is the greater of $325,000 or the fair market value of the Property as of the date of such sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan established in 1976 by Gibson Distibuting Company, Inc.—Permian Basin (Gibson), a Texas corporation which owned and operated discount retail stores in the Permian Basin region of West Texas. The Plan was terminated in 1986 upon the acquisition of Gibson by Furr's, a Texas corporation with its headquarters in Lubbock, Texas. The board of directors of Furr's (the Directors) have directed that the assets of the Plan be liquidated and distributed to Plan participants in accordance with the provisions of the Plan document. No contributions have been made to the Plan since its termination. As of April 30, 1990, there were 184 Plan participants and total assets of $736,322. The Plan is administered by an administration committee comprised of three members who are employees and/or officers of Furr's. The trustee of the Plan with exclusive authority to convey or otherwise dispose of Plan assets is Bank One Texas, N.A. (the Trustee) in Odessa, Texas.

2. Since termination of the Plan the Trustee has proceeded with liquidation of Plan assets. Completion of the liquidation and the distribution of Plan assets is prevented in part, however, by the inability to sell the Property. The Property is an 8,800 square-foot parcel of land located at 1176 Yarbrough Drive in El Paso, Texas and improved with a Wendy's Old Fashioned Hamburger restaurant, parking lot and driveways (the Improvements).

Gibson contributed the Property unimproved to the Plan in 1976. Furr's represents that this contribution was voluntary on the part of Gibson and that it did not constitute a prohibited transaction under the Act or the Code.[8]

[7] In this proposed exemption the Department expresses no opinion as to whether the acquisition and holding of the Property violated any provision of Part 4 of Title I of the Act.

[8] In this proposed exemption the Department is expressing no opinion as to whether the contribution of the Property violated any provision of Part 4 of title I of the Act.

At the time of this contribution Gibson owned an adjacent parcel of land (the Adjacent Property) on which was situated a shopping center, including a Gibson store, and parking lots. Soon after receiving the property from Gibson on behalf of the Plan, the Plan trustee which was the predecessor of the current Trustee entered into an agreement with Wendy's West, Inc. (Wendy's), whereby the Plan would constuct on the Property the Improvement and lease them to Wendy's for at least twenty years. Wendy's is a Texas corporation which is unrelated to Gibsons, Furr's and the Plan. Wendy's and the Plan executed the lease (the Wendy's Lease) effective February 18, 1976 with provisions which included an obligation to enter into a separate additional agreement with Gibson (the Parking Agreement) relating to Wendy's rights of ingress/egress over the Adjacent Property and reciprocal parking access between Gibson and Wendy's.[9] The Parking Agreement was executed March 1, 1976 and the Improvements were constructed soon thereafter at a total cost of $95,000. As of December 15, 1976, the property, including the Improvements, had a fair market value of $160,000, according to Bart Colwell, MAI, SREA, an independent professional real estate appraiser in El Paso.

Gibson sold the Adjacent Property in 1978 to the YDC Joint Venture (YDC), specifically subject to the Parking Agreement. After the 1986 termination of the Plan following Furr's acquisition of Gibson, efforts were initiated to sell the Property pursuant to the Directors' instruction to liquidate and distribute all Plan assets. On June 10, 1986, the Trustee entered into a sales contract (the Contract) with an unrelated party, Eugene Barth (Barth) for the sale of the Property for $260,000. In August 1986, however, Barth elected to terminate the Contract as a result of his inquiries about the status of landlord/tenant relations under the Wendy's Lease. Specifically, YDC was proposing to construct a competing fast-food restaurant on the Adjacent Property and Wendy's was maintaining that such construction would be in violation of the Wendy's Lease and the Parking Agreement. Litigation between YDC, the Plan and Wendy's resulting from this dispute (the Litigation) commenced October 29, 1986 and remains unresolved. On December 11, 1989 a judgement was entered in the Litigation which only partially addressed the substantive legal disputes between the parties and did not serve to resolve the conflicts sufficiently to satisfy the parties to the Litigation, according to the Trustee and Furr's.

Furr's and the Trustee represents that since the Plan was terminated, efforts have been made to sell the Property, and that Barth's offer had been the only acceptable purchase offer to have been made by any party until January 1989. At that time, according to the Trustee, Wendy's agreed to purchase the Property from the Plan for $305,000 upon the condition that the Litigation be settled. The Trustee represents that Wendy's did not purchase the Property pursuant to its offer because the parties to the Litigation were unable to reach any settlement agreement. The Trustee maintains that the continuing unresolved disputes involving the Adjacent Property are adversely affecting the Property's marketability and are accountable for the failure to sell the Property.

3. In order to enable the Trustee to complete liquidation and distribution of Plan assets without further delays and without economic loss to the Plan, Furr's is proposing to purchase the Property from the Plan and is requesting an exemption to permit such transaction. Furr's will pay the Plan cash for the Property in the amount of no less than $325,000, which was the fair market value of the fee simple of the Property as of December 15, 1989, without consideration of or allowances for the effect of the Litigation on the Property's value, according to Frederick H. McKinstry, CCIM (McKinstry), an independent professional real estate appraiser in El Paso, Texas. McKinstry will update his appraisal of the Property as of the date of the sale transaction and the purchase price paid by Furr's will be the greater of $325,000 or the Property's fair market value as of the sale date. Furr's will bear all expenses related to the sale transaction.

4. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plan will receive cash for the Property in the full amount of its fair market value as of the date of the sale; (2) The transaction will enable the Trustees to complete the liquidation of the assets of the Plan, which has been terminated; (3) The transaction will enable the Plan to divest of an asset which has become unmarketable to unrelated buyers at its fair market value because of the ongoing disputes involved in the Litigation; and (4) The Plan will incur no expenses related to the sale transaction.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

[9] The Department is providing no exemptive relief for any prohibited transactions which may have occurred as a result of the Parking Agreement.

Signed at Washington, DC, this 27th day of July, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-17860 Filed 7-31-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would change the Technical Specifications (TSs) for the Auxiliary Building Filtered Ventilation Exhaust (ABFVE) system include surveillance requirements and associated action statements to address the ability of the ABFVE system to maintain a negative pressure in the Engineered Safety Features (ESF) equipment area (also called the Emergency Core Colling System (ECCS) pump room area). The present McGuire TS 3/4.7.7 is written on a "per Unit" basis, i.e., if one unit is operating, then only the one ABFVE system associated with that unit is required to be operable. The proposed TS 3/4.7.7 would be written consistent with the actual design which is based upon a "shared" system (i.e., if either unit is operating, then both ABFVE systems are required to be operable).

The submittal also proposed changes to the ABFVE system with respect to laboratory carbon adsorber test temperature and acceptance criteria, the allowable operating time between laboratory tests of the carbon adsorber, and the use of the standard, ANSI N510-1980, in specifying the conditions for these tests.

Specifically, TS 3/4.7.7 would be changed to:

a. Specify a 7-day action time if one train of the ABFVE system is inoperable due to inoperable filter package.

b. Specify a 72-hour action time if one train of the ABFVE system is inoperable due to an inoperable flowpath.

c. Specify a 7-day action time if one train of the ABFVE system is unable to maintain a negative pressure of 0.25-inch water gauge at the ECCS pump room.

d. Specify a 72-hour action time if one train of the ABFVE is unable to maintain a negative pressure at the ECCS pump room.

e. Specify a 24-hour action time if both ABFVE trains are inoperable.

f. Replace the standard "ANSI N510-1975" with "ANSI N510-1980."

g. Replace the term "charcoal" with "carbon."

h. Decrease the required frequency for obtaining a representative carbon sample for laboratory analysis by replacing "after every 720 hours of charcoal adsorber operation" with "after every 1440 hours of carbon adsorber operation."

i. Change the carbon adsorber sample test temperature from 80 degrees C (which is required by referenced Regulatory Guide 1.52, Regulatory position C.6.a) to 30 degrees C. Also change the associated acceptance criterion from less than 1% penetration to less than 10% penetration.

j. Add a new surveillance requirement 4.7.7.3 to specify that each unit's ABFVE system be demonstrated to be operable at least once per 18 month by verifying that the system maintains the ECCS pump room at a negative pressure relative to outside atmosphere.

The licensee also requested a change in the ABFVE system flow rates. This part of the licensee's request has been addressed by separate Environmental Assessment and Finding of No Significant Impact (54 FR 37515, September 11, 1989), and is not changed by this current Environmental Assessment and Finding of No Significant Impact.

The Need for the Proposed Action

The proposed changes are needed to correct the TSs consistent with the actual design of the ABFVE system which is shared between the two McGuire units. The changes are also needed to provide operating flexibility with respect to the performance of system maintenance and repairs requiring one of the two ABFVE systems trains to be inoperable in excess of 24 hours, but less than 7 days or 72 hours. For example, the licensee indicates that the time needed to restore an inoperable ABFVE train to operable status by replacing the carbon filters and performing post-maintenance testing is 7 days. The time allowed by the revised TS with one ABFVE train inoperable would recognize actual system performance levels (e.g., 7 days allowed if the operable train is shown to maintain a negative pressure of 0.25 inch water gauge, or 72 hours allowed if it maintains only a negative pressure).

Since carbon filter performance tests do not occur only at scheduled outages, some test under the current TSs could necessitate a unit shutdown, resulting in undesirable thermal cycling of the Reactor Coolant System with detrimental effects on availability, component lifetime, and safety. Changes to the TSs regarding use of ANSI N510-1980, the testing criterion regarding depth of methyl iodide penetration into the carbon filter sample, and use of 30 degrees C for the carbon adsorber test temperature, are needed to achieve more meaningful, more realistic testing of carbon filters consistent with acceptance criteria in the Standard Review Plan (NUREG-0800), section 6.5.1. The change to decrease the required frequency for obtaining a carbon sample for laboratory analysis provided operational flexibility in the scheduling of tests and is supported by favorable operating history of the filters since 1981. Replacement of the term "charcoal" with "carbon" in reference to the filters is a change in nomenclature only and is needed for consistency with the licensee's terminology.

Environmental Impacts of the Proposed Action

The proposed changes to the TSs involve the surveillance and testing of the ABFVE system and the actions required of operators if one or more of the two ABFVE subsystems should be inoperable. The changes will enhance ABFVE system operability by ensuring proper surveillance, use of improved standards and realistic conditions for the testing of carbon filter samples in the laborabory, and providing for timely corrective actions in the event of system inoperability. The changes do not alter the function of the ABFVE system or decrease its ability to maintain a negative pressure in the ECCS pump rooms of the Auxiliary Building, or to filter and collect any gaseous or particulate radioactive contaminants in the Auxiliary Building exhause due to potential reactor leakage in the ECCS pump room after an accident. The changes do not effect the type or quantity of radioactivity released to unrestricted areas. Moreover, the changes do not cause any increase in dose due to radiological releases from the station after an accident or during normal operation. The changes also

would not result in a significant increase in individual or cumulative occupational exposure. Therefore, the changes would not cause any significant adverse radiological impact on the environment.

The changes have no nonradiological effects on the environment.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse environmental impact.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts or plant operation and would leave the limiting conditions for ABFVE system operation and its surveillance requirements as specified in the TSs inconsistent with a shared system design. Denying the amendments would also restrict operational flexibility and cause unnecessary unit shutdowns to accomplish repairs or maintenance on one of the two ABFVE system trains (e.g., to replace the carbon filter and conduct post-maintenance testing) that require more time than allowed in the current TSs to complete.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of the William B. McGuire Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

Agencies and Persons Consulted

The Commission's staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated October 15, 1987, and supplemental letter of October 22, 1987. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 26th day of July, 1990.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17869 Filed 7-31-90; 8:45 am]

BILLING CODE 7590-01-M

Closing of Local Public Document Room for Byron Station at the Rockford Public Library, Rockford, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closing of local public document room for Byron Station located at the Rockford Public Library, Rockford, Illinois.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) has closed the local public document room (LPDR) for records pertaining to Byron Station located at the Rockford Public Library, Rockford, Illinois.

DATES: The Byron LPDR located at the Rockford Public Library, Rockford, Illinois, was closed effective July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4344, or Toll-Free 800-638-8081.

SUPPLEMENTARY INFORMATION: The NRC had maintained two LPDRs for Byron Station, located at the Byron Public Library, Byron, Illinois, and the Rockford Public Library, Rockford, Illinois. The Byron Public Library was the original LPDR for Byron Station. In 1979, at the request of several intervenors, a second LPDR was established at the Rockford Public Library. At that time, the Byron Public Library had very limited hours of operation and no photocopying equipment.

The conditions at the Byron Public Library that necessitated a second LPDR no longer exist. The Byron Public Library is now open 60 hours per week, and has photocopying equipment. In addition, the libary is in a new building with ample room for the collection.

The NRC published a notice in the **Federal Register** on May 24, 1990, of intent to close the LPDR at the Rockford Public Libary (55 FR 21467). The Rockford Public Library has been offered the option of storing or discarding the records in the LPDR collection. Records pertaining to the Byron Station may be examined and copied at the Byron Public Library, 109 N. Franklin, Byron, Illinois, 61010. Telephone (815) 234-5107. Hours of operation are Monday through Thursday 9 am to 8 pm; Friday and Saturday 9 am to 5 pm; closed Sunday.

Dated at Bethesda, Maryland, this 25th day of July, 1990.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90-17871 Filed 7-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2); Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License Nos. DPR-53 and DPR-69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (the facilities). The licenses provide, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Calvert County, Maryland.

II

10 CFR 50.71(e)(4) requires that licensees submit a revision of the Updated Final Safety Analysis Report (UFSAR) no less frequently than annually and shall reflect all changes up to a maximum of 6 months prior to the date of filing. This regulation would require the submittal of Revision 10 of the Calvert Cliffs UFSAR by July 20, 1990.

III

By letter dated June 8, 1990, the licensee requested a one-time schedule exemption from 10 CFR 50.71(e)(4). Specifically, the licensee requested that it be permitted to delay the annual update for Revision 10 from July 20,

1990, to October 20, 1990, which is a three-month delay.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) authorized by law will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temparary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

IV

The requested exemption is administrative and would not affect plant equipment, operation, or procedures. The UFSAR contains the analysis, assumptions and technical details of the facility design and operating parameters. Until the UFSAR is annually updated, the recent changes are documented in the licensee's safety analysis reports (SAR) and in the Commission's Safety Evaluations (SE) for actions requiring prior approval.

Internal quality assurance audits and NRC inspections conducted in 1989 identified weaknesses in the licensee's updating process for the annual update of the UFSAR. Weakness were noted in the methods for identifying modifications which required updating and failure to incorporate safety evaluation reports, Generic Letters, and other material as described in 10 CFR 50.71(e).

The licensee's subsequently initiated an investigation to determine the cause of the lack of adequate administrative controls for the updating process. The lack of central oversight and adequate administrative procedures resulted in relying on individuals being responsible; thus, many required items were not included in the periodic updates of the UFSAR as required by the regulations.

The licensee has initiated corrective actions for the indentified weaknesses which include centralized control utilizing an experienced consultant on a full-time basis for the short-term and increased supervisory involvement both in the short-term and long-term.

It was determined that the Revision 10 update to the UFSAR would require additional interface with the responsible design engineers to ensure both completeness and quality of the updates to be incorporated in Revision 10.

The schedule extension is needed in the short-term, for the reasons discussed above, to assure adequate time is available to allow the licensee to provide a complete and quality update. The extended time also allows the long-term effort to improve the update process, which is being pursued in parallel, by utilizing the benefits of the lessons learned in the current update effort. Both the short-term and long-term effort are being handled primarily by the same individuals.

The proposed exemption constitutes a three-month delay in the annual update of the UFSAR. The requested exemption is a temporary one and is necessary to assure both improvement in the completeness and quality of the Revision 10 update and future submittals. The additional time provided for the Revision 10 submittal allows the feedback necessary to assure that the final procedures used for future submittals are workable, efficient, and result in a quality product.

The licensee has made a good faith effort to comply with the regulations by initiating corrective actions, both short-term and long-term, to improve its submittals when the deficiencies were identified both internally and by the NRC inspection process. Therefore, the exemption would only provide temporary relief from the applicable regulation and the extension would allow the time necessary for corrective action and would result in an improved update for Revision 10. Thus, there are special circumstances present which satisfy 10 CFR 50.12(1)(2)(v).

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants a one-time exemption, as described in Section III above from 10 CFR 50.71(e)(4) from the requirement to submit Revision 10 of the Calvert Cliffs UFSAR on July 20, 1990. Revision 10 shall be submitted by October 20, 1990.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of this exemption extension would have no significant effect on the quality of the human environment (55 FR 29920, July 23, 1990).

A copy of the licensee's request for exemption dated June 8, 1990, is available for public inspection at the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW, Washington, D.C., and at the Calvert County Public Library, Prince Frederick, Maryland. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention, Director, Division of Reator Projects I/II.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23 day of July 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17890 Filed 7-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp., et al; Consideration of Issuance of Amendment to Provisional Operating License and Proposed no Significant Hazards; Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amemdment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et al., (GPUN or the licensee) for operation of Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The licensee initially proposed an amendment dated February 20, 1990 concerning surveillance requirements of the station batteries. Subsequently, the amendment request was revised on April 11, 1990 and July 24, 1990. The February 20, 1990 submittal was published in the **Federal Register** on March 21, 1990 (55 FR 10533). The revised amendment request dated April 11, 1990 expanded the battery testing revision and requested that the surveillance interval for battery service tests be changed from 18 months of 24 months. The April 11, 1990 submittal was published in the **Federal Register** on May 30, 1990 (55 FR 21971). The revised amendment request dated July 24, 1990 withdrew the February 20, 1990 and April 11, 1990 requests. The requested amendment revises Technical Specification sections 4.7.B.3, 4.7.B.4.C and section 4.7, Basis of the Technical Specifications. Specifically, the revision adds the Service Test to the Station and Diesel Batteries and revised the Capacity and Annuciator surveillance intervals from 18 to 24 months.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

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.

Based on our review of the information provided by the licensee, the staff has determined that the proposed changes do not:

(1) Involve a significant increase in the probability or the consequences of an accident previously evaluated. The proposed surveillance interval does not involve any changes to the plant configuration, availability of safety systems or the manner in which they respond to initiating events, and, as such, will not increase the probability of an accident previously evaluated. The surveillance requirements will not alter the battery's response to an accident and, therefore, will not increase the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. Revising the battery refueling outage surveillance interval does not involve any change to the plant configuration, nor does it change the availability of the batteries or the manner in which they respond to initiating events. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety. The weekly, monthly, annual, and 24 months outage battery surveillance requirements verify the availability and capability of these components and, therefore, do not represent a reduction in the margin of safety. Additionally, the addition of battery service testing increases the information available to assure battery performance.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendments 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 31, 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 effected 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 Proceeding" 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 Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753. 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 proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petition 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, 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 Ernest L. Blake, Jr., 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 applications for amendment dated February 20, 1990, April 11, 1990 and July 24, 1990, which are 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 Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville Maryland, this 26th day of July, 1990.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-17869 Filed 7-31-90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Notice of Visit To Postal Facility

July 26, 1990.

Notice is hereby given that Commissioner William H. "Trey" LeBlanc, III will visit the Monroe, Louisiana post office on Thursday, September 6, 1990, to observe postal operations.

For further information contact Gerald Cerasale at (202) 789-6868. A report of the visit will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 90-17868 Filed 7-31-90; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Offices of Management and Budget

Agency clearance officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form ADV-S
File No. 270-43

Form S-6
File No. 270-181

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form ADV-S under the Investment Advisers Act of 1940 and Form S-6 under the Securities Act of 1933.

Form ADV-S is an annual report required of registered investment advisers. Approximately 15,571 investment advisers each file form ADV-S once a year. The form takes about 1 hour to prepare.

Form S-6 is used for registration of securities under the Securities Act of 1933 by unit investment trusts registered under the Investment Company Act of 1940. Unit investment trusts file approximately 11,527 Forms S-6 annually. The form takes an average of 35 hours to prepare.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235-0046 (Form ADV-S) and 3235-0184 (Form S-6)), Room 3208 NEOB, Washington, DC 20503.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17883 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28258; File No. SR-DTC-90-10]

Self-Regulatory Organizations; Depository Trust Company; Filing of Proposed Rule Change Relating to Payment of Distributions on Securities Sold Subject to Repurchase Agreement

July 24, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1990, the Depository Trust Company ("DTC")

filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–DTC–90–10) as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes the Repo Tracking System ("RTS") to enable distributions on securities sold subject to a repurchase agreement to be paid to the proper party as summarized in Item II, Section (A), below. The text of the proposed rule change is in Exhibit 2 to File No. SR–DTC–90–10.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to facilitate Participants' processing of repurchase agreements when the parties have agreed that the buyer will promptly pass on to the seller distributions received on the securities during the period between the buyer's purchase and the seller's repurchase.

The proposed rule change establishes RTS offering three new instructions for Participants to use to direct DTC to effect automatic allocation of distributions on securities sold pursuant to repurchase agreements: a "Repo Deliver Order," a "Repo Reclaim" instruction, and a "Repo Adjustment" instruction. RTS will also provide a variety of inquiry functions and reports to Participants.

The Repo Deliver Order may be used by a seller to instruct DTC to effect book-entry transfer of securities (free or versus payment) and, in addition, to instruct DTC to credit all future distribution on the subject securities to the delivering seller (and not the receiving buyer); it may also be used by a buyer to return securities upon their repurchase and simultaneously decrease the buyer's future obligation to relinquish distributions on that CUSIP. The Repo Reclaim instruction may be used by the recipient of a Repo Deliver Order on the day the delivery originated to negate the distribution instructions associated with the delivery being reclaimed while effecting book-entry return of the securities. The Repo Adjustment instruction may be used by any DTC Participant (whether or not a party to a previous DTC Repo Transaction) to direct DTC to debit its account by a specified quantity for future distributions to another DTC Participant, without effecting any book-entry delivery of securities.

DTC uses an accounting entry, called the "Repo position," to record Participants' distribution allocation instructions for each CUSIP. A Repo Deliver Order increases the deliverer's Repo position and decreases the receiver's Repo position. A Repo Reclaim instruction increases the instructing Participant's Repo position and decreases the counterparty's. A Repo Adjustment instruction decreases the instructing Participant's Repo position and increases the counterparty's.

On each future payable date for a CUSIP, DTC will automatically debit the settlement account for any Participant with a neagative Repo position on record date in the CUSIP, and credit the settlement account of any Participant with a positive Repo position, in the amount corresponding to the distribution on the quantity of the underlying security. DTC will allocate the distribution according to the Participant's Repo position whether or not the Participant has a long position in that CUSIP on record date.

Returns of principal on securities that return principal in periodic payments until maturity will be paid to those Participants with positive quantities in their Repo positions, except for the final payment at maturity. The final payment at maturity, and redemption proceeds on other types of securities, will be paid to Participants with long positions in the security at maturity, without regard to Repo positions.

DTC will keep a running record of the net of each Participant's obligations to each counterparty in each CUSIP, to be consulted by DTC upon a Participant's voluntary or involuntary retirement. This net Repo record may be positive or negative for a CUSIP/counterparty even if the retiring Participant's Report position for that CUSIP is zero. The net Repo record reflects legal obligations that a Participant may continue to have even if its settlement debits and credits at DTC would cancel each other out. DTC will use this record to verify, before permitting retirement, that the retiring Participant has closed out all its entitlements and obligations for future distributions created by past Repo instructions. In addition, if DTC were to cease to act for a Participant that has engaged in RTS transactions, DTC would determine from this record whether any active DTC Participants had continuing obligations to or rights from the terminated Participant with respect to future distributions in any CUSIP, and reduce and increase the continuing Participants' net Repo records accordingly. This would eliminate any DTC obligations to automatically allocate future distributions created by RTS transactions with the terminated Participant. While the counterparties' legal obligations or rights with respect to the terminated Participant would not be changed by DTC's action, active counterparty Participants would have to make other arrangements (outside DTC) to receive or pay future distributions on any Repo transactions with the terminated Participant that remain open after DTC had ceased to act.

RTS will be available for all issues eligible in DTC's Same Day Funds Settlement system. In the future DTC may consider offering RTS for use in DTC's Next Day Funds Settlement system.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) Act and the rules and regulations thereunder because it is a more efficient procedure than DTC currently provides for sellers and buyers using repurchases agreements if the buyer has agreed to pass distributions on the seller until repurchase (or any other event specified in their agreement). It is consistent with the safeguarding of securities and funds in DTC's custody or control or for which DTC is responsible because it clearly distinguishes "Repo" Deliver Orders from ordinary Delivery Orders ("DO"), enables same-day reclaims, permits only the Participant that is forfeiting the right to receive the distribution to instruct DTC by Repo Adjustment instruction to channel distributions to another Participant, provides reports and inquiry functions to Participants for their review and reconciliation, and provides for the termination of future DTC obligations upon a Participant's voluntary or involuntary retirement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Copies of written comments received from three DTC Participants are in Exhibit 3 to SR-DTC-90-10. The three Participants express agreement with DTC's design, except for two questions raised by Dean Witter Reynolds, Inc. about the requirement to process all Repo Deliver Orders through the Receiver Authorized Delivery ("RAD") screening and about the allocation of proceeds received by DTC on maturity. DTC responded in writing in its letter dated June 15, 1990 (also in Exhibit 3), that RAD screening was requested by the vast majority of Participants but that if experience indicated that RAD was creating gridlock, DTC could modify its RAD system to enable a Participant to set a separate limit for its Repo transactions than for its regular Deliver Order activity, and that maturity proceeds would be allocated as requested.

DTC also held a series of meetings with Participants to solicit their comments on RTS plans, which were incorporated into the final design of RTS. A list of Participants who attended those meetings is in Exhibit 4 to SR-DTC-90-10.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-90-10 and should be submitted by August 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 90-17877 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28259; File No. SR-MBSCC-90-03]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Collection of Commissions on Behalf of Participants Acting as Brokers

July 24, 1990.

On March 5, 1990, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR-MBSCC-90-03) [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act").[2] The proposal would authorize MBSCC to collect broker commissions from dealer participants on behalf of MBSCC participants acting as brokers. Notice of the proposal appeared in the Federal Register on April 26, 1990.[3] No comments were received. This order approves the proposal.

I. Description

MBSCC's proposal would authorize MBSCC to include in participating dealers' [4] monthly billing statements charges for brokerage services rendered by participants acting as brokers. Under the proposal, participating brokers will submit to MBSCC, by the second business day of each month, a statement of brokerage commissions earned during the previous month. MBSCC will net the commissions with the dealer's regular monthly settlement balance order or market differential and report the commission charges to the dealer on the third business day of each month.[5] MBSCC will bill the appropriate dealer on the 14th day of the month for the net charge.[6] When payment is received from the dealer, MBSCC will withhold .035% of the commissions and pass-through to the broker participant's account the remaining commissions.[7]

Brokers will be responsible for the accuracy of the charges and providing their dealers with underlying details supporting the charge. MBSCC will not undertake to resolve disputes or discrepancies concerning the commissions. Dealers having questions concerning the charges will be directed to contact the appropriate broker participant. MBSCC anticipates accelerating the collection date after operating the collection service for an initial period.

II. Rationale

MBSCC believes the proposal is consistent with Section 17A of the act in that it provides for the equitable allocation of fees for services provided to participants.

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[1] The proposed rule change, SR-MBSCC-90-03, was incorrectly referenced as SR-MBSCC-90-01 in the notice that appeared in the Federal Register on April 26, 1990. *See* Securities Exchange Act Release No. 27922 (April 20, 1990), 55 FR 17690.

[2] 15 U.S.C. 78s(b)(1) (1989). The proposal was originally filed on March 5, 1990, pursuant to section 19(b)(3)(A) of the Act. MBSCC amended the proposal on March 21, 1990, to provide for review pursuant to section 19(b)(2) of the Act. *See* letter, dated March 21, 1990, from Jeffrey Lewis, Secretary, MBSCC, to Sonia Burnett, Staff Attorney, Division of Market Regulation, Commission.

[3] *See* Securities Exchange Act Release No. 27922 (April 20, 1990), 55 FR 17690.

[4] As of May 10, 1990, 15 MBSCC's 43 dealer participants have elected not to participate in the collection service. MBSCC will continue to update broker participants of any firms that subsequently terminate their participation in the service.

[5] MBSCC will report the commission charges to participating dealers as part of MBSCC's regular monthly reporting process. In addition, all participating brokers independently notify their dealers of the commission charges.

[6] The 14th day of the month was chosen as the billing date for accumulated commissions because this date is MBSCC's Class B settlement date, *i.e.*, the settlement date for securities in which many MBSCC participants hold positions, making it more efficient for MBSCC to integrate the commissions into other dealer charges.

[7] *E.g.*, for every $100.00 of commissions reported to MBSCC, MBSCC will withhold $0.035, and pass-through $99.965. MBSCC will credit the commissions to the broker's account by 12 noon of the next business day or as soon as payment is received from the dealer.

III. Discussion

MBSCC's proposed rule change offers its participants access to a centralized, automated billing system to pass-through broker commission charges to dealers.[8] The Commission believes that such systems are consistent with Section 17A of the Act because centralized, automated billing and collection systems increase the efficiency of the overall clearance and settlement system.

The Commission also believes that MBSCC's proposal is consistent with section 17A(a)(1)(C) of the Act because the collection procedure is designed to offer access to data processing techniques which create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Billing and collection will be accomplished by book-entry, thereby encouraging the use of automated facilities in the clearance and settlement of securities transactions. The proposed procedure will effect an efficient billing and collection system because MBSCC will render bills to dealers as part of the dealer's regular monthly settlement balance order or market differential, and MBSCC will credit commissions to the appropriate broker's account upon receipt. Participating brokers will receive commissions within a shorter time period than if the broker billed each dealer directly. Therefore, the Commission believes that the proposal is consistent with section 17A(b)(3)(F) of the Act in that it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission agrees with MBSCC that the proposal is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among MBSCC participants. The proposed service charge represents a relatively small percentage of the commissions collected by MBSCC and will only affect the beneficiaries for the service for which the fee is assessed. Since the service charge will be a stated percentage of the commissions reported to MBSCC, each participating broker's monthly service charge will increase in correlation with the amount of commissions collected by MBSCC for the broker in a given month. Moreover, participation in the service is voluntary. Participants desiring to continue to bill their dealers, or receive bills from their brokers, directly may tender notice to MBSCC of its intention not to participate in the service.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change 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-MBSCC-90-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(12) (1989).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17878 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[8] The Commission approved a similar system proposed by National Securities Clearing Corporation ("NSCC"). *See* NSCC Rules and Procedures, R. 16 (revised March 14, 1990).

[Rel. No. 34-28246; File No. SR-MSTC-90-1]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Securities Trust Company Relating to its Enhanced Operating System

July 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 12, 1990, the Midwest Securities Trust Clearing Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by MSTC. On June 14, 1990, MSTC filed with the Commission an amendment which consists of MSTC's operational procedures to its enhanced operating system. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Summarized, in section II below is the proposed rule change of MSTC which reflects enhancements to MSTC's operating system (the "Enhanced System").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to implement various changes to MSTC's operating system as a result of MSTC's Enhancement Project. The proposed rule change documents and clarifies certain of the major deliverables of the Enhancement Project, including those relating to revisions to Participant account structure and terminology, establishment of a fully-paid-for position, and implementation of real time, rather than batch, processing and inquiry. The rule change is summarized below:

1. Account Structure and Terminology

The designation of a "Depository Free Position" has been changed to a "Segregated Position." This position category has been changed to more reflect industry usage. The definition of "Segregated Position" is the same as "Depository Free Position" and Participants retain the same rights in these positions.

2. Eligible Securities

The definition of eligible securities is revised to indicate that MSTC's procedures may provide that a Security is eligible but subject to restrictions. Depending on its operational capabilities, MSTC may designate certain securities as eligible, but inactive or "frozen" (e.g., CUSIP or name changes or other issues undergoing reorganizations).

3. Cash Settlement

Under the Enhanced System, Participants will have on-line inquiry capability via terminal to pay and collect amounts. The proposal provides that Participants may receive pay and collect amounts via terminal transmission (or in other manners provided in the Procedures). However, Participants are required to obtain and confirm amounts due to or owing from MSTC.

4. Net Position and Activity Reports

The proposal recognizes the new account designations. The activity report will also indicate completed, as well as transactions pended, on the date of entry. The pledge position report will now indicate amounts pledged by the

applicable cut-off time as the date of the report, rather than as of the close of the preceding business day.

5. Pledge Loan Program

The rules have been revised to indicate that MSTC may establish procedures to pledge (or release from pledge) positions via terminal transmission, rather than by hard-copy.

The proposed rule change is consistent with section 17A of the Act in that the rule provides for the prompt, and accurate and efficient clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The major deliverables of the Enhancement Project are the result of a series of consultations with MSTC's Users Steering Committee. The text of the proposed rule change will be submitted to Participants for comment and MSTC will notify the Commission of comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-90-1 and should be submitted by August 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17884 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28249; File No. SR-MCC-90-1]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Clearing Corporation Relating to Its Enhanced Operating System

July 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by MCC. On June 14, 1990, MCC filed with the Commission an amendment which consists of MCC's operational procedures to its enhanced operating system. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Summarized, in section II below is the proposed rule change of MCC which reflects enhancements to MCC's operating system (the "Enhanced System").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to implement various changes to MCC operating system as a result of MCC's Enhancement Project. The proposed rule change documents and clarifies certain of the major deliverables of the Enhancement Project, including those relating to revisions to Participant account structure and terminology, establishment of a fully-paid-for position, and implementation of real time, rather than batch, processing and inquiry. The rule change is summarized below:

1. Account Structure and Terminology

The designation of a "Clearing Free Position" has been changed to a "General Free Position"; "Loan Free Position" has been changed to "Available for Loan" Position. The position categories have been changed to reflect more accurately industry usage. The underlying definitions remain unchanged and Participants retain the same rights in these positions. (A General Free Position is a position where the Participant has fully paid for a security and the security is *not* available for loan; an Available for Loan Position is a position where the Participant has fully paid for a security and the security is available for loan in the Continuous Net Settlement ("CNS") System.)

2. Eligible Securities

The definition of eligible securities is revised to indicate that the MCC's procedures may provide that a security is eligible but subject to restrictions. Depending on its operational capabilities, MCC may designate certain securities as eligible, but inactive or "frozen" (e.g., CUSIP or name changes or other issues undergoing reorganizations).

3. Full-Paid-For Position

Under the Enhanced System, Participants may convert a long value position and/or a position not yet allocated under CNS into a full-paid-for position. A participant may instruct MCC to debit its account for the full value of the position. Fully-paid-for positions will be marked to the market daily and subject to any additional

charges that MCC may establish in its Procedures. (Under the intended procedures, MCC will charge a Participant's account for 130% of the market value of the securities underlying the full-paid-for position.) MCC will request the Commission to confirm that positions in a fully-paid-for position representing securities due to a Participant may be deemed within the control of the Participant for purposes of Commission Rule 15c3–3.

4. CNS Allocations

Deliveries and Priorities; Withdrawals:

(a) Deliveries of securities by a Participant having a short value position, as well as any negative balance in a security, will be used to reduce the short value position, as well as any negative balance. (Under the proposed rule change and as contemplated in the Enhanced System, a negative balance in a security results when MCC later debits a Participant's account for a delivery of securities which when initially made was not in good deliverable form, or was otherwise invalid or not genuine. If a Participant fails to eliminate a negative balance, MCC may either cause the securities to be bought in or charge the Participant's account a percentage (130%) of the market value of the position.) Under the Enhanced System, a Participant's Available for Loan Positions (positions that a Participant has designated to MCC as available for lending in the CNS System) will be used automatically to eliminate any short value position or negative balance of the Participant. A Participant's Available for Loan Positions (formerly Loan Free Positions) will now provide an automatic back-up to cover its short value or negative balance positions.

(b) Securities deliveries against short value positions will be credited to Participants' positions in the CNS System in the following new order: First, long value positions of Participants in securities undergoing a reorganization; Second, fully-paid-for positions; Third, long value positions of securities not undergoing a reorganization, and Fourth, loan value positions. (The former rules did not include priority treatment for long value positions involving reorganizations, *e.g.*, securities subject to a redemption or a tender offer, or fully-paid-for positions.)

(c) Participants are no longer required to submit a security withdrawal request in order to receive priority in the allocation of CNS deliveries. (MCC will now make CNS deliveries on-line throughout the business day.) Accordingly, priorities in CNS delivery obligations for pending security withdrawal requests have been eliminated.

5. Security Withdrawals and Automatic Securities Loan Program

(a) A Participant's Available for Loan Positions will provide an automatic back-up to fill its regular Security Withdrawal Requests (in addition to the Participants long value positions or General Free Positions). (A security withdrawal request is a request by Participant for physical withdrawal of its fully-paid securities.) The Enhanced System will eliminate the requirement that a Participant must specifically characterize as a "Loan Request" a request to use its Loan Free (now called Available for Loan) Positions to fill a security withdrawal request.

(b) Under the current rules, MCC may loan a Participant's Loan Free position (now called Available for Loan Position) to another Participant thus changing that participant's long value position to a Clearing Free Position (now called General Free Position). Under the Enhanced System, MCC may also allocate a Participant's Available for Loan Position to another Participant's fully-paid-for position thus changing it to a General Free Position.

(c) Under the current rules and system, security withdrawal requests are processed based on a series of priorities. (For example, MCC grants a higher priority to long value and loan value positions in processing such requests.) Under the Enhanced System, MCC will eliminate batch processing and process security withdrawal requests on-line throughout the business day. The priorities in the current rules are therefore eliminated and MCC will process security withdrawal requests in the order received based on the Participant's position at the time of processing.

6. Pledge Loan Program

Under the current system, Participants cannot pledge positions at MCC to pledge banks, and must effect all pledges on the books of the Midwest Securities Trust Compnay ("MSTC"). Under the Enhanced System, Participants will have the capability of also pledging their MCC General Free Positions directly with the bank. Accordingly, Participants will no longer have to first move securities from their MCC clearing free accounts positions to an MSTC depository free account to effect a pledge loan.

7. Cash Settlement

Under the Enhanced System, Participants will have on-line inquiry capability, via terminal, to pay and collect amounts. The proposal provides that Participants may receive pay and collect amounts via terminal transmission (or in other methods provided in the procedures). However, Participants are obligated to obtain and confirm amounts due to or owing from MCC.

8. Net Position and Activity Reports

The proposal recognizes the new account designations. The Activity Report will also indicate completed, as well as pended, transactions on the date of entry.

9. References to demand street withdrawal requests are eliminated. Withdrawal requests are processed in the order received by MCC.

The proposed rule change is consistent with section 17A of the Act in that the rule change provides for the prompt, efficient and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The major deliverables of the Enhancement Project are the result of a series of consultations with MCC's Users Steering Committee. The text of the proposed rule change will be submitted to Participants for comment and MCC will notify the Commission of comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Withing 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR-MCC-90-1 and should be submitted by August 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17885 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28260; File No. SR-NYSE-90-31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rules Governing Equity Specialists' Transactions in Listed Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 25, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Rule 105 regarding Specialists' Interest in Pools and Options and the Guidelines for Specialists' Specialty Stock Option Transactions pursuant to Rule 105. The text of the proposed modifications to Rule 105 and the Guidelines may be obtained from the places specified in Item IV below. The proposed amendments to the Rule and Guidelines consist of the following:

(1) Permitting the specialist to use any legitimate hedging strategy, including options positions on both sides of the market, to offset risk so long as the net option position is on the opposite side of the market from his stock position;

(2) Permitting the specialist to use "dynamic deltas" or any other hedging convention approved by the Exchange, as well as fixed hedge ratios, to determine the number of option contracts to be used;

(3) Changing the time frame for entering a liquidation order to the end of the trading day for a net option position that becomes on the same side of the market as a stock position and the end of the next trading day for an option position that, while on the opposite side of the market from the specialist's stock position, has become larger than that needed to offset the specialist's stock position as a result of a greater than 25% change in the stock position;

(4) Provindg a *de minimis* exception to the liquidation requirement for option contracts which offset the equivalent of 5,000 shares;

(5) Permitting the specialist to establish an over-hedge option position, and maintain it until the close of trading on the next trading day, by holding both near term and more distant term options during a so-called calendar rollover when the near term options are expiring and the specialist seeks to replace them with more distant term options; and

(6) Permitting the specialist to establish long-term option positions to offset general market-making risk irrespective of any actual stock position, without being subject to the liquidation requirements as to that option position, provided that the specialist obtains prior Exchange approval of the option strategy, and provided that he uses only out-of-the-money options that are not near term.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In approving the existing version of Rule 105 to permit specialists to use listed options to hedge specialty stock positions, the Commission noted that the rule "has the potential to enable specialists to add to overall stock market liquidity and depth by taking specialty stock positions they might not otherwise assume or by reducing risk on positions they are required to assume." [1] Further, the Commission determined that the existing Rule 105 as proposed by the NYSE would "offer substantial benefits to the markets for these stocks and possibly to the markets for the options themselves." [2] The Commission's approval order in connection with the current version of Rule 105 modified a 50-year prohibition against specialists on the Exchange holding an interest in any option on any of their specialty stocks.

The Commission understandably proceeded cautiously in balancing the regulatory concerns regarding possible stock/option manipulation and the specialists' perceived information advantages against the benefits to the market resulting from increased specialist dealer activity with corresponding offset of risk. The Commission determined that the Exchange's proposal appropriately addressed these regulatory concerns, and accordingly approved the current version of Rule 105.

As implemented in 1985, Rule 105 imposes strict limitations on the specialist's ability to hedge specialty stock positions with options. The rule provides that a specialist may establish a hedge to offset an existing specialty stock position only if he conforms to fixed "hedge ratios" and if the option position is entirely on the other side of the market from his stock position. The Rule contains strict liquidation provisions requiring the specialist to liquidate an option position within one or two hours depending, respectively, on whether the option position becomes on the same side of the market as the stock position or becomes excessive as a result of a decrease in the size of the stock position being hedged. In addition, the Rule contains a *de minimis* exception to the liquidation requirements as to an option position of 10 or fewer contracts.

Experience indicates that the cautious approach to specialist option hedging undertaken by the Commission and the NYSE has apparently proved to be unduly restrictive. Since Rule 105 went into effect, very few specialist units have actually engaged in option hedging. Currently, only one specialist unit is

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[1] *See* Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708, 5712.

[2] *Id.* at 5714.

periodically using options to hedge its specialty stock positions. Thus, the current Rule does not appear to be an effective means of permitting the specialist to offset market-making risk. However, the benefits to the market to be derived from specialists' use of listed options for hedging, which seemed to be significant in 1985, appear to be even more important in today's market environment, which is characterized by greater volatility than that which existed in 1985, and which places increasing demands on specialists to act as dealers to cushion intra-day fluctuations in supply and demand in order to maintain fair and orderly markets in their specialty stocks. In noting the desirability of specialists using options to offset risk, the NYSE's Market Volatility and Investor Confidence Panel, composed of individuals from major U.S. corporations, the securities and futures industries, and the academic community, recently observed:

> The Panel recommends that other proposals to increase liquidity be considered by the NYSE, as well as other markets where equities and equity derivatives are traded. One promising idea is to enhance the ability of specialists at the NYSE to provide liquidity to the market by encouraging them to hedge their positions using options in individual stocks. *Such hedges are made virtually impossible by current rules, which the Panel recommends relaxing, if adequate safeguards are in place to protect against frontrunning and manipulation. (emphasis added)* (Report of Market Volatility and Investor Confidence Panel, at page 6.)

The Exchange proposal provides the specialist with greater flexibility in using options by allowing the specialist to use any legitimate hedging strategy to offset risk (including options positions on both sides of the market), as long as the resulting *net* option position is on the opposite side of the market from the underlying stock position. The proposed rule change will allow the specialist the choice of using either fixed hedge ratios as in the current version of the Rule, deltas,[3] or any other hedging convention approved by the Exchange to offset risk in an existing specialty stock position.

The proposed amendments to Rule 105 retain the liquidation requirements for options positions that become overhedged or where the net option position becomes on the same side of the market as the underlying stock position. However, the proposal would change the time frame for liquidation. For a net option position which becomes overhedged and remains on the opposite side of the market from the underlying stock position, the specialist would be required to enter a liquidation order by the close of trading on the day after the position becomes overhedged. For a net option position which becomes on the same side of the market as the underlying stock position, the liquidation order must be entered by the close of trading on the same day. A *de minimis* exception to the liquidation requirements would be available for excess options contracts which offset the equivalent of 5,000 shares of a specialty stock position.

The proposal would further facilitate "calendar rollovers" [4] by permitting the specialist to establish and hold an overhedged position (both near term and more distant term options) for a limited period of time (until the close of trading on the next trading day). This will provide the specialist added flexibility while executing a rollover and removes the risk of becoming "unhedged" should there be a temporary absence of liquidity in the options market as the specialist seeks to liquidate one options position and establish another.

In addition, the proposal would permit the specialist to establish a long-term options position, irrespective of his actual stock position when the long-term options position is established, provided that he used "out-of-the-money" options that are not near term and provided that the strategy is intended to offset general market making risk. Prior approval from the Exchange would be required before a specialist could engage in such a strategy. The specialist would also be exempted from any liquidation requirements as to this options position. However, if the speicalist were to deviate from the approved strategy, he would no longer be exempt from the liquidation provisions.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in part, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the NYSE believes that the revisions to Rule 105 are consistent with these objectives in that they can be expected to facilitate the specialist's providing liquidity to the market by affording the specialist a reasonable means of offsetting the risk of assuming dealer positions in his specialty stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copyng at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[3] A "delta" is the amount by which an option's price will change for a corresponding change in price by the underlying security.

[4] A "calendar rollover" is a method whereby one establishes a position in another series of options where an existing options series is about to expire.

Dated: July 24, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17881 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28254; File No. SR-PSE-90-26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Trading of Warrants on the PSE's Technology Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to list and trade warrants on the PSE Technology Index ("Index"), a nationally recognized, price-weighted index consisting of 100 stocks representing companies engaged in a wide variety of technology fields. The Index is calculated and disseminated by the PSE, and any changes in its composition are also made by the PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to amend its rules to allow it to list and trade warrants on the Index. The Index is a nationally recognized, price-weighted index consisting of 100 stocks representing companies engaged in a wide variety of technology fields. The Index is calculated and disseminated by the PSE, and any changes in its composition are also made by the Exchange.

Such warrant issues will conform to PSE listing guidelines which provide that (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements outlined in the PSE guidelines, (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance, and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders and have an aggregate market value $4,000,000.

The Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a put option would receive payment in U.S. dollars to the extent that the Index has declined below a prestated cash-settlement value. Conversely, holders of a warrant structured as a call option would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The PSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule X, section 18(c), makes the options suitability standard applicable to recommendations regarding index warrants. The Exchange also proposes that Index warrants be sold only to options-approved accounts. Exchange Rule X, section 18(c)(1), requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the date the order is entered. In addition, the PSE, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: July 23, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17882 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28251; File No. SR-NSCC-89-19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding a Modification to Continuous Net Settlement System Buy-Ins

July 20, 1990.

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change (File No. SR-NSCC-89-19) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 12, 1990, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change would modify sections VII and X of the NSCC Procedures governing Continuous Net Settlement ("CNS") System buy-ins.[3] The proposal seeks to ensure that in the retransmittal of buy-in notices those NSCC members having the oldest relevant short positions in a security issue subject to a buy-in notice will be held liable for an executed buy-in. Accordingly, under the proposal, NSCC would: (1) Track each buy-in position that generates a retransmittal notice; and (2) retransmit buy-in notices to a sufficient number of broker-dealer members holding short positions ("short brokers") to assure that a short broker, and not NSCC, would be liable for the buy-in.

Under current CNS buy-in methods, a member with a long position ("long broker") at the end of a day may submit a buy-in notice to NSCC. Upon NSCC's receipt of such notice, the CNS System assigns a priority code to the long broker for the allocation of shares to its account from the CNS System. If, after the first allocation cycle, the buy-in position is not filled, the System automatically retransmits buy-in notices to brokers with the oldest short positions. The age of short positions is defined as the number of consecutive days during which the member has been short, irrespective of the quantity of shares. If several brokers have short positions of the same age, each such broker receives a retransmittal notice, even if the total of their short positions exceeds the buy-in position.[4] The allocation rank of such brokers is determined by a computer generated random number.[5] If, however, the oldest short positions are not sufficient to satisfy the buy-in position, retransmittal notices will be generated for the remainder quantity in the next oldest age class(es) until the buy-in position has been retransmitted to the necessary number of short brokers. If the appropriate short broker(s) fails to make the requisite securities available, the long broker may execute the buy-in, and such short broker(s) will be liable for any loss (*i.e.*, the price differential) that occurs as a result of the buy-in.[6]

NSCC has noted, however, that the current system recognizes only that a member is short and that it takes no account of the fact that a retransmittal notice may have been generated against the same member on the previous day for the same issue. Thus, due to the system's identification limitations, if the short member delivers securities against its first buy-in notice, NSCC might not be able to identify and hold liable any member for the second buy-in. Consequently, NSCC itself would have to absorb the loss, if any, for the second buy-in.

The proposed rule change is designed to eliminate the need for NSCC to absorb such losses. The proposal would add systems modifications to track each buy-in position that produces a retransmittal notice. NSCC would continue to issue retransmittal notices to all the short brokers within the oldest age class, but, in addition, where buy-ins occur in the same issue on successive days, NSCC would transmit notices to the brokers in the next oldest age class(es) in order to identify brokers to hold liable for subsequent buy-ins if the oldest short brokers are executed against or have satisfied the initial short position. In every case, the oldest short broker will be held liable first. Thus, as modified, the rule clarifies that an NSCC member, and not NSCC, will be liable for the execution of buy-ins.

II. Rationale for the Proposal

NSCC states that the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by providing for the proper transmittal of CNS buy-in retransmittal notices and executions of buy-ins against the appropriate entity. NSCC states that the rule change is, therefore, consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

III. Discussion

The Commission believes that the proposal is consistent with the Act, and particularly with section 17A of the Act. Section 17A(B)(3)(F) of the Act requires that clearing agency rules promote the prompt and accurate clearing and settlement of securities transactions and the safeguarding of clearing agency funds. Moreover, section 17A(a) of the Act states that inefficient clearing and settlement procedures impose unnecessary costs on investors and on those facilitating transactions in their behalf.

Under the current NSCC procedures, difficulties in identifying short brokers that are liable for the costs of buy-ins have resulted in the costs of such buy-ins being imposed on NSCC. This proposal, which enhances NSCC's buy-in procedures, will require NSCC to track each buy-in position that generates a retransmittal notice. Also, in the event that brokers holding short positions of a particular age have inadequate positions to satisfy a buy-in requirement, the proposal will require NSCC to send retransmittal notices to a sufficient number of other short brokers (*i.e.*, brokers in other age classes) to ensure that an NSCC member, and not NSCC, is held liable for the cost of executing the buy-in.

The Commission believes that, for the sake of marketplace efficiency and the safeguarding of clearing agency assets, NSCC should eliminate the practice of using clearing agency funds to pay for members' buy-ins. The Commission believes that the proposed rule change,

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[1] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Secruities Exchanges Act Release No. 27872 (April 3, 1990), 55 FR 13874.

[3] The term "buy-in," in this context, refers to the buy-in procedures that one broker must follow when another broker (the defaulting broker) fails to deliver securities as promised. The non-defaulting broker must buy-in the securities to meet its own obligations, and liability for resulting losses may be imposed on the defaulting broker. The opposite of a buy-in is a "sell-out," where a broker may dispose of securities if another broker defaults by refusing to accept delivery as promised. *See*, M. Thompsett, *Investment & Securities Dictionary*, 38, 257 (1986); D. Scott, *Wall Street Words*, 42 (1988).

[4] *See* NSCC *Rules and Procedures*, Procedures, section VII.J, p 3 at 55 (rev. Dec. 8, 1989).

[5] *Id.* section VII.E., p 1 at 38 and section E.4, p 4 at 40. NSCC uses the same allocation procedures for buying-in long positions as for short positions.

[6] *Id.* section X.A.1, p 2 at 61. *See also id.*, section VII.D at 31-37, esp. section D at 35 and section E at 37.

which is designed to eliminate that practice through the use of more thorough tracking and retransmittal procedures, facilitates the prompt and accurate clearing and settlement of securities transactions and is consistent with the Act, particularly section 17A of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR-NSCC-89-19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17888 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 26, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Gainsco, Inc.
Common Stock, $.10 Par Value (File No. 7-6053)
European Warrant Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6054)
Preferred Health Care, Ltd.
Common Stock, $.01 Par Value (File No. 7-6055)
Ruddick Corporation
Common Stock, $1.00 Par Value (File No. 7-6056)
Kent Electronics Corporation
Common Stock, No Par Value (File No. 7-6057)
Nuevo Energy Co.
Common Stock, $.01 Par Value (File No. 7-6058)
Policy Management Systems Corporation
Common Stock, $.01 Par Value (File No. 7-6059)
Rhone-Poulenc S.A.
Contingent Value Rights, No Par Value (File No. 7-6060)

[7] 17 CFR 200.30-3(a)(12).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 16, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-17832 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applictions for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 26, 1990.

The above named national securities exchange has filed applcations with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Holnam, Inc.
Common Stock, No Par Value (File No. 7-6061)
Snyder Oil Corporation
Common Stock, $0.01 Par Value (File No. 7-6062)
American Medical Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7-6063)
Freeport-McMoran Oil & Gas Company
Common Stock, $0.01 Par Value (File No. 7-6064)
Longview Fibre Company
Common Stock, $1.50 Par Value (File No. 7-6065)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 16, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comemnts should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washigton, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-17833 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28264; File No. SR-PSE-90-28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Extension of a Pilot Program of the Pacific Options Exchange Trading System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 9, 1990, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE seeks an extension until October 22, 1990, of its pilot program of an automated options trading system designated as the Pacific Options Exchange Trading System ("POETS").[1]

[1] The Commission approved the PSE's POETS system on a six-month pilot basis on January 18, 1990. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File SR-PSE-89-26). The initial six-month approval expired on July 22, 1990. POETS is a completely automated trading system comprised of an options order routing system ("ORS"), an automatic and semi-automatic execution system ("Auto-Ex"), an on-line limit order book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1990 the Commission approved POETS on a pilot basis.[2] The PSE requests a three-month extension of the pilot program in order to complete installation of the system's hardware. After POETS has been installed floorwide, the Exchange will be able to assess fully the merits of the system and to inform the Commission of its findings.

Although POETS has not yet been installed floorwide, POETS has benefitted Exchange members and public investors as follows: (1) By providing faster order turnaround time; (2) by providing better tracking of orders for members, member firms and Exchange staff due to POETS' ability to retain large amounts of order and transaction information; (3) by facilitating trading during periods of high activity due to POETS' ability to adjust to market fluctuations by upgrading its capability while on-line; and (4) by providing the Exchange's Regulation Department with more accurate trade data and information.

Because POETS has benefitted Exchange members and public investors even though the system has not yet been installed floorwide, the PSE proposes an extension of the program for an additional three months, until October 22, 1990, in order to complete the installation of POETS.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirement of section 6(b)(5) of the Act which provides, among other things, that the rules of the Exchange are to be designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 thereunder.[3] In particular, the Commission finds that the extension of the pilot is consistent with section 6(b)(5) of the Act based on the PSE's representations that POETS has resulted in more efficient execution of public customers market and limit orders, has facilitated trading on high volume days, and has provided the PSE's Regulation Department with more accurate trade information.[4] The enhanced efficiency of order processing resulting from POETS, in turn, should help the PSE to provide deeper, more liquid and more efficient options markets. In addition, the provision of more accurate trade information will allow the Exchange to develop more accurate and timely audit trails, thereby helping the PSE to maintain the integrity of its markets.

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to permit uninterrupted the continuation of the pilot program. In addition, because there have been no adverse comments concerning the pilot program since its implementation or prior to the Commission's approval of POETS in January 1990 and because of the importance of maintaining the quality and efficiency of the PSE's markets, the Commission believes good cause exists to prove the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PSE-90-28) relating to an extension of the POETS pilot program until October 22, 1990, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1990.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17872 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28268; File No. SR-NASD-89-52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Rules of Practice and Procedure for the Small Order Execution System

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on November 16, 1989, and

[2] *See supra,* note 1 for a decription of POETS. The automatic execution feature of POETS, however, was limited to implementation in all equity options classes at two trading posts and any option which becomes multiply traded.

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] Before the pilot expires, and before any further extension of the pilot, the Commission expects the PSE to submit a full pilot report, by September 22, 1990, providing detailed statistics on these representations and POETS useage and system capacity.

[5] 14 U.S.C. 78s(b)(2) (1982).

amended on February 16, 1990, to the Securities and Exchange Commission ("SEC or "Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The proposal amends the NASD's Rules of Practice and Procedure for the Small Order Execution System ("SOES")[3] to prohibit market makers from entering agency orders into SOES in securities in which they make markets. The proposed rule change also would reiterate a market maker's obligation to obtain best execution for its customer orders.

The NASD believe this rule change will enhance further a market maker's participation in SOES, by preventing a type of so called fair-weather market making. The proposal will prohibit a market maker from receiving its own customer's order, reviewing it, deciding not to act as a market maker for that order, and sending it into SOES for an automatic execution on an agency basis against its competitors. The NASD believes that this is an appropriate modification to the SOES rules because when an NASD member establishes itself as a market maker, it assumes certain responsibilities and obligations, one of which is to fill its customer orders from its market making position or through telephone negotiation. The rule change also emphasizes a market maker's continuing obligation to afford its customer the best execution available in the NASDAQ marketplace, even though an agency based SOES execution may not be permitted.

The February 16, 1990 amendment added specific language to emphasize that a market maker's duty to its customer is in no way abridged by the unavailability of a SOES execution. The NASD believes that the proposed rule change, and the amendment regarding best execution, reinforce a market maker's obligation in the NASDAQ marketplace.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27732, February 26, 1989) and by publication in the **Federal Register** (55 FR 7613, March 2, 1990). No comments were received on the proposal.

The Commission reviews carefully any changes that limit the use of small order systems, such as SOES. The objective of SOES is to provide retail customers in the OTC market the ability to obtain an execution of up to 1,000 shares at the best quoted price. This proposal limits the ability of market makers to use SOES on behalf of customers for securities in which they make a market. It does not change the obligation of the market maker to obtain the best price for the security on its customer's behalf.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regualtions thereunder applicable to the NASD and, in particular, the requirements of section 15A[4] and the rules and regulations thereunder. Specifically, section 15A(b)(8) requires that the rules of the NASD, in general, "provide a fair procedure for * * * the prohibition or limitation by the association of any person with respect to access to services offered by the association or member thereof." The Commission believes it is reasonable for the NASD to in effect conclude that one responsibility of market maker status is to execute customer orders without resorting to SOES.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Dated: July 26, 1990.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17874 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *NASD Manual*, paragraphs 2451 *et. seq.*

[4] 15 U.S.C. 78o-3 (1982).

[5] 17CFR 200.30-3(a) (12).

[Release No. 34-28265; File No. SR-PHLX-90-16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Extension of Automated Options Market System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 11, 1990, the Philadelphia Stock Exchange, Incorporated ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b-4 of the Act, the PHLX proposes to extend the Exchange's Automated Options Market ("AUTOM") system on a pilot basis until December 31, 1990. AUTOM is an electronic system that allows delivery of small options orders from member firms directly to the PHLX trading floor and also provides automatic execution for certain options orders.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] In March 1988, the Commission approved until June 30, 1988, a PHLX rule change to establish the AUTOM system on a pilot basis for market orders of up to five contracts in all exercise prices in the near-term month for twelve PHLX equity options. *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (order approving File SR-PHLX 88-10). Subsequently, the Commission approved PHLX proposed rule changes which: (1) Expanded AUTOM to 37 PHLX equity options and extended the pilot through December 31, 1988, *see* Securities Exchange Act Release No. 25868 (June 30, 1988), 53 FR 25563 (order approving File SR-PHLX-88-22); (2) made orders in all exercise prices for all expiration months for the 37 options approved for the pilot eligible to be handled by AUTOM, increased the eligible order size for AUTOM to 10 contracts, and extended the pilot through June 30, 1989, *see* Securities Exchange Act Release No. 26354 (December 13, 1988), 53 FR 51185 (order approving File SR-PHLX-88-33); (3) expanded the pilot to include an additional 25 equity options and extended the pilot through December 31, 1989, *see* Securities Exchange Act Release No. 26522 (February 3, 1989), 54 FR 6465 (order approving File SR-PHLX-89-1); and (4) permitted the use of the AUTOM electronic order delivery system for eligible daily limit orders, expanded AUTOM to include an automatic execution feature for 12 PHLX equity options and any other PHLX option which is multiply-traded and extended the pilot through June 30, 1990, *see* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (order approving File SR-PHLX-89-03).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1990 the Commission approved a rule change that, among other things, extended the AUTOM system on a pilot basis until June 30, 1990.[2] The PHLX requests a six-month extension of the pilot program until December 31, 1990.

AUTOM has been developed and implemented in order to use new data processing and communications techniques to provide more efficient execution of transactions in PHLX equity options. Accordingly, the Exchange believes that the development of the AUTOM system is consistent with the Congressional findings, set forth in Section 11 of the Act, that (1) "New data processing and communications techniques create the opportunity for more efficient and effective market operations" [3] and (2) "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions." [4]

In addition, the PHLX believes that because the other options exchanges currently have in place Commission-approved option execution systems, the AUTOM system is consistent with the Act because it fosters "fair competition . . . among exchanged markets." [5] Finally, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not beleive that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither soliciated nor received.

[2] *See supra* note 1.

[3] *See* 15 U.S.C. 78k-l(a)(1)(B) (1982).

[4] *See* 15 U.S.C. 78k-l(a)(1)(C)(i) (1982).

[5] *See* 15 U.S.C. 78k-1(a)(1)(C)(ii) (1982).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 thereunder.[6] In particular, the Commission finds that the extension of the pilot is consistent with section 6(b)(5) of the Act because the Commission believes that the development and implementation of AUTOM will provide for more efficient handling and reporting of orders in PHLX equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The increased order routing efficiencies provided by AUTOM, in turn, should benefit public customers and PHLX member firms. In addition, since the pilot program is being extended without expansion of the scope of the pilot, the Commission does not believe that the capacity of the Exchange's automated systems will be adversely affected by extension of the pilot. Moreover, the Commission believes that extension of the pilot will provide the Exchange with a better opportunity to study its operation and effectiveness prior to permanent approval of the program.[7]

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to permit uninterrupted the continuation of the pilot program. In addition, because there have been no adverse comments concerning the pilot program since its implementation and because of the importance of maintaining the quality and efficiency of the PHLX's markets, the Commission beleives good cause exists to approve the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendsments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 22, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act; [8] that the proposed rule change (SR-PHLX-90-16), relating to an extension of the AUTOM pilot program until December 31, 1990, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17873 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] Before the pilot expires, and before any further extention of the pilot, the Commission expects the PHLX to submit a full report, by November 30, 1990, providing detailed statistics indicating the benefits provided by AUTOM, the degree of AUTOM usage, and the system capacity of AUTOM.

[8] 15 U.S.C. 78s(b)(2) 1982).

[Release No. 34-28266; File No. SR-PHLX-90-08]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Listing Guidelines and Rules Applicable to Index Warrants

On May 4, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to allow the PHIX to list and trade warrants based upon foreign and domestic stock market indexes.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The PHLX has proposed to trade index warrants based on the Nikkei and DAX foreign stock indexes.

Continued

The proposed rule change was published in Securities Exchange Act Release No. 28130 (June 19, 1990), 55 FR 26041. No comments were received on the proposed rule change.

The Exchange proposes to amend its Rule 803 to provide listing guidelines for index warrants. These warrants will be cash-settled, unsecured obligations of their issuer with a term ranging from one to five years. The index warrants would be based on established domestic and foreign market indexes. Further, the PHLX intends to list both American style warrants, which can be exercised throughout their term, as well as European style warrants, which can only be exercised on their expiration date.

Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a prestated cash settlement value while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

The PHLX will consider listing index warrants on a case-by-case basis. Because the warrants will represent unsecured obligations of their issuer, only warrants issued by companies that exceed the Exchange's financial listing criteria and have assets in excess of $100 million would be eligible for listing. The Exchange proposes to require a minimum public distribution of one million warrants together with a mimimum of 400 public holders, and an aggregate value of $4 million; or, warrants which already have been approved for trading on another national securities exchange.

The Exchange also proposes to amend PHLX Rule 1026 entitled "Suitability" to apply the options suitability standard to index warrant recommendations made by members and member organizations. The suitability standard will require that the member of member organizations have reasonable grounds to believe that the recommended index warrant transaction is suitable for the customer and that the customer is able to evaluate and bear the risks of the proposed transaction. The Exchange will also recommend that index warrants be sold only to options-approved accounts.

Further, the Exchange proposes to amend PHLX Rule 1027 entitled "Discretionary Accounts" so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP shall review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transaction, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants. In addition, prior to trading in any particular index warrant, the PHLX proposes to distribute a circular to its membership describing the risks associated with trading in such index warrant.

Index warrants represent another of the innovative methods of raising capital recently developed by business enterprises. Whereas corporations once raised capital solely through simple debt or equity offerings with the occasional sale of convertible debt or preferred stock, today a wide range of financing alternatives, such as commodity-or stock-index linked debt, foreign currency denominated debt, and currency warrants are available. Index warrants are yet another example of this phenomenon. These innovative financing techniques not ony allow business entities to raise capital more easily and less expensively, but also provide investors with an opportunity to obtain differential rates of return on a small capital outlay if the underlying stock index moves in a favorable direction within a specified time period.[4]

Because index warrants are derivative in nature and closely resemble index options, the Commission has several specific concerns regarding these instruments. In particular, index warrants raise customer suitabilitiy, disclosure, and secondary market trading issues that must be addressed adequately. In this regard, the PHLX has proposed safeguards that are designed to meet these investor protection concerns, including the application of options suitability standards to index warrant recommendations and the requirement that discretionary orders in index warrants be approved on the day entered by a SROP or ROP.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[5] More specifically, the Commission believes that index warrants are an innovative financing technique designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in return for assuming some overall market volatility risk. Purchasers of the warrants can use them to hedge against or speculate on stock market fluctuations.

The Commission believes that the PHLX has designed reasonable rules and procedures to address the special concerns attendant to the secondary trading of index warrants.[6] By imposing special suitability, disclosure, and compliance requirements on index warrants, the PHLX has addressed potential public customer problems that could arise from the derivative nature of these products. The Commission believes further that it is appropriate to apply options suitability and risk disclosure standards to index warrants since index warrants possess the same basic risks as index options. Similarly, applying existing options suitability procedures to index warrants should ensure that only customers with an understanding of options and the financial capacity to bear the risks attendant to options trading will be trading index warrants on their broker's recommendations. Moreover, a SROP or ROP will be required to review any discretionary index warrant transaction on the day the transaction is executed. As with index options, this procedure will ensure that appropriate supervisory personnel at member firms review these transactions promptly. In addition, the PHLX will recommend that index warrants be sold only to options-approved accounts. Finally, the listing standards for index warrants should ensure that only substantial companies capable of meeting their warrant obligations issue the index warrants.

The Commission is considering these index warrant proposals pending the approval of the present proposed rule change in File No. SR-PHLX-90-08 ("Index Warrant Proposal").

[4] Of course, if the underlying stock index moves in the wrong direction or fails to move in the right direction within the specified time period, the warrant will expire worthless and the investor will have lost his entire investment.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] These are identical to proposals to trade index warrants by other exchanges, and which the Commission has previously approved. *See, e.g.*, Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39632 ("AMEX Index Warrant Approval Order"); Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001 ("PSE Index Warrant Approval Order"); Securities Exchange Act Release No. 28133 (June 19, 1990), 55 FR 26319 ("MSE Index Warrant Approval Order").

Although the proposed rule change provides a structure for listing index warrants, the PHLX will be required to submit each specific stock index it proposes to trade warrants on as a separate 19(b)(1) rule change for Commission approval. The rule change will provide the Commission with an opportunity to determine, among other things, if a particular index raises the potential for manipulation or other trading abuse concerns.[7] In addition, the Commission is examining the experience with stock index warrants currently trading on the American Stock Exchange, and may in the future recommend modifications to the standards contained in this filing for a specific stock index warrant.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-PHLX-90-08) which establishes a regulatory framework to permit the trading of index warrants based on both domestic and foreign market indexes be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: July 26, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-17875 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28263; File No. SR-PHLX-90-10]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Declaration of Fast Market Conditions

On May 21, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change which would relieve PHLX Options Specialists and Registered Options Traders ("ROTS") of their responsibilities concerning bids and offers during a "fast market."

The proposed rule change was published in Securities Exchange Act Release No. 28128 (June 18, 1990), 55 FR 25758. No comments were received on the proposed rule change.

The Exchange proposes to adopt Floor Procedure Advice F-10 entitled "Extraordinary Market Conditions" relating to the ability of options specialists and ROTS to provide quotations for their respective options during extraordinary market conditions or "fast markets." The proposed rule change would codify existing practice on the Exchange's option floors concerning the determination of extraordinary market conditions or fast markets.

The proposal recognizes the impact of extraordinary market conditions on market participants. The declaration of a "fast market" operates to put all market participants on notice that options specialists and ROTS are temporarily relieved of some of their responsibilities respecting market quotations pursuant to PHLX Rule 1033 as well as its corollary, Floor Procedure Advice A-11 ("Ten Up Markets"). Specifically, the proposal provides that, for one or more class of options, two floor officials may declare a "fast market" when unusual conditions exist. Subsequently, regular trading procedures would be resumed when the two floor officials determine that the market conditions supporting the declaration no longer exist.

The text of the proposed rule change provides that during a period for which a "fast market" is in effect, displayed quotes for respective options are not firm and volume guarantees of Option Advice A-11 are not applicable. However, the respective specialists and trading crowds would still be required to use their "best efforts" to update quotas and fill incoming orders in conformity with Option Advice A-11.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6. More specifically, the Commission believes that providing the PHLX with the authority to declare a "fast market" promotes a free and open market because it will facilitate the continued operation of the markets during periods of extreme pressure. Finally, the Commission notes that several other options exchanges, such as the Chicago Board Options Exchange, Inc. ("CBOE") and Pacific Stock Exchange, Inc. ("PSE"), have "fast markets" rules [3] to enable their market makers to continue their market making activity during hectic conditions.

Moreover, due to the derivative nature of options, the Commission believes it is reasonable to allow market makers to disseminate non-firm quotes during chaotic conditions. In addition, the protection of the public interest in financial markets during times of extraordinary market conditions is realized since options specialists and ROTS are relieved of quotation responsibilities in order to keep the markets operational when informational flows are hindered as a result of extreme volume pressure.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR-PHLX-90-10) relating to the ability of the Exchange to declare fast market conditions and the trading requirements during fast market conditions be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: July 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17876 Filed 7-31-90; 8:45 am]

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[7] In this connection, the Commission notes that for warrants based on a foreign stock index, adequate surveillance sharing agreements betwen the PHLX and foreign market(s) where the index's component stocks are traded would be a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *See, e.g.,* CBOE Rule 6.6 and PSE Rule VI, section 38.

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-17614; 811-2751]

First Investors Bond Appreciation Fund; Application for Deregistration

July 25, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Investors Bond Appreciation Fund, Inc. (the "Applicant").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on June 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 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 reasons for request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026, or Max Berueffy, Branch Chief, at (202) 272-3016 (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. Applicant is a Maryland corporation and an open-end diversified management investment company registered under the Act. On June 10, 1977, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-8B pursuant to sections 8(a) and (b) of the Act. On July 10, 1977, Applicant filed a registration statement on Form S-5 under the Securities Act of 1933. The registration statement became effective on April 14, 1978. The Applicant's initial public offering took place shortly thereafter.

2. On February 16, 1989, the Boards of Directors of Applicant and First Investor High Yield Fund, Inc. (the "High Yield Fund"), having determined that a reorganization could provide shareholders of both funds less risk exposure and better investment performance over a broader range of market conditions, unanimously adopted resolutions approving the reorganization of the two funds and the submission of the Agreement and Plan of Reorganization (the "Agreement") for approval by Applicant's shareholders. Under the Agreement, the Applicant would transfer all of its assets to High Yield Fund in exchange for shares of common stock of High Yield Fund having an aggregate net asset value equal to the net value of the transferred assets. Applicant filed proxy material with the Commission (File No. 33-28892) on May 22, 1989 and distributed the proxy material to its shareholders of record with reference to a special meeting of shareholders to be held on August 8, 1989 to consider the Agreement. Two-thirds of the Applicant's shareholders approved the Agreement on September 29, 1989.

3. As of October 26, 1989, Applicant had 10,761,848.312 shares of common stock, $1.00 par value, outstanding. As of the same date, Applicant had an aggregate net asset value of $86,721,765.22 or $8.06 per share.

4. On October 27, 1989, Applicant transferred all of its assets, consisting of cash and portfolio securities, to High Yield Fund in a tax-free exchange for shares of High Yield Fund having the same aggregate net asset value as the transferred assets. The shares were distributed on a pro rata basis to Applicant's shareholders.

5. The expenses incurred in connection with the reorganization included fees and disbursements of attorneys and accounts. The Applicant and High Yield Fund assumed these expenses based on each funds relative net asset value unless specifically allocated to either fund. In addition, Applicant assumed all expenses incurred in connection with the solicitation of proxies by Applicant's management and the payment of any state stock transfer stamps and taxes incurred in connection with the reorganization.

6. As of the time of filing the application, Applicant had no securityholders, assets, debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those related to its dissolution. Finally, Applicant intends to file a Certificate of Dissolution with the appropriate authority in the State of Maryland upon receipt of an Order from the Commission pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17886 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17615; File No. 812-7457]

Nationwide Life Insurance Co., et al.; Application

July 25, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Nationwide Life Insurance Company ("Nationwide"), Nationwide Variable Account-II ("Variable Account"), and Nationwide Financial Services, Inc. ("NFS").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 22(e), 27(c)(1) and 27(d).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit Applicants to comply with certain provisions of the Louisiana Revised Statutes which provide for an optional retirement plan for certain employees of public institutions of higher education.

FILING DATE: The Application was filed on January 8, 1990, and amended on April 17 and July 11, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on August 20, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Nationwide, Variable Account and NFS, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney, at (202) 272-2622 or Heidi Stam, Assistant Chief, at (202) 272-2060 (Office of Insurance Products and Legal Compliance Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Nationwide is a stock life insurance company incorporated under the laws of Ohio and admitted to do business in all states and the District of Columbia. The Variable Account, registered as a unit investment trust under the 1940 Act, was established to fund certain individual deferred variable annuity contracts (the "Contracts") issued by Nationwide. The Contracts are sold to individuals for use in retirement plans which may qualify for special Federal tax treatment under the Internal Revenue Code (the "Code"). Nationwide Financial Services ("NFS") is the general distributor of the Contracts.

2. In 1989, the Regular Session of the Louisiana Legislature enacted §§ 17:765 through 17:775 of the Louisiana Revised Statutes providing for the establishment of an Optional Retirement Plan for academic and administrative employees of public institutions of higher education who are eligible for membership in the Teachers' Retirement System of Louisiana. The purpose of the Optional Retirement Plan is to provide retirement and death benefits to participants while affording maximum portability, and is in lieu of participation in the defined benefit pension plan of the Teachers' Retirement System of Louisiana. Benefits are provided by the purchase of annuity contracts, fixed or variable in nature, or a combination thereof, at the option of the employee.

3. Retirement benefits pursuant to the Optional Retirement Plan are to be paid in the form of a lifetime income and, except for death benefits, lump sum cash payments are not permitted. A participant may take a disribution from the annuity contract only upon retirement or termination of employment. However, a participant will be allowed to transfer, on a tax-free basis pursuant to Section 1035 of the Internal Revenue Code of 1986, past or future contributions made to the Optional Retirement Plan between approved companies, subject to each company's contractual provisions, such as the imposition of any applicable contingent deferred sales charges, administrative charges, or other fees that may be assessed upon full or partial transfer of contract values. A participant in the Optional Retirement Program never has the right to redeem his annuity contract otherwise than in accordance with the limitations described above. Accordingly, the constraints imposed by section 17:773B of the Louisiana Revised Statutes conflict with the unimpaired right of redeemability required by sections 22(e), 27(c)(1) and 27(d) of the 1940 Act.

4. In its application, the Applicants describe the regulatory precedent for the exemptions requested. In 1983 the SEC adopted Rule 6c–7 under the 1940 Act, which addressed withdrawal restrictions imposed by the Texas Optional Retirement Program, and which provided variable annuity separate accounts with exemptive relief from redemption requirements in the 1940 Act. In 1967 the State of Texas enacted a statute that directed the governing boards of all Texas institutions of higher education to make available to their faculty members an Optional Retirement Program, as an alternative to the existing Teacher Retirement System. The statute established as funding media for the optional retirement program, certain tax-qualified fixed or variable retirement annuity contracts offered by insurance or annuity companies qualified to do business in Texas. The Optional Retirement Program provision of the Texas statute provides that if a participant terminates participation in the program for reasons other than death, retirement or termination of employment in all Texas institutions of higher education, then the participant forfeits all accrued benefits under the program. The 1982 Proposing Release to Rule 6c–7 (Investment Company Act Rel. No. 12745 (Oct. 18, 1982)) states that separate accounts and other persons proposing to offer or sell variable annuity contracts to (optional retirement) program participants must obtain individual orders granting exemptive relief from these provisions constraining redeemability. The release explained that sections 22(e), 27(c)((1) and 27(d) do not permit the imposition of restrictions on redemption of the type required by the Optional Retirement Program statute, as it was interpreted by the Texas Attorney General. Consequently, registered separate accounts offering variable annuity contracts in Texas regularly filed applications for exemptive relief pursuant to Section 6(c) under the 1940 Act. The Adopting Release to Rule 6c–7 (Investment Company Act Rel. No. 13687 (Dec. 23, 1983)) states that these applications generally demonstrated that the requested relief was consistent with the standards of section 6(c) and were necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In view of these routine applications for exemption and certain prospectus disclosure practices, the SEC codified the standards embodied in the individual exemptive orders as Rule 6c–7.

5. In 1988 the SEC issued to the American Council of Life Insurance (the "ACLI") an industry-wide "no-action" letter stating that the staff of the SEC would not recommend any enforcement action if registered separate accounts issuing variable annuity contracts as funding vehicles for retirement plans meeting the requirements of section 403(b) of the Internal Revenue Code of 1986, as amended, comply with new subsection (11). In 1986 the United States Congress had enacted subsection (11), which imposes withdrawal restrictions on elective contributions to annuities qualifying under section 403(b) of the Code by requiring that distributions not begin before an individual reaches age 59½, separates from service, dies, becomes disabled, or incurs a hardship. These Code changes became effective December 31, 1988. Thus, subsection (11) imposes redeemability constraints upon registered separate accounts and, therefore, conflicts with the unimpaired right of redemption required by sections 22(e), 27(c)(1) and 27(d) of the 1940 Act. In its no-action request, the ACLI noted the similarities of constraints imposed under the Texas Optional Retirement Program statute to those imposed under section 403(b)(11) of the Code.

6. Applicants submit that the proposed exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the redeemability constraints imposed by section 17:773B of the Louisiana Revised Statutes parallel, in function and scope, those found in the Texas Optional Retirement Program and section 403(b)(11) of the Code, which provided the regulatory need for Rule 6c–7 and the ACLI no-action letter, respectively. The legislative purpose of the three statutes' restrictions is to ensure that certain tax-qualified variable annuities would be acquired and used for long-term retirement planning purposes. All three statutes preclude short-term withdrawals and prevent the use of the variable annuities for short-term non-retirement purposes.

7. Applicants assert that regulatory relief from the redemption requirements for separate accounts funding Louisiana Optional Retirement Program annuities is necessary and appropriate because such relief will provide an important retirement funding alternative for

Louisiana Optional Retirement Program participants. Absent such relief, participants in the Optional Retirement Plan would be able to acquire only fixed annuity contracts. Additionally, Applicants submit that the SEC should grant the requested exemptions because the limited restriction on redemption would be voluntarily assumed by participants (*i.e.*, eligible employees are not required to participate in the Optional Retirement Plan), and participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by participating in the Optional Retirement Plan. Applicants also note that the redemption restrictions were not formulated or suggested by the Applicants but were mandated by the provisions of the Louisiana Optional Retirement Plan statute.

Applicants' Conditions

If the requested Order is granted, Applicants consent to the following conditions:

Applicants will ensure that appropriate disclosure, analogous to the disclosure required in Rule 6c–7 and the ACLI no-action letter, is made to persons who consider participation in the Louisiana Optional Retirement Plan, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. The Applicants will: (1) Include appropriate disclosure regarding the redemption restrictions imposed by the Optional Retirement Plan in each registration statement used in connection with the offer of the Contracts; (2) include appropriate disclosure regarding the redemption restrictions imposed by the Optional Retirement Plan in any sales literature used in connection with the offer of the Contracts; (3) instruct sales representatives who solicit participants to purchase the Contracts specifically to bring the redemption restrictions imposed by the Optional Retirement Plan to the attention of potential participants; and (4) obtain form each participant who purchases a Contract, prior to or at the time of such purchase, a signed statement acknowledging the participant's understanding of (a) the restrictions on redemptions imposed by the Optional Retirement Plan, and (b) the investment alternatives available under the Louisiana Retirement Program, to which the participant may elect to transfer his Contract value.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–17887 Filed 7–31–90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17610; 812–7562]

The France Growth Fund, Inc.; Application

July 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: The France Growth Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3–1.

FILING DATE: The application was filed on July 16, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1230 Avenue of the Americas, New York, NY 10020.

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 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 Marland corporation and is a closed-end management investment company registered under the Act. Applicant's investment manager is Indosuez International Investment Management Services, a French subsidiary of Banque Indosuez, a French financial institution.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 23(d)(3) of the Act and rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicant seeks

an exemption from the "margin security" requirements of rule 12d3–1.

2. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 Fr 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–17879 Filed 7–31–90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17613; 812–7283]

The SuperTrust Trust for Capital Market Fund, Inc. Shares, et al.; Application

July 25, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The SuperTrust Trust for Capital Market Fund, Inc. Shares (the "SuperTrust"); Capital Market Fund, Inc. (the "Fund"); SuperShare Services Corporation (the "Sponsor" or "SSC"); and each other investment company or unit investment trust to be established, advised or managed by the Sponsor.

RELEVANT ACT SECTIONS: Order requested: (a) Pursuant to section 6(c) granting exemptions from sections 4(2) and 22(d) of the Act, and rule 22c–1 thereunder; and (b) pursuant to sections 11(a) and 11(c) of the Act approving the exchange of shares of the Fund for units of the SuperTrust (the "Exchange Offer").

SUMMARY OF APPLICATION: Applicants seek an order: (1) Permitting a unit investment trust to issue redeemable securities that are divisible into non-redeemable components; (2) permitting secondary market transactions in such redeemable securities at negotiated prices; and (3) approving the exchange of shares of the Fund for units of beneficial interest in the SuperTrust pursuant to the Exchange Offer.

FILING DATE: The application was filed on April 3, 1989, and amended on September 7, 1989, February 6, 1990, April 27, 1990, July 3, 1990, and July 9, 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 22, 1990, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: SEC: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicants: 523 West 6th Street, Suite 220, Los Angeles, CA 90014.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application 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. The Fund is an open-end management investment company consisting of two series. The Index Series will invest in a portfolio of common stocks designed to provide investment results that correspond to the performance of the Standard & Poor's 500 Composite Stock Price Index.[1] The Money Market Series will invest in a portfolio of short-term money market instruments classified as "diversified" in accordance with section 5(b) of the Act. The Fund has filed a registration statement on Form N–1A (File No. 33–25684) under the Securities Act of 1933, which has not been declared effective yet.

2. SSC, a majority-owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated, is expected to serve as the Fund's investment manager and adviser. SSC is expected to enter into subadvisory agreements with a subadviser to the Index Series and a subadviser to the Money Market Series.

3. The Fund expects to offer its shares through a principal underwriter (the "Distributor") and a group of authorized dealers, which may include the Distributor (the "Distribution Group"), on a continuous basis at the net asset value per share next determined after an order is received, plus a sales charge (see paragraph 21). The Distributor is expected to be SSC Distribution Services, Inc., a registered broker-dealer and wholly-owned subsidiary of SSC.

4. Shares of the Fund will not be listed on any securities exchange; they can be purchased only from a member of the Distribution Group. Index Series shares may be purchased either for cash or in exchange for the securities of the S&P 500 Index. Money Market Series shares will be purchased for cash. The minimum initial investment in either series will be $10,000. The Fund will issue a separate class of capital stock for each series. Each share has one vote with respect to matters regarding the Fund of the respective series upon which a shareholder vote is required, consistent with the requirements of the Act and the rules thereunder. Shares of each series of the Fund may be redeemed at the net asset value per share next determined after receipt of a redemption request.

5. SSC proposes to sponsor the SuperTrust as a unit investment trust to be established under the laws of the State of New York pursuant to a trust agreement with a bank (the "Trustee"). The SuperTrust has filed a registration statement on Form S–6 (File No. 33–25685) under the Securities Act of 1933, which has not been declared effective yet.

6. The SuperTrust initially will consist of two separate trusts, the Index Trust for Index Shares (the "Index Trust") and the Money Market Trust for Money Shares (the "Money Market Trust") (each, a "Trust"). The Trusts will offer redeemable units of beneficial interest ("SuperUnits") in a portfolio consisting of shares of the Index Series of the

[1] "Standard & Poor's 500 Composite Stock Price Index" and "S&P 500" are trademarks of Standard and Poor's Corporation.

Fund, in the case of the Index Trust, or shares of the Money Market Series of the Fund, in the case of the Money Market Trust. The term of each Trust is expected to be three years.

7. SuperUnits may be separated, at the option of the owner thereof and upon payment of a separation fee, into two complementary securities ("SuperShares"),[2] as more fully described in paragraphs 8 and 9 below. SuperShares may be separately transferred, but may not be separately redeemed. Any SuperShare may be recombined with its opposite complementary SuperShare and then redeemed.

8. An Index Trust SuperUnit may be separated into an Appreciation SuperShare and a Priority SuperShare. The Appreciation SuperShare will entitle its holder, at termination of the Index Trust, to any portion of the net asset value of the Index Trust that exceeds an amount known as the "Termination Date Amount for Index Trust SuperUnits." The Termination Date Amount for Index Trust SuperUnits will be specified in the SuperTrust prospectus and will be reduced at termination by the amount of capital gains distributions made by the Index Trust, if any, prior to termination. The holder of a Priority SuperShare will receive all dividends that, but for the separation, would have been distributed to the holder of the Index Trust SuperUnit, and on termination of the Index Trust will receive all of the net asset value of the Index Trust SuperUnit not paid to the holder of the Appreciation SuperShare.

9. A Money Market SuperUnit may be separated into a Protection Supershare and an Income and Residual SuperShare. At termination of the Money Market Trust, the Protection SuperShare will be worthless if the net asset value of the Index Trust SuperUnit is at or above a specified amount known as the "Termination Date Amount for Money Market Trust SuperUnits." However, if at termination the net asset value of the Index Trust SuperUnit is less than the Termination Date Amount for Money Market Trust SuperUnits, the holder of a Protection SuperShare will be entitled to receive an amount equal to such deficiency (up to a maximum preset limit) out of the assets of the Money Market Trust SuperUnit. Thus, a Protection SuperShare can be used to hedge against the possibility that the value of the S&P 500 Index will be less than a specific amount. The Termination Date Amount for Money Market Trust SuperUnits and the maximum amount receivable in respect of the Protection SuperShare will each be specified in the SuperTrust prospectus. The Termination Date Amount for Money Trust SuperUnits will be reduced at termination by the amount of capital gains distributions made by the Index Trust, if any, prior to termination. The holder of an Income and Residual SuperShare will receive all of the interest and dividends that, but for the separation, would have been distributed to the holder of the Money Market SuperUnit, and on termination of the Money Market Trust will receive all of the net asset value of the Money Market SuperUnit not paid to the holder of the complementary Protection SuperShare.

10. Each SuperUnit will be entitled to direct the voting of the number of shares of the underlying series of the Fund in the respective Trust represented by that SuperUnit. When a SuperUnit is separated into two SuperShares, the voting rights of a SuperUnit will be divided equally between the SuperShares.

11. Neither the Sponsor nor the Dealer Manager will maintain a secondary market in SuperUnits or SuperShares. Applicants anticipate that SuperUnits and SuperShares will be listed for trading on the American Stock Exchange, Inc. ("AMEX") and the Chicago Board Options Exchange, Inc. ("CBOE"), respectively. Pursuant to rule 19b–4 under the Securities Exchange Act of 1934, the ANEX on May 14, 1990 and the CBOE on May 25, 1990 submitted to the SEC proposed amendments to their rules relating to listing standards for unit investment trusts. *See* Exchange Act Release Nos. 28095 (June 6, 1990) (notice of AMEX application) and 28132 (June 19, 1990) (notice of CBOE application). Although the proposals differ somewhat, both require that a unit investment trust have (1) Total assets of at least $60,000,000 at the time of formation; (2) a minimum public distribution of 1,000,000 units held beneficially or of record by 400 holders of units or separate components of units; and (3) a stated term of not less than two years.

12. The proposed rules submitted by the AMEX and the CBOE set forth limited circumstances under which the exchanges would consider delisting or suspending trading in a Trust's securities. If SuperUnits are delisted from the AMEX or the SuperShares are delisted from the CBOE, applicants undertake to use their best efforts to list the SuperUnits and SuperShares on another national securities exchange or to make arrangements with at least two broker dealers to act as market makers for the SuperUnits and SuperShares.

13. Dividends and other distributions on the shares of the Index Series and the Money Market Series held by the Index trust and Money Market Trust, respectively, less the expenses of such Trust and any applicable taxes, will be distributed promptly on a pro rata basis by the transfer agent for the SuperTrust to owners of record of the SuperUnits, Priority SuperShares, and Income and Residual SuperShares. Distributions will be made in cash, unless the investor elects to receive distributions in additional whole SuperUnits of the appropriate Trust (with the remainder in cash).

14. Each Trust is scheduled to terminate on the "Termination Date" specified in the SuperTrust prospectus, and may not be terminated at an earlier date except: (a) Upon an order of the SEC or (b) the unanimous vote of all of the outstanding Index Trust SuperUnits and separate Appreciation SuperShares and Priority SuperShares voting as a single class in the case of the Index Trust, or all of the outstanding Money Market Trust SuperUnits and separate Protection SuperShares and Income and Residual SuperShares voting as a single class in the case of the Money Market Trust. If a Trust is terminated earlier than the Termination Date, the ultimate values of the SuperUnits and SuperShares may be adversely affected, and the Appreciation SuperShares and Protection SuperShares may not have a value at that date.

15. At the Termination Date of the Trusts, payments to holders of SuperUnits and SuperShares will be made in shares (including fractional shares) of the underlying series. The Sponsor reserves the right, however, to make payment in cash, in kind, or a combination thereof.

16. In accordance with the terms of the Exchange Offer as set forth in the SuperTrust prospectus, the SuperTrust will accept an unlimited number of validly tendered shares of the Index Series for deposit in the Index Trust and an unlimited number of validly tendered shares of the Money Market Series for deposit in the Money Market Trust. Index Trust SuperUnits will be issued in exchange for shares of the Index Series on the basis of net asset values determined as of the next succeeding valuation after acceptance of validly tendered shares, plus the applicable Deposit Fee (see paragraph 21). Money Market Trust SuperUnits will be issued in exchange for shares of the Money Market Series on the basis of net asset

[2] The terms "SuperTrust," "SuperUnits" and "SuperShares" are trademarks of Leland O'Brien Rubinstein Associates Incorporated.

values determined as of the next succeeding valuation after acceptance of validly tendered Money Market Series shares, plus the applicable Deposit Fee (see paragraph 21).

17. The Exchange offer will continue until the Termination Date of each Trust. The only circumstances in which applicants intend to terminate or suspend the Exchange Offer prior to the Termination Date of a Trust area: (a) On the dates on which the net asset value of Index Trust SuperUnits exceeds the Termination Date Amount for such units, (b) if a Trust is terminated in the limited circumstances permitted by an order of the SEC, or (c) if the SuperUnits or SuperShares are no longer listed on the AMEX or the CBOE, as applicable, or another national exchange. On the advise of tax counsel, applicants have reserved the right to terminate or suspend the Exchange Offer as described in (a) above to increase the likelihood that owners of SuperUnits and SuperShares will be entitled to the dividends-received deduction available to corporate shareholders.

18. In connection with the Exchange Offer, the Distributor will serve as the "Dealer Manager" and will organize a syndicate of dealers to solicit subscriptions to purchase Fund shares from prospective investors, to exchange Fund shares of SuperUnits, and to exchange SuperUnits for SuperShares. The agreements with the Dealer Manager and the members of the selling group concerning the distribution of SuperUnits through the Exchange Offer will require those parties to comply with any rules of the AMEX, or any other secondary market that has been approved by the SEC for the trading of SuperUnits, relating to the suitability of SuperUnits for investment.

19. The issuance of Fund shares and the commencement of the Exchange Offer will occur only after: (a) SEC approval of proposed rule changes submitted by the AMEX and the ABOE, as set forth above in paragraph 11; (b) receipt of subscriptions for a minimum number of Fund shares; and (c) the valid tender of a sufficient number of Index Series shares and Money Market Series shares to result: (i) Issuance of the minumum number of Index Trust SuperUnits and Money Market Trust SuperUnits and (ii) the minimum number of beneficial round lot Index Trust SuperUnit owners and Money Market Trust SuperUnit owners (or the equivalent number of SuperShare owners in each case), as specified in the application. Applicants presently expect to require subscriptions with a minimum aggregate value of $2 billion for the Index Trust and the Money Market Trust. If the foregoing conditions are not met, all subscriptions will be cancelled and no Fund shares, SuperUnits, of SuperShares will be issued.

20. The Fund shares will be sold through the Distribution Group (see paragraph 3) and, except for the Exchange Offer feature, will be treated in the market like other open-end management company shares. Shares of each series will be sold at the net asset value of the share next determined after receipt of a purchase order plus, in the case of the Index Series, a sales charge calculated as follows: .36% of the first $750,000 invested; .33% of the amount invested over $750,000 up to $5,000,000; .06% of the amount invested over $5,000,000 up to $10,000,000; with no additional sales charge made on amounts invested over $10,000,000. There will be no sales charge on purchases of shares of the Money Market Series.

21. Fund shareholders electing to participate in the Exchange Offer will pay a "Deposit Fee" on exchanges of Fund shares of either series for SuperUnits. The Deposit Fee schedule applicable to exchanges of Index Series shares for Index Trust SuperUnits is as follows: .7500% on the first $500,000 deposited; .6000% on the next $50,000 deposited; .5250% on the next $1.5 million deposited; .2250% on the next $2.5 million deposited; .0450% on the next $245 million deposited; .0375% on the next $250 million deposited; and .0150% on amounts deposited in excess of $500 million. The Deposit Fee schedule applicable to exchanges of Money Market Series shares for Money Market Trust SuperUnits is as follows: 1.1100% on the first $500,000 deposited; .9600% on the next $250,000 deposited; .9300% on the next $250,000 deposited; .8550% on the next $1.5 million deposited; .5550% on the next $2.5 million deposited; .1050% on the next $5 million deposited; .0450% on the next $240 million deposited; .0375% on the next $250 million deposited; and .0150% on amounts deposited in excess of $500 million.

22. Owners of Index Trust and Money Market Trust SuperUnits who elect to separate their SuperUnits into SuperShares will be charged a "Separation Fee" based on the following schedule, which will apply at the inception of the SuperTrust: 1.50% on the first $500,000 separated; .90% on the next $2 million separated; .60% on the next $47.5 million separated; .45% on the next $50 million separated; .30% on the next $150 million separated; .24% on the next $250 million separated; and . 15% on amounts separated in excess of $500 million. After inception, the Separation Fee actually charged will decline at the rate of 2.77778% (one-thirty-sixth) per month.

23. The Fund will pay SSC a fee, computed daily and paid monthly, for its investment advisory and management services. The advisory fees paid to SSC, expressed as an annual percentage of assets under management, will be as follows with respect to the Index Series of the Fund: .130% of the first $1.0 billion (or portion thereof) of assets; .095% of the assets over $1.0 billion up to $2.0 billion; 0.70% of the assets over $2.0 billion up to $3.0 billion; and .040% of the assets in excess of $3.0 billion. The advisory fees paid to SSC with respect to the Money Market Series of the Fund will be as follows: .155% of the first $1.0 billion (or portion thereof) of assets; .120% of the assets over $1.0 billion up to $2.0 billion; .095% of the assets over $2.0 billion up to $3.0 billion; and .0575% of the assets in excess of $3.0 billion.

24. Cash purchases of Index Series shares will be charged a cash transaction fee of .125% of the amount invested to cover brokerage costs of investing the cash received in Index Series portfolio securities. The Index Series will charge a cash transaction fee of .125% of the amount of all cash redemptions of Index Series shares to cover the Fund's brokerage costs of selling Index Series portfolio securities. In the case of inkind purchases and redemptions, investors will bear the costs of transferring portfolio securities.

25. Applicants have reserved the right to reduce or waive the foregoing fees. The terms of any such reduction or waiver of fees will be fully disclosed in the Fund prospectus or SuperTrust prospectus, as appropriate.

Applicants' Legal Conclusions

1. The Super-Trust securities are intended to enable investors to trade a standardized United States equity market basket and to shape their expected market risks and returns. In the application, applicants discuss in detail the conceptual and historical background that they believe has led to an increased demand for market baskets and for investment products that are designed to help control risks and returns in relation to equity markets.

2. Applicants submit that the SuperTrust securities have been designed to conform to existing regulatory precedents under the Act. Nevertheless, certain exemptive relief appears necessary from the provisions of sections 4(2) and 22(d) of the Act and from rule 22c–1 promulgated thereunder.

Such exemptive relief is sought pursuant to section 6(c) of the Act, which authorizes the SEC to exempt any person or security from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the Act)." In addition, the Exchange Offer is subject to approval of the Commission pursuant to sections 11(a) and 11(c) of the Act.

3. Section 4(2) of the Act defines a unit investment trust as an investment company that, *inter alia*, "issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities." Although SuperUnits are redeemable securities representing an undivided interest in each Trust, SuperShares are neither redeemable securities nor undivided interests. Thus, if the SuperTrust is regarded as the issuer of the SuperShares for purposes of the Act, it would not meet the definition of unit investment trust.

4. Applicants note that the legislative history of the Act does not include any discussion of the purpose of requiring unit investment trusts to issue only securities that are redeemable and undivided. However, applicants assert that the existence of SuperShares does not thwart the purposes of any provision of the Act. Applicants place great reliance on the no-action position taken by the Division of Investment Management in *Americus Shareowner Service Corp.* (pub. avail. Feb. 12, 1977), which involved the issuance by a unit investment trust of redeemable units that could be split into non-redeemable securities. Since 1983, twenty-six Americus Trusts have issued redeemable units that can be separated into non-redeemable components representing the right to capital appreciation or the right to current income. Applicants submit that seven years of experience with the Americus Trusts has not indicated any abuses or results harmful to holders of the units or of the components.

5. Applicants seek exemptions from section 22(d) of the Act and rule 22c–1 to permit secondary market transactions in SuperUnits at negotiated prices. Rule 22c–1 requires dealers and other specified persons who redeem, purchase, or sell redeemable securities to effect such transactions at the net asset value next computed after receipt of the request to redeem, purchase, or sell. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Purchases and sales of redeemable SuperUnits by dealers in the secondary market will be at negotiated prices, not a current offering price described in the prospectus and not a price based on the net asset value of the securities.

6. Section 22(d) and rule 22c–1 were both intended to prevent dilution and to eliminate certain speculative trading practices that resulted from a policy known as backward pricing. Applicants assert that dealer transactions in SuperUnits will not implicate any of the abuses caused by backward pricing. Dilution can occur only where the transaction is made by or on behalf of the investment company, i.e., in a primary distribution transaction or a redemption. No dilution can occur from trading SuperUnits on the secondary market because the investment company and its assets are not involved in any way. Similarly, the speculative trading practices addressed by section 22(d) and rule 22c–1 are possible only when dilution has occurred.

7. Some commenters have asserted that section 22(d) was also designed to prevent unjust discrimination among investors resulting from sales at different prices and to avoid disruption in the orderly distribution of open-end investment company shares by thwarting the development of a secondary market in such shares. Applicants assert that discrimination among investors, like dilution, can not occur as a result of secondary market transactions. Applicants also assert that rather than disrupting the distribution of SuperUnits, secondary trading in SuperUnits will result in a more efficient distribution, with the smaller cash investor obtaining lower costs in the secondary market than through the Exchange Offer. An active secondary market, applicants claim, should enhance liquidity for SuperUnits, thus reducing the need for owners to redeem their SuperUnits.

8. Applicants are requesting an order pursuant to sections 11(a) and 11(c) of the Act approving the Exchange Offer. Applicants request that such order also approve the exchange of Fund shares of the Index Series and Money Market Series for units of future Trusts differing from the present Trusts only as to Termination Dates and Termination Date Amounts.

9. The exchange of Fund shares for SuperUnits will be at the relative net asset values plus the applicable Deposit Fee. The SuperTrust and Fund prospectuses will contain complete disclosure of all costs and fees associated with the Exchange Offer. Applicants claim that such costs and fees will be reasonable in amount and kind and will not involve layering or pyramiding. The Exchange Offer will not be terminated or suspended prior to the scheduled Termination Date of the Trusts except in limited circumstances, as set forth in condition 5 below.

10. Applicants submit that the Exchange Offer is fair and reasonable to the shareholders of the Fund and to the owners of SuperUnits. In support of this argument, applicants point to, among other things, condition 8 set forth below.

Applicants' Conditions

If the requested order is granted, applicants expressly consent to the following conditions:

1. The SuperTrust prospectus will clearly disclose that, for the purposes of the Act, SuperShares are to be regarded as issued by SuperTrust and that the acquisition of SuperShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. Reports and other communications required to be supplied to owners of the SuperUnits in accordance with the Act and the rules and regulations thereunder will also be supplied to owners of record of SuperShares as a part of the services which the SuperTrust provides.

3. The Fund prospectus will include a statement to the effect that no offers or sales of SuperUnits may be made except pursuant to the SuperTrust prospectus.

4. SuperUnits will not be issued until and unless the AMEX and the CBOE, or such other secondary market as has been approved by an order of the SEC for the trading of SuperUnits or SuperShares, has listed or accepted the applicable SuperUnits and/or SuperShares for trading, and no additional SuperUnits will be issued if, for any reason, such SuperUnits are no longer listed on the AMEX or accepted for trading on such other secondary market for which trading has been approved or any of the SuperShares derived from such SuperUnits are no longer listed on the CBOE or accepted for trading on such other secondary market for which trading has been approved.

5. Each Trust will terminate only on the termination date specified in the SuperTrust Prospectus, and may not be terminated at an earlier date except (a) Upon an order of the SEC or (b) upon the unanimous vote or consent, after written notice specifically for the purpose of soliciting such consent, of all the outstanding Index Trusts SuperUnits

and separate Appreciation SuperShares and Priority SuperShares voting as a single class in the case of the Index Trust (each SuperShare having one-half the voting rights of one SuperUnit), or all of the outstanding Money Market Trust SuperUnits and separate Protection SuperShares and Income and Residual SuperShares voting as a single class in the case of the Money Market Trust (each SuperShare having one-half the voting rights of one SuperUnit).

6. Absent an order of the SEC, for so long as any SuperTrust holds shares of either the Index Series or the Money Market Series of the Fund, without the consent of each of its shareholders, neither such series will liquidate, dissolve, or otherwise cease to invest: (a) In the case of the Index Series, in a portfolio of common stocks designed to provide investment results that correspond to the performance of the S&P 500 Index; and (b) in the case of the Money Market Series, in a portfolio of short-term money market instruments.

7. SuperUnits will be issued only in exchange for shares of the Index Series of the Fund, in the case of Index SuperUnits, or in exchange for shares of the Money Market Series of the Fund, in the case of Money Market SuperUnits, and (unless further SEC approval is obtained) no SuperUnits will be issued other than Index SuperUnits and Money Market SuperUnits. Neither the Fund, SuperTrust, the Sponsor, Leland O'Brien Rubinstein Associates, nor any of their affiliated persons, will directly or indirectly arrange for or facilitate the division of Fund shares, SuperUnits or the beneficial interests therein in any manner, or the trading of such divided interests, except for the division of SuperUnits into, and the trading of, Appreciation SuperShares, Priority SuperShares, Protection SuperShares, and Income and Residual SuperShares, as described in the application.

8. The Exchange Offer will not be terminated or suspended prior to the scheduled Termination Date of each Trust except (a) On dates when the net asset value of Index Trust SuperUnits exceeds the Termination Date Amount for such units, (b) in the limited circumstances permitted by any order of the SEC, (c) if the SuperUnits for the applicable Trust are no longer listed on the AMEX, or (d) if the SuperShares for the applicable Trust are no longer listed on the CBOE.

9. The Sponsor agrees that until otherwise ordered by the SEC, during the life of the SuperTrust, the Sponsor will not seek to have declared effective any registration statement under the Securities Act of 1933 with respect to a new trust of the SuperTrust unless the Division of Investment Management shall have advised the Sponsor that the Division does not intend to recommend that the Commission prospectively rescind the exemption and the order under section 11(c) granted under the application.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17880 Filed 7-31-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1235]

U.S. National Committee for Man and the Biosphere; Request for Proposals Fiscal Year 1991

Introduction

The mission of the United States Man and the Biosphere Program (U.S. MAB) is to foster harmonious relationships between humans and the biosphere through an international program of policy-relevant research which integrates social, physical and biological sciences to address actual problems. These activities—broadly interpreted—include catalytic conferences and meetings, education and training, and the establishment and use of biosphere reserves as research and monitoring sites.

To implement its mission, the U.S. National Committee for U.S. MAB hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in federal fiscal year 1991, contingent upon the availability of funds. While the currently available funds are relatively modest (less than one million dollars), it is intended that these funds will enable scientists to begin in a limited, yet timely, manner interdisciplinary pilot projects and programs. U.S. MAB funding is aimed at stimulating scientists from different disciplines to work together in the areas described below.

Scientists are encouraged to seek complementary funds from other sources. Funding from U.S. MAB is not intended to substitute for discipline specific support available from other sources. Proposed research and projects, such as symposia, workshops or other activities which further the U.S. MAB objectives, may be spread over several years. Proposed workshop and similar activities must be especially innovative to merit consideration. Research activities proposed should be innovative and interdisciplinary in order to comply with the interests of the U.S. MAB Program.

Because of limited available funding, U.S. MAB will give priority consideration to proposals which complement the missions of the U.S. MAB directorate programs. Interested scientists and individuals are encouraged to write to the U.S. MAB Secretariat to receive copies of the full U.S. MAB Directorate Mission Statements on:

- High Latitude Ecosystems;
- Human Dominated Systems;
- Marine and Coastal Ecosystems;
- Temperate Ecosystems; and
- Tropical Ecosystems.

Program Areas

In the area of High Latitude Ecosystems, U.S. MAB seeks proposals which enhance the understanding and rational management of resources and ecosystems in the high-latitude regions of the United States and other circumpolar northern lands. Proposals to accomplish this should seek participation in and support of cooperative international endeavors; foster integrated research in biological, physical and the social sciences in applying scientific and technological advances to societal needs; and include the concerns of multi-cultural residents and indigenous peoples of the north. Proposals should foster and support informed and rational policy formulation relevant to high-latitude regions including: sustainable development, global change, and maintenance of biological diversity and stability in high-latitude ecosystems.

In the area of Human Dominated Systems, U.S. MAB seeks proposals which address the issues arising in connection with human activities that overwhelm or threaten to overwhelm natural ecosystems and their life-support functions. Research topics are sought on indicators of sustainable or regenerative development; human decision making processes and institutions related to ecosystem management; urban systems issues such as pollution, health sustainability and ecological functioning; agricultural systems issues such as the integration and sustainability of agriculture, rural communities and the environment; and the impact of population and local institutions on biosphere reserves.

In the area of Marine and Coastal Ecosystems, U.S. MAB seeks proposals which: assess the sources, impacts and control of marine pollution, including

but not limited to nutrient loading, eutrophication, siltation and relationships to freshwater resources; analyze sea level rises, coastal erosion and other land margin disturbances; assess habitat loss or alteration, including implications for biological diversity; identify and estimate the means for and benefits of preservation of traditional marine and coastal uses; clarify the relationships betwen natural fluctuations and human perturbations, as with red tides and harmful algal blooms; and, investigate fisheries and other living resource management issues.

In the area of Temperate Ecosystems, U.S. MAB seeks proposals which complement the directorate's major theme of management of the temperate landscape for diversity, resilience, productivity, and sustainability for the long term. Proposals are sought which will enhance opportunities for sustaining human and environmental systems by integrating socio-economic and ecological processes influencing landscape patterns and their effects. Proposals and the products of the projects should address immediate or emerging issues and be of use to major land management agencies, land owners, and authorities coordinating multi-ownership resources.

Successful projects will be encouraged to function as satellite programs to provide pertinent information about specific issues that are either beyond the scope of the more comprehensive U.S. MAB directorate level projects or to provide comparative information from other regions. Principals should be prepared to work in close cooperation with the U.S. MAB Directorate on Temperate Ecosystems.

In the area of Tropical Ecosystems, U.S. MAB seeks proposals on tropical ecosystem restoration and management of tropical ecosystems. Proposals should be interdisciplinary, with a holistic focus, have strong scientific underpining, and clear implications for policy and/or decision making. More specifically, the Tropical Ecosystem Directorate is interested in advancing the field of Social Ecology, which addresses the interface between the social and natural sciences. Successful proposals must demonstrate that the human aspects of the research are an integral part of the study and must include a clear effort to address the human-biosphere interaction.

General Instructions

Preference will be given to proposals which:

- Are inter- or trans-disciplinary;
- Request $50,000 or less;
- When international, involve scientists from the host country;
- Deal with environmental policy issues relevant to agencies which support U.S. MAB;
- Are submitted by U.S. citizens or persons studying or teaching at U.S. institutions/universities; and
- Within the program areas, utilize units of the International Network of Biosphere Reserves as sites to integrate appropriate project components of monitoring, research, education or demonstration; and promote biosphere reserves as focal points for special regional and interagency cooperation. Regional MAB/Biosphere Reserve projects are encouraged.

All proposals must first be submitted as prospectus of a maximum length of three (3) pages. They must be accompanied by a summary biographic sketch of the potential principals(s) which includes exceptional qualifications and lists any relevant publications. It is encouraged that bibliographic sketches demonstrate that principas have worked with others from different disciplines. The bibliographic sketch of each principal may not exceed three (3) pages. The prospectuses must also be accompanied by a cover sheet clearly indicating how the potential proposal meets the above stated requisite criteria.

U.S. MAB will not pay overhead fees on grants.

Mail prospectuses to: U.S. MAB Secretariat, OES/EGC/MAB, Room 833, SD–5, U.S. Department of State, Washington, DC 20522–0508.

No prospectus will be accepted after November 5, 1990. Prospectuses will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

Evaluation and Review Process of Prospectuses

The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorate. Individual Directorates will review the prospectuses based on their responsiveness to this call, relevancy of the proposed activity to their mission statements, and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch.

Prospectuses favorably reviewed by a Directorate will be sent to the U.S. National Committee for MAB for evaluation at the January 1991 National Committee meeting. The National Committee will review each of these prospectuses for its relevance to the U.S. MAB program priorities. The National Committee will then determine which principals will be invited to submit a full proposal. The U.S. National Committee, at its own initiative, may request that additional proposals on specific subjects be submitted for review and consideration.

Evaluation and Review Process of Proposals

Invited prospective investigators should submit proposals which clearly state the objectives, scientific rationale,

Complete project and research proposals must be received by the U.S. MAB Secretariat by close of business May 1, 1991. Proposals texts may not exceed 25 pages, double-spaced, including a two page executive summary describing the objective of the

If proposed project activities are international in scope, the proposal must provide written evidence that host country permissions on an appropriate level have already been obtained

All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; and (3) specified products which will result from the grant.

Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the proposed activities.

Proposals will be subject to an administrative review for adherence to listed requirements and if deficiencies are found, will be returned without further consideration.

Appropriate U.S. MAB Directorate and peer reviewers, including specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate the proposals. Evaluative criteria for assessing the proposals include but are not limited to: the intrinsic scientific or technical merit of the activities; the utility or policy relevance of the research or activities; the interdisciplinarity of the proposed activities; and the performance record of the principal(s).

A final ranking of the proposals will be made by the U.S. National Committee for the Man in the Biosphere Program based on all of the above factors and their assessment of each proposal's relevancy to the goals of U.S. MAB. Proposals will then be

Principals will receive copies of all peer review evaluations made of their proposal and a written notification of the Committee's decision on their project. Winning proposals become part of the public domain. Proposals not selected for funding by the U.S. National

Committee for MAB will be returned to the authors.

The National Committee will notify all principals of its final decisions in August/September 1991. Funds will be committed to the managing institutions identified in the selected proposals by September 30, 1991.

Agencies supporting the U.S. MAB Program: Agency for International Development, Department of Energy, Environmental Protection Agency, USDA Forest Service, National Aeronautics Protection Agency, USDA Forest Service, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Park Service, National Science Foundation, U.S. Peace Corps, The Smithsonian Institution and the Department of State.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program.

[FR Doc. 90-17814 Filed 7-31-90; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice 1234]

U.S. Organizations for the International Consultative Committees on Radio (CCIR) and Telegraph and Telephone (CCITT); Meeting

The Department of State announces that there will be a joint meeting of the National Committees of the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on August 9, 1990 from 10 a.m. to 1 p.m. in Room 1105, Department of State, 2201 C Street NW., Washington, DC.

The National Committees provide advice on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general.

The purpose of this joint CCIR/CCITT will be to discuss the United States activities relating to the ITU's standardization efforts on the subject of Universal Personal Telecommunications.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Dated: July 13, 1990.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Warren Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-17815 Filed 7-31-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Order 90-7-59 Docket 47090.

Order Instituting The United States-United Kingdom Regional Airport Service Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the *United States-United Kingdom Regional Airport Service Proceeding.*

SUMMARY: Pursuant to an exchange of letters between the United States and United Kingdom in June 1990, the United States may designate up to two additional U.S. carriers to serve between two U.S. gateways and up to two regional airports in the United Kingdom (*i.e.*, airports excluding London). In view of the new route opportunities, the Department invited interested parties (by Notice dated July 6, 1990), to file certificate applications for the U.S.-U.K. route. American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, Pan American, Trans World Airlines, United Air Lines and USAir, Inc. have expressed their interest in serving the U.S.-U.K. markets at issue. Accordingly, the Department has decided to institute the *United States-United Kingdom Regional Airport Service Proceeding*, Docket 47090, to select up to two primary and two backup carriers to provdie scheduled combination service in the U.S.-U.K. regional airport markets. The Department has set an expedited schedule for processing this case to facilitate commencement of service by the peak 1991 season. As the Department has already invited applications for the service at issue in this proceeding, it is not inviting further applications in this order. The Department also dismissed the applications of American Airlines, Northwest Airlines and United Airlines for exemption authority to serve U.S.-U.K. markets (Dockets 45129, 45175, and 47073, respectively).

DATES: Petitions for leave to intervene, and petitions for reconsideration of Order 90-7-59, should be filed by August 2, 1990. Answers should be filed by August 7, 1990.

ADDRESSES: Petitions for leave to intervene, petitions for reconsideration, etc., should be filed in Docket 47090, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590, and should be served on all parties in Docket 47090, as well as the Office of Hearings, room 9228, at the same address.

Dated: July 26, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-17911 Filed 7-31-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47090]

Office of Hearings, United States-United Kingdom Regional Airport Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 90-17912 Filed 7-31-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47090]

Office of Hearings, United States-United Kingdom Regional Airport Case; Prehearing Conference

The prehearing conference in this proceeding will be held on Friday, August 3, 1990 at 10 a.m. in room 5332, Nassif Building, 400 7th Street, SW., Washington, DC. The parties are advised that the following procedural dates will be established at the conference barring a clear and convincing showing of extreme need for a change:

Information responses: August 7, 1990
Direct exhibits: August 28, 1990
Rebuttal exhibits: October 3, 1990
Hearing: October 9, 1990 for all parties' cases other than air carrier applicants

and public counsel; [1] then October 10–19 for air carriers and public counsel. The hearing will be held in Washington, DC.

Public Counsel Statement of Position: November 5, 1990

Briefs: November 9, 1990

Target Date for Recommended Decision: December 14, 1990.

On or before August 1, 1990 the applicants and any putative intervening party shall submit one copy of each other, using the names on the attached service list and adding any who in the interim request intervention, and four copies of the judge of any proposed stipulations and any proposals for changes in the evidence request contained in the appendix to instituting order 90–7–59, July 26, 1990.

Dated at Washington, DC, July 27, 1990.

Burton S. Kolko,

Administrative Law Judge.

Service List

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Honorable Burton S. Kolko, Department of Transportation, Room 9228, M–50, 400 7th St. SW., Washington, DC 20590 (202) 366–2144

Keith F. McCrea, Virginia Department of Aviation, 4508 South Laburnum Avenue, Richmond, VA 23231–2422

Regis Milan, P–55, Room 6415, U.S. D.O.T., 400 7th Street SW., Washington, DC 20590

[FR Doc. 90–17913 Filed 7–31–90; 8:45 am]

BILLING CODE 4910–62–M

[1] Since this is a gateway selection case, the presentation of civic parties who are potential gateways will be important and helpful, not to mention interesting, and they are invited. But experience indicates that such presentations need not occupy the time taken in extensive direct or cross examination. The parties will be "strongly encouraged" to stipulate such testimony and to waive the requirement of a sponsoring witness; and the civil parties will be similarly encouraged to offer in written form any endorsements and accolades from interested public officials. With these done, one day for these matters should suffice.

Coast Guard

[CGD 90–045]

Environmental Impact Statement; Widening the San Mateo-Hayward Bridge Over San Francisco Bay Between Alameda and San Mateo Counties, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Coast Guard is preparing an Environmental Impact Statement (EIS) for a proposed bridge widening project in Alameda and San Mateo Counties, California. This notice also announces the dates and times of two scoping meetings to be held in the communities at each end of the San Mateo-Hayward Bridge.

ADDRESSES: Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, California 94501–5100.

FOR FURTHER INFORMATION CONTACT: Wayne R. Till, Chief, Bridge Section, Eleventh Coast Guard District, at the address above, telephone (415) 437–3514.

SUPPLEMENTARY INFORMATION: The Coast Guard, as lead federal agency, will prepare an EIS on a proposal to widen California Route 92 from four to six lanes between the west end of the San Mateo-Hayward Bridge in San Mateo County and Interstate Route 880 in Alameda County. The Federal Highway Administration, the U.S. Army Corps of Engineers, and the California Department of Transportation will be cooperating agencies. The bridge spans San Francisco Bay, a navigable waterway of the United States. The purpose of the proposal is to relieve existing conjestion and accommodate future traffic.

The proposal would widen the bridge trestle from four to six lanes and provide standard-width inside and outside shoulders. The bridge presently provides 135 feet vertical clearance above Mean High Water, and 660 feet horizontal clearance. The proposal would not affect navigational clearances. The toll plaza would be expanded from the current seven toll lanes to twelve. The four lane east approach would be upgraded to six lanes by adding a lane in the median for each direction of travel. Auxiliary lanes also would be provided between interchanges.

The EIS will discuss the Build Alternative (project proposal) and to No Build Alternative. As an operational consideration, the Build Alternative will analyze the operation of the new lane addition as a High Occupancy Vehicle facility. The EIS will also address the feasibility of bike paths and rail transit. The EIS will discuss the impacts of the widening of Route 92 between U.S. Route 101 and Interstate Route 880.

The EIS scoping process includes publication of this Notice of Intent in the Federal Register, pursuant to the National Environmental Policy Act, and the distribution of the Notice of Preparation to each responsible and trustee agency, pursuant to the

California Environmental Quality Act. Scoping meetings will be held for affected federal, state, and local agencies, and the public to solicit comments on the scope of the environmental studies. The meetings will be held at 7 p.m., on the following dates at these locations:

August 7, 1990: Bowditch Middle School Gymnasium, 1450 Tarpon Street, Foster City, California.

August 9, 1990: Centennial Hall, Room 6, 22292 Foothill Boulevard, Hayward, California.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments concerning this proposed action and the EIS should be mailed or delivered to the Coast Guard at the address provided above.

Dated: July 25, 1990.

J.W. Lockwood,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-17864 Filed 7-31-90; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in APRIL 1990. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
2462-X	DOT-E 2462	E.I. du Pont de Nemours & Co	49 CFR 173.73(b)	To authorize shipment of certain lead azides in glass bottles overpacked in non-DOT specification wooden boxes. (Mode 1.)
4453-P	DOT-E 4453	Maurer & Scott, Inc., Lehigh Valley, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (Modes 1, 3.)
5704-X	DOT-E 5704	Trojan Corp., Spanish Fork, Ut	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, 3.)
5704-X	DOT-E 5704	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, 3.)
6154-X	DOT-E 6154	Uniroyal Chemical Co., Inc., Middlebury, CT.	49 CFR 173.154(a)(12), 178.205-16.	To authorize transport of certain flammable solids in a modified DOT Specification 12B fiberboard box. (Modes 1, 2, 3.)
6349-P	DOT-E 6349	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 172.101, 173.315(a)	To become a party to exemption 6349 (Modes 1, 2, 3.)
6449-9	DOT-E 6349	Linde Gases of the Northwest, Inc., Portland, OR.	49 CFR 172.101, 173.315(a)	To become a party to exemption 6349 (Modes 1, 2, 3.)
6543-X	DOT-E 6543	Linde Gases of Florida, Inc., Tampa, FL.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Airco, of The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Gases of the Southeast, Inc., Wilmington, NC.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Gases of the South, Inc., Houston, TX.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Unigas, Inc., Mercedita, PR	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Puerto Rico, Inc., Gurabo, PR.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Gases of New England, Inc., West Hartford, CT.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
6543-X	DOT-E 6543	Linde Gases of the West, Inc., San Ramon, CA.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6543-X	DOT-E 6543	Linde Gases of Southern California, Inc., Santa Ana, CA.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4.)
6614-P	DOT-E 6614	U.S. Chlorine, Inc., Miami, FL	49 CFR 173.263(a)(28), 173.277(a)(6).	To become a party to exemption 6614 (Mode 1.)
6874-P	DOT-E 6874	Nisso America, Inc., New York, NY	49 CFR 172.101, 173.370(a)(13)	To become a party to exemption 6874 (Modes 1, 2, 3.)
6927-X	DOT-E 6927	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.353	To authorize rail freight as an additional mode of transportation. (Modes 1, 2, 3.)
6927-X	DOT-E 6927	Bromine Compounds, Limited, Beer-Sheva, Isreal.	49 CFR 173.353	To authorize rail freight as an additional mode of transportation. (Mode 1, 2, 3.)
6971-X	DOT-E 6971	AccuStandard, Inc., New Haven, CT.	49 CFR parts 100-199	To authorize an alternative method of packaging for reshippers who are returning the material to the holder of the exemption. (Modes 1, 2, 3, 4, 5.)
7052-X	DOT-E 7052	Foxboro Co., Foxboro, MA	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7052-X	DOT-E 7052	Moli Energy, Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7052-X	DOT-E 7052	Siemens Medical Systems, Inc., Jamaica, NY.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Battery Specialties, Costa Mesa, CA.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Nautronix, Inc., San Diego, CA	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, 4.)
7052-X	DOT-E 7052	Eastman Christensen, Salt Lake City, UT.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Wildlife Materials, Inc., Carbondale, IL.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Raynet Electronics Co., Inc., Houston, TX.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, 4.)
7052-X	DOT-E 7052	Beckman Instruments, Inc., Fullerton, CA.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Panasonic Industrial Co., Secaucus, NY.	49 CFR 172.101, 172.400, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, 4.)
7235-X	DOT-E 7235	Luxfer USA, Limited, Riverside, CA	49 CFR 173.302(a)(1), 175.3	To authorize use of non-DOT specification fiber reinforced plastic cylinders for shipment of certain nonflammable gases. (Modes 1, 2, 3, 4, 5.)
7259-X	DOT-E 7259	FMC Corp., Philadelphia, PA	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7548-X	DOT-E 7548	U.S. Department of Defense, Falls Church, VA.	49 CFR 46 CFR 146.29-100	To authorize stowage of explosives on deck of vessel, over the square of the hatch. (Modes 3.)
7607-P	DOT-E 7607	Fluor Daniel, Inc., Greenville, SC	49 CFR 172.101, 175.3	To become a party to exemption 7 (Mode 5.)
7640-X	DOT-E 7640	Mauser Packaging, Limited, Litchfield, CT.	49 CFR 173.266(a), 178.19	To authorize use of a DOT Specification 34 polyethylene container of 15 gallon capacity, for shipment of hydrogen peroxide, 60%. (Modes 1, 2, 3.)
7674-X	DOT-E 7674	U.S. Department of Defense, Falls Church, VA.	49 CFR 174.104(a)	To authorize shipment of certain Class A explosives on flat-cars and open-top rail cars. (Mode 2.)
7823-X	DOT-E 7823	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.246	To authorize transport of iodine pentafluoride in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3.)
7907-P	DOT-E 7907	Aqualon Co. Wilmington, DE	49 CFR 173.127, 173.184, 178.224	To become a party to exemption 7907 (Modes 1, 2, 3.)
7909-9	DOT-E 7909	Display Pack, Inc., Grand Rapids, MI.	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33.	To become a party to exemption 7909 (Modes 1, 2, 4.)
7929-P	DOT-E 7929	Brandywine Explosives & Supply, Inc., Paris, KY.	49 CFR 173.65	To become a party to exemption 7929 (Modes 1, 2.)
7945-P	DOT-E 7945	McDonnel Douglas Helicopter Co., Mesa AZ.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 7945 (Modes 1, 2, 4, 5.)
7971-X	DOT-E 7971	Walter Kidde, Wilson, NC	49 CFR 173.302, 173.304, 175.3, 178.53.	To authorize manufacture, marking and sale of non-DOT specification cylinders, for transportation of nonflammable compresed gases. (Modes 1, 2, 3, 4, 5.)
8125-X	DOT-E 8125	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.123, 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain flammable and nonflammable gases and flammable liquids. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
8127-P	DOT-E 8127	Aqualon Co., Wilmington, DE	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To become a party to exemption 8127 (Modes 1, 2, 3.)
8127-X	DOT-E 8127	Hercules, Inc., Wilmington, DE	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (Modes 1, 2, 3.)
8308-X	DOT-E 8308	Sky Cab, Inc., East Brunswick, NJ	49 CFR 173.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria cannot be met. (Mode 1.)
8308-X	DOT-E 8308	American Courier Express Corp., Miramar, FL.	49 CFR 173.447(a), 177.842(a), 177.842(b).	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria cannot be met. (Mode 1.)
8337-P	DOT-E 8337	LWD Trucking, Inc., Calvert City, KY.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8337 (Mode 1.)
8387-X	DOT-E 8387	FMC Corp., Philadelphia, PA	49 CFR 173.266(e)	To authorize transport of hydrogen peroxide in DOT Specification MC-312 cargo tank aboard cargo vessel. (Mode 3.)
8445-X	DOT-E 8445	Rohm and Haas Co., Philadelphia, PA.	49 CFR part 173, subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8451-X	DOT-E 8451	Ensign-Bickford Co., Simsbury, CT	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Lockheed Missiles & Space Co., Inc., Palo Alto, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explsoive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	ICI Americas, Inc., Valley Forge, PA	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Battelle Columbus, Columbus, OH	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
8467-X	DOT-E 8467	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (Modes 1, 2, 3.)
8489-X	DOT-E 8489	FMC Corp. Philadelphia, PA	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3.)
8489-X	DOT-E 8489	Degussa Corp. Ridgefield Park, NJ	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3.)
8554-X	DOT-E 8554	Cherokee Products, Inc., Jefferson City, TN.	49 CFR 173.114a, 173.154, 173.93	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC-306, MC-307 and MC-312 cargo tanks. (Modes 1, 3.)
8854-X	DOT-E 8854	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of anhydrous hydrofluoric acid. (Modes 1, 2, 3.)
8960-X	DOT-E 8960	Sunshine Aero Industries, Inc., Crestview, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of certain Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9001-X	DOT-E 9001	Chesterfield Cylinder Limited, Derbyshire, England.	49 CFR 173.301, 173.302, 173.304, 175.3 178.45.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders complying in part with DOT Specification 3T, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4.)
9011-X	DOT-E 9011	Van Leer Containers, Inc., Chicago, IL.	49 CFR 175.3, 178.100, 178.115, 178.118, 178.117, 178.118, 178.80, 178.81, 178.82, 178.98, 178.99.	To authorize certain DOT Specification 5, 6 and 17 series drums constructed of stainless steel, nickel or monel and when so constructed to be exempt from certain steel drum test requirements, for shipment of those commodities presently authorized for each drum. (Modes 1, 2, 3, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
9048-P	DOT-E 9048	EG&G Flow Technology, Inc., Phoenix, AZ.	49 CFR 173.119, 173.304, 173.315	To become a party to exemption 9048 (Mode 1.)
9133-X	DOT-E 9133	American Cyanamid Co, Wayne, NJ	49 CFR 173.377(a)	To authorize shipment of a formulated dry organophosphorous pesticide in a DOT Specification 56 metal portable tank. (Mode 1.)
9166-X	DOT-E 9166	Comptank, Corp., Bothwell, Ontario, CN.	49 CFR 173.119(a), (m), 173.346(a), 178.340, 178.342, 178.343, part 173, subpart F.	To update exemption reference for acoustic emission tests to the most recent edition of the published standard. (Mode 1.)
9262-X	DOT-E 9262	Owen Oil Tools, Inc., Forth Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (Modes 1, 3, 4.)
9266-X	DOT-E 9266	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (Modes 1, 2, 3.)
9491-X	DOT-E 9491	E.I. du Pont de Nemours & Co., Wilmington, DE.	49 CFR 173.302, 173.304	To authorize transport of hexafluoroethane and trifluoromethane in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4, 5.)
9527-X	DOT-E 9527	Carolina Aircraft Corp. Ft. Lauderdale, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9571-X	DOT-E 9571	U.S. Department of State, Washington, DC.	49 CFR parts 100-177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 4, 5.)
9571-X	DOT-E 9571	Environmental Health Research & Testing, Inc., Lexington, KY.	49 CFR parts 100-177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 3, 4, 5.)
9595-X	DOT-E 9595	IRECO, Inc., Salt Lake City, UT	49 CFR 173.64, 173.86	To authorize transport of certain unapproved Class A explosives for disposal in packagings not presently authorized for Class A explosives, in metal or fiber drums not exceeding 55-gallon capacity with liners consisting of two polyethylene leak-proof bags. (Mode 1.)
9606-X	DOT-E 9606	Ensign-Bickford Co., Simsbury, CT	49 CFR 173.66(b)	To authorize shipments of more than 110 detonators in one inside spcially designated package. (Modes 1, 3.)
9610-X	DOT-E 9610	Federal Cartridge Co., Anoka, MN	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), part 107, Appendix B, parts 171-189.	To authorize transport of DOT Specificaiton 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1, 2.)
9612-X	DOT-E 9612	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.288	To authorize transport of ethyl chlorofomate and methyl chloroformate in DOT Specification 105A500W tank cars which have been restenciled DOT 105A100W. (Mode 2.)
9638-X	DOT-E 9638	Allied-Signal Aerospace Co., Tempe, AZ.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize manufacture, marking and sale of non-DOT specification welded pressure vessell comparable to a DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases. (Modes 1, 4, 5.)
9723-P	DOT-E 9723	Chemical Analytics, Inc., Romulus, MI.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1.)
9735-P	DOT-E 9735	Farrell Lines, Inc., New York, NY	49 CFR 176.30(a), 46 CFR 146.29-14(a).	To become a party to exemption 9735 (Mode 3.)
9745-X	DOT-E 9745	CMB Enterprises, Inc., Vernona, NJ	49 CFR 173.1200(a)(8), 173.302, 173.304, 173.306(a), (b), (c), 175.3, 178.33-2(b).	To authorize shipment of insecticide, liquefied gas (containing no poison A or poison B material) contained in a non-DOT specification container conforming to the DOT Specification 2P except for size. (Modes 1, 2, 3, 4.)
9745-X	DOT-E 9745	CMB Enterprises, Inc., Vernona, NJ	49 CFR 173.1200(a)(8), 173.302, 173.304, 173.306(a), (b), (c), 175.3, 178.33-2(b).	To authorize manufacture, marking and sale nonrefillable non-DOT specification inside metal containers conforming with DOT Specification 2P containers, for shipment of nonflammable or flammable gases. (Modes 1, 2, 3, 4.)
9811-X	DOT-E 9811	Container Products Corp., Wilmington, NC.	49 CFR 173.364 173.365	To authorize use of a "T-Bolt" closure non non-DOT specification containers for shipment of certain poison B solids and an ORM-C material. (Mode 1.)
9823-X	DOT-E 9823	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3, 178.65.	To authorize use of a non-DOT specification, toroidal shape pressure vessel for transportation of helium. (Modes 1, 2, 4.)
9825-X	DOT-E 9825	Sequoyah Fuels Corp., Gore, OK	49 CFR 173.425(c)(2)(ii)	To authorize sludge to be classified as Low Specific Activity (LSA) at a specific activity greater than that normally allowed for liquids transported in the specification MC-312 cargo tank. (Mode 1.)
9873-P	DOT-E 9873	Aqualon Co., Wilmington, DE	49 CFR 173.184, 175.3	To become a party to exemption 9873. (Modes 1, 2, 3, 4.)
9901-X	DOT-E 9901	J.T. Baker, Inc., Phillipsburg, NJ	49 CFR 173.268, 173.269	To authorize shipment of nitric acid, classed as oxidizer or corrosive material, and perchloric acid, classed as oxidizer, in a DOT Specification 12A fiberboard box, with inside glass bottles cushioned and encapsulated by molded polystyrene inserts. (Modes 1, 2, 3.)
9915-P	DOT-E 9915	Aqualon Co., Wilmington, DE	49 CFR 173.28(m)	To become a party to exemption 9915. (Modes 1, 2, 3.)
9923-Y	DOT-E 9923	Chemical Handling Equipment Co., Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 173.266, 176.340, 178.19, 178.253, part 173, subpart F.	To authorize combustible liquids as additional materials and cargo vessel as an additional mode of transportation. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
9934-X	DOT-E 9934	Advanced Research Chemicals, Inc., Catoosa, OK.	49 CFR 173.274, 175.3	To authorize shipment of corrosive liquids in non-DOT specification teflon bottles packed in non-DOT specification fiberboard boxes. (Modes 1, 4.)
9938-X	DOT-E 9938	Explosive Technology, Inc., Fairfield, CA.	49 CFR 173.65(a)(4)	To authorize transport of Class A explosives in a DOT Specification 15A wooden box exceeding the weight limitation of 140 pounds prescribed in 49 CFR 173.659a)(4). (Mode 1.)
9953-X	DOT-E 9953	ServiceMaster Co., Downers Grove, IL.	49 CFR 177.834(i)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases in temperature controlled equipment. (Mode 1.)
9953-X	DOT-E 9953	National Starch and Chemical Corp., Bridgewater, NJ.	49 CFR 177.834(i)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases in temperature controlled equipment. (Mode 1.)
10135-X	DOT-E 10135	Ciba-Geigy Corp., Hawthorne, NY	49 CFR 173.168	To authorize use of stainless steel T-304L for construction of DOT-56 portable tank, for shipment of lithium amide, classed as flammable solid. (Mode 1.)
10253-X	DOT-E 10253	Drew Industrial Chem. (Division of Ashland Chem.), Boonton, NJ.	49 CFR 178.19, 178.253, part 173, subpart D, F.	To authorize use of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protecive steel frame for the shipment of certain flammable liquids or corrosive liquids. (Mode 1.)
10285-P	DOT-E 10285	Proper Temp Leasing, Salinas, CA	49 CFR 173.29, 173.315	To become a party to exemption 10285. (Mode 1.)
10285-P	DOT-E 10285	Growers Vacuum Cool Co., Salinas, CA.	49 CFR 173.29, 173.315	To become a party to exemption 10285. (Mode 1.)
10285-P	DOT-E 10285	C & D Cooling Co., Holtville, CA	49 CFR 173.29, 173.315	To become a party to exemption 10285. (Mode 1.)
10300-X	DOT-E 10300	U.S. Department of Energy, Washington, DC.	49 CFR 173.305	To renew exemption originally issued on an emergency basis to authorize use of non-DOT specification cylinders containing urethane foraming agents, compressed gas, n.o.s., classed as nonflammable gas. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10110-N	DOT-E10110	Cylinder Laboratories Inc., Romulus, MI.	49 CFR 173.119, 173.302, 173.304, 173.326, 173.34(d), (e), 173.346.	To authorize use of a non-DOT Specification stainless steel full opening head, "salvage" cylinder for overpacking damaged or leaking packages of pressurized or non-pressurized hazardous materials. (Mode 1.)
10138-N	DOT-E10138	Betz Laboratories, Inc., Trevose, PA.	49 CFR 172.326(d), 173.334(b)	To authorize the display of placards showing only the generic n.o.s. identification number on a closed transport vehicle loaded with three or more portable tanks containing materials of the same hazard class, materials of different hazard classes which are compatible or residuals. (Mode 1.)
10193-N	DOT-E10193	Anderson Company Gainesvill, TX	49 CFR 173.315, 178.245	To authorize manufacturer, marking and sale of non-DOT Specification steel portable tanks comparable to DOT Specification 51, except the fill and discharge openings will be located on the bottom of the tanks, for shipment of anhydrous ammonia and liquified petroleum gas. (Modes 1, 2, 3.)
10229-N	DOT-E10229	United States Can Compnay, Oak Brook, IL.	49 CFR 173.1200(a)(8), 173.302, 173.304, 173.306(a), (b), (c), 178.33-2(b).	To authorize manufacture, marking and sale of nonrefillable non-DOT Specification inside metal containers, for shipment of nonflammable and flammable gases. (Modes 1, 2, 3, 4.)
10265-N	DOT-E10265	Linco-Electromatic, Inc., Midland, TX.	49 CFR 173.119, 173.304, 173.315.	To authorize manufacture, marking and sale of non-DOT Specification containers described as mechanical displacement meter provers mounted on a truck chassis or trailer, for shipment of hydrocarbon products classed as combustible liquids, flammable liquids or flammable gases. (Mode 1.)
10288-N	DOT-E10288	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.31(c), 179.101-1(a)	To authorize the transport of a DOT Specification 105A300W or 112A340W tank car tank with a safety relief device start-to-discharge pressure at 82.5 percent of the tank test pressure. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 2787-X	DOT-E 2787	Raytheon Company, Andover, MA.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable compressed gases, in non-DOT specification pressure vessels equipped with a regulating valve, a pressure relief valve, and a squibb actuated valve. (Modes 1, 2, 3, 4.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453-X	DOT-E 4453	Roundup Powder Company, Inc., Miles City, MT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
EE 6016-X	DOT-E 6016	S.J. Smith Welding Supply, Davenport, IA.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
EE 6016-X	DOT-E 6016	Weiler Welding Company, Incorporated, Dayton, OH.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification protable tanks. (Mode 1.)
EE 7052-X	DOT-E 7052	Computer Components Corporation, Dallas, TX.	49 CFR 172.101, 172.400, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
EE 8451-X	DOT-E 8451	Quantic Industries, Inc., San Carlos, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pyrotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
EE 8582-X	DOT-E 8582	Kansas City Southern Railway Company, Kansas City, MO.	49 CFR parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
EE 8723-X	DOT-E 8723	DAMA Incorporation, Roanoke, VA.	149 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8862-X	DOT-E 8862	Union Carbide Industrial Gases, Inc., Danbury, CT.	49 CFR 173.119, 173.124(a)(4), 173.305.	To authorize shipment of propylene oxide, classed as a flammable liquid, in DOT Specification 5P lagged steel drums. (Mode 1.)
EE 8901-X	DOT-E 8901	Douglas Chemical Company, Liberty, MO.	49 CFR 173.357	To authorize shipment of chloropicrin, in polyethylene bottles overpacked in non-DOT specification triple-wall, A-A-C flute, corrugated fiberboard boxes. (Mode 1.)
EE 9070-X	DOT-E 9070	Warner Brothers, Inc., Sunderland, MA.	49 CFR 173.119, 173.32(a)(1)	To authorize the filling and discharge of two non-DOT specification portable tanks while remaining securely mounted on a truck chassis. (Mode 1.)
EE 9809-X	DOT-E 9809	Texas-New Mexico Pipe Line Company, San Angelo, TX.	49 CFR 173.119	To authorize use of a non-DOT specification container described as a mechanical displacement meter prover mounted on a truck, for transportation of flammable liquids. (Mode 1.)
EE 10354-N	DOT-E 10354	BASF Corporation, Parsippany, NJ.	49 CFR 179.200-18(b)	To authorize shipment of hydrochloric acid in DOT Specification 111A100W5 tank car tanks equipped with an orifice plate in line with the safety relief device. (Mode 2.)
EE 10363-N	DOT-E 10363	Indspec Chemical Corporation, Petrolia, PA.	49 CFR 173.29(c)(1), 174.67(k)	To authorize transport of a DOT Specification 111A100W1 tank car tank with defective interior coils for the transportation of benzene (benzol) residue. (Mode 2.)
EE 10368-N	DOT-E 10368	The Buffalo and Pittsburgh Railroad Company Punxsutawney, PA.	49 CFR 173.29, 179.12-1	To authorize a one-time shipment of a residue of crude oil, petroleum in a DOT Specification 111A100W1 tank car tank with damaged interior heater coils resulting from a derailment. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7802-X	Bennett Industries, Peotone, IL	49 CFR part 173, subpart D, F	To authorize shipment of liquid hazardous materials in non-DOT specification 3.5 or 5 gallon capacity removable head polyethylene drums. (Modes 1, 2, 3.)
9130-X	Calgon Vestal Laboratories, St. Louis, MO.	49 CFR 173.154	To authorize shipment of an oxidizer, n.o.s., in polyethylene containers of not over 10 pounds capacity each, overpacked in a non-DOT specification corrugated fiberboard box as prescribed in 49 CFR 173.217(c). (Models 1, 2.)
9359-P	ENPAC Corporation, Jacksonville, FL.	49 CFR 173.154, 173.156, 173.160, 173.163, 173.164, 173.166, 173.168, 173.175, 173.182, 173.184, 173.187, 173.188, 173.194, 173.195, 173.198, 173.204, 173.207, 173.217, 173.219, 173.220, 173.229, 173.234, 173.235, 173.239a, 173.245b, 173.369, 173.377, Part 173, Part 178.	To become a party to exemption 9359. (Modes 1, 2.)

Denials

8966-X Request by GPS Industries City of Industry, CA to authorize shipment of sodium hypochlorite solution, and hydrochloric acid solutions in four one-gallon polyethylene bottles enclosed in a bag of polyethylene film, packed in a corrugated fiberboard box complying with DOT Specification 12B except for hand holes authorized in side panels of box denied April 20, 1990.

9734–N Request by Pressed Steel Tank Company, Inc. Milwaukee, WI to authorize manufacture, marking and sale of a non-DOT specification cylinder, similar to a DOT 3AA specification cylinder, for shipping non-flammable compressed gases denied April 24, 1990.

10245–N Request by Sonoco Fiber Drum, Inc. Lobard, IL to authorize manufacture, marking and sale of a non-DOT specification fibre drum similar to the DOT specification 21C fibre drum with top construction of plastic parts for those materials authorized for shipment in a DOT specification fibre drum denied April 2, 1990.

10289–N Request by Dart Energy Corporation Mason, MI to authorized use of non-DOT specification cargo tanks for transportation of crude oil and condensate, classed as both combustible liquid and flammable liquid, and 2 diesel fuel, classed as flammable liquid denied April 20, 1990.

10324–N Request by Ferro Corporation Penn Yan, NY to authorize shipment of a corrosive liquid, n.o.s. containing 40% or less nitric acid, in DOT specification 35 polyethylene pails, with or without inner 4-mil heat sealed polyethylene liner denied April 5, 1990.

Issued in Washington, DC, on July 9, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 90–17828 Filed 7–31–90; 8:45 am]

BNBILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 25, 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, Pub. L. 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.

U.S. Customs Service

OMB Number: 1515–0126.

Form Number: None.

Type of Review: Extension.

Title: Current List of Officers, Members or Employees of Licensed Cartmen, Lightermen or Airport Employers.

Description: The district director requires, at certain times, a list showing the names and addresses of managing officers and members. The information is used to insure that officers and members are not involved in organized crime or other fradulent practices.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,841.

Estimated Burden Hours Per Response/Recordkeeping: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 711 hours.

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Mangement and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois. K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–17826 Filed 7–31–90; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 25, 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.

Internal Revenue Service

OMB Number: 1545–0274.

Form Number: 2163(c).

Type of Review: Extension.

Title: Employment—Reference Inquiry.

Description: Form 2163 is used by IRS to verify past employment history and to question listed and developed references as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security determination is based.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents. 20,000.

Estimated Burden Hours Per Response: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–17826 Filed 7–31–90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 148
Wednesday, August 1, 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).

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 8, 1990.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notiation voting during the month of July, 1990.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Acting Executive Director, Tel: (202) 523–5920.

Date of Notice: July 23, 1990.

William A. Gill, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 90–18039 Filed 7–30–90; 2:13 pm]

BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 55, No. 148
Wednesday, August 1, 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 TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 90-014]

RIN 2115-AC45

Random Chemical Drug Testing Programs for Commercial Vessel Personnel

Correction

In proposed rule document 90-17528 beginning on page 30886 in the issue of Friday, July 27, 1990, make the following correction:

§ 16.205 [Corrected]

On page 30889, in § 16.205(a), in the third column, in the first paragraph, in the last line "August 27, 1990" should read "[insert date 30 days after publication of the final rule in the **FEDERAL REGISTER**]".

BILLING CODE 1505-01-D

federal register

Wednesday
August 1, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 67

Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 67

[Docket No. 25905; Amdt. No. 61-87, 67-14]

RIN 2120-AC51

Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations under which the FAA may deny an application for, and suspend or revoke, an airman certificate or rating if an individual has had two or more alcohol- or drug-related motor vehicle convictions or state motor vehicle administrative actions within a 3-year period (motor vehicle actions). The rule requires pilots to report to the FAA in Oklahoma City, Oklahoma, all alcohol- or drug-related motor vehicle convictions or state motor vehicle administrative actions that occur after the effective date of the final rule. The rule also amends the FAA's medical certification rules to include an "express consent" provision that authorizes the FAA to obtain information from the National Driver Register.

The rule is needed to prohibit a pilot from operating an aircraft after multiple alcohol- or drug-related motor vehicle actions. It is also needed to verify traffic conviction information required to be reported on the airman medical application and to evaluate whether the airman meets the minimum standards to be issued an airman medical certificate. The rule is intended to enhance safety in air travel and air commerce, and is necessary to remove from navigable airspace pilots who demonstrate an unwillingness or inability to comply with certain safety regulations and to assist in the identification of personnel who do not meet the medical standards of the regulations.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Covell, Investigations and Security Division (ACS-310), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3965.

SUPPLEMENTARY INFORMATION:

Background

General Statement

The Federal Aviation Regulations (FAR) have addressed the issues of alcohol and drug use by an aircraft crewmember for many years. Section 91.11 of the FAR, for example, provides for certificate action against a person who acts, or attempts to act, as a crewmember of a civil aircraft within 8 hours after consumption of an alcoholic beverage; while under the influence of alcohol; while using any drug that affects the person's faculties in any way contrary to safety; or while having 0.04 percent by weight or more alcohol in the blood. Moreover, the FAA's strong interest in ensuring that airmen are not alcohol or drug dependent is demonstrated by the medical standards contained in part 67. This rule will supplement, not replace, the current regulations. It is intended to implement measures to further ensure the safety of air commerce. This will be accomplished by identifying and removing from airspace those persons who may commit unsafe acts in an aircraft because of a disregard for certain safety regulations; by identifying those persons who fail to report violations of specific safety regulations to the FAA as required; and by providing a means for verification of information or omission of information required to be reported on the application for airman medical certification.

Regulatory History

The FAA issued a notice of proposed rulemaking (NPRM) concerning pilots convicted of alcohol- or drug-related motor vehicle offenses or subject to state motor vehicle administrative procedures on May 11, 1989 (54 FR 21580; May 18, 1989). This NPRM was issued in part to respond to the results of an audit of the FAA's airman medical certification program by the Office of the Inspector General (OIG) of the U.S. Department of Transportation (DOT) released on February 17, 1987. The OIG evaluated the procedures used by the FAA to determine if pilots applying for medical certification had reported alcohol- or drug-related motor vehicle convictions on the FAA medical application form. This information and other historical data are required of applicants for medical certification to assist the agency in determining their physical and psychological fitness to safely operate an aircraft.

The OIG used three automated files to conduct its audit: (1) An extract from a state driver licensing file on alcohol- and drug-related motor vehicle offenses; (2) an extract from the National Driver Register (NDR); and (3) the FAA's airman medical file (the Automated Medical Certification Data Base). The OIG used these files to perform two comparisons for the audit. First, the OIG compared the FAA's medical file and the state records of alcohol- and drug-related traffic offenses. This comparison showed that 1,584 of the active pilots (3.4 percent) who held a driver's license issued by the state had at least one driving-while-intoxicated (DWI) or driving-under-the-influence (DUI) conviction. Of these pilots, 1,124 pilots (71 percent) did not report this information to the FAA.

The OIG also compared the FAA's medical file with the NDR records for individuals whose driver's licenses had been suspended or revoked based on alcohol- or drug-related traffic offenses. This comparison disclosed that the driver licenses of approximately 10,300 of the 711,648 active airmen (1.45 percent) had been suspended or revoked for DWI or DUI offenses within the past seven years. Of these pilots, 7,850 pilots (76 percent) failed to report these motor vehicle convictions to the FAA on their medical applications. The National Driver Register Act of 1982 (NDR Act) contains statutory restrictions regarding access and use of NDR information. Thus, the OIG collected only statistical data from the NDR and did not obtain the names of specific airmen during the audit.

After the audit report was released, the OIG announced its intention to conduct two computer matches as part of an investigative effort to gather specific, detailed information (52 FR 5374; February 20, 1987) (52 FR 8545; March 18, 1987). For the first match, the OIG matched the FAA's airman medical file with certain identification records of criminal history information of the Federal Bureau of Investigation (FBI). For the second match, the OIG matched FAA's Automated Medical Certification Data Base with the State of Florida Department of Highway Safety and Motor Vehicles driver licensing records for alcohol- or drug-related traffic offenses. These one-time computer matches resulted in the identification of specific airmen who allegedly falsified applications for medical certificates by failing to report alcohol- or drug-related convictions.

The OIG reported the results of the Florida state match and the Department of Justice (DOJ) match to the FAA for possible administrative action and to the DOJ for possible criminal action based on a violation of 18 U.S.C. 1001 for intentional falsification of an application for a medical certificate.

Based on the information discovered during the audit, the OIG recommended that the FAA develop an objective, regulatory standard that would provide for FAA certificate action against pilots convicted of alcohol- or drug-related motor vehicle offenses. The OIG also recommended that the FAA seek legislative changes to the NDR statute that would give the FAA access to NDR information. The National Transportation Safety Board (NTSB) and the U.S. General Accounting Office (GAO) supported these recommendations. On December 30, 1987, the President signed legislation amending the NDR Act to add section 206(b)(3) (Pub. L. 100-223; 101 Stat. 1525). In part, that statutory amendment authorizes the FAA to receive information from the NDR regarding motor vehicle actions that pertain to any individual who has applied for an airman medical certificate.

The amendment to the NDR Act states:

> Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regardaing the individual * * * to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information and shall make such information available to the individual for review and written comment. The Administrator shall not otherwise divulge or use such information, except to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 3 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request." [23 U.S.C. 401 note]

On October 22, 1987, the FAA issued a notice (52 FR 41557; October 29, 1987) of a special enforcement policy regarding applicants for a medical certificate who have provided incorrect information about traffic convictions on a medical application form. In order to encourage compliance with the reporting requirement on the medical certificate application form, and to ensure that the FAA's records are accurate and complete, the FAA afforded airmen an opportunity to avoid FAA enforcement action based on falsification of their medical certificate applications if they volunteered the corrected information to the FAA before January 1, 1988. As of that date, the FAA may take enforcement action, based on falsification of the medical certificate application, against those persons who had not provided corrected information. This includes those persons identified and referred by the OIG and those persons discovered through the FAA investigative process. However, even after January 1, 1988, the FAA determined not to take enforcement action against those persons who submitted corrected information prior to the FAA obtaining that information from other sources. On October 27, 1988, the FAA issued a notice announcing complete termination of this so-called "amnesty" policy, effective December 1, 1988 (53 FR 44166; November 1, 1988). Therefore, after November 30, 1988, voluntary submission of corrected information does not preclude FAA enforcement action.

The FAA received about 11,300 letters from pilots disclosing offenses previously unreported on their medical application forms in response to the October 1987 notice. The "disclosure" letters served in most cases to secure amnesty from FAA enforcement action for these airmen as related to the falsification issue. The disclosures, however, did not preclude the FAA from denying an application or suspending or revoking a medical certificate, as appropriate, after evaluating the disclosures and determining that an airman was medically not qualified.

Airmen whose traffic offenses suggested the need for further medical evaluation were asked to provide the agency with all court or administrative records associated with the offenses, or records associated with any care or treatment for substance abuse or related disorders. They also were asked to undergo specialized medical evaluations, if appropriate. The airman medical files of the individuals who submitted the information were updated and reevaluated in light of the new information to ascertain whether those airmen continued to be medically qualified to operate an aircraft in a safe manner.

Since October of 1987, the FAA has reviewed approximately 24,000 airman medical files as a result of letters from pilots disclosing offenses previously unreported and of new applications for medical certificates indicating DWI or DUI convictions. The majority of the pilots whose files were reviewed were sent letters confirming their continued eligibility to hold medical certificates. Of the 24,000 airmen, approximately 2,400 (10 percent), were requested to submit additional information. Of this 2,400 airmen, an estimated 24 (1 percent) were denied medical certificates or had their medical certification suspended or revoked.

On April 11, 1989, the FAA issued another notice of enforcement policy (54 FR 15144; April 14, 1989). This notice announced the FAA's enforcement policy in those OIG-referred cases in which the airman had not come forward to disclose the convictions pursuant to the amnesty policy, as well as in similar cases which otherwise may come to the FAA's attention. In all cases, the FAA reviews the individual's medical eligibility, and takes action, if appropriate, whether or not the FAA takes certificate action based on falsification.

Discussion of Comments

General Statement

The FAA received 84 timely comments in response to the May 18, 1989, NPRM. Based on its analysis and review of these public comments, the FAA is adapting some of the proposed revisions to parts 61 and 67, with changes as described. A discussion of the comments follows.

In general, the majority of the commenters support the safety goal of the proposed rule. Those objecting say that the methods proposed by the FAA in the NPRM do not contribute to a safer aviation community, but rather place serious regulatory burdens on those airmen who are law-abiding. Among the commenters are six organizations representing airline and pilot associations; one Federal agency, the NTSB; and seventy-seven individual members of the flying and non-flying public. The organizations include the Air Line Pilots Association (ALPA), the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the Helicopter Association International (HAI), the National Air Transportation Association (NATA), and the National Business Aircraft Association, Inc. (NBAA).

Specific Comments

Existing Laws and Regulations

Nine commenters note that the FAA already has safety and enforcement regulations in existence. They believe the FAA should enforce rather than promulgate additional regulations. In the words of one respondent, "[t]he rules of the road are not the same as the rules of the air * * * Alcohol is allowed up to a certain amount, while driving a car. In the case of operating an airplane, no alcohol at all is the regulation."

The FAA agrees with the need to enforce existing safety regulations. Several commenters indicate that the

rules dictating "within 8 hours" or "under the influence" are already in place and are designed to protect the public from intoxicated pilots; the agency devotes considerable resources to this purpose. However, the previously described OIG audit shows that although only a small percentage of the aviation community may be involved, there are airmen who do not comply with the existing reporting requirements. There also are some airmen who have a record of multiple convictions for DWI and DUI, indicating that not all pilots show an appropriate concern for critical highway safety requirements. It is these pilots who are the focus of the detection mechanisms established by this rule.

Lack of Supportive Evidence of Correlation

Of concern to twenty-six commenters, including all six organizations, is the lack of statistical data to support the proposals presented in the NPRM. They note the lack of a proven correlation between alcohol and drug convictions while driving a motor vehicle and alcohol- and drug-related accidents while flying an aircraft.

The FAA made no attempt to obscure the lack of evidence correlating alcohol- or drug-related motor vehicle actions with substance abuse-related accidents or incidents while operating an aircraft. The FAA notes, however, that from 1978 to 1987, 6.0 percent of general aviation pilots killed in aviation accidents had a blood alcohol level of 0.04 percent or more. During that same period, 11,213 people died in general aviation accidents. If the rule were to result in the saving of a few lives, the potential benefits of the rule would exceed its potential cost.

If, for example, 6.0 percent of average annual deaths in general aviation accidents occurred in circumstances where alcohol may have been a contributing factor and the rule were only one percent effective in preventing such accidental deaths, then the benefits of the rule (given the values currently ascribed to a statistical life) would exceed its potential costs. FAA believes, in fact, that the rule will be significantly more effective than one percent so that potential benefits are likely to significantly exceed costs.

Therefore, FAA needs to develop an objective, regulatory standard that will enable the agency to take certificate action against pilots convicted of alcohol- or drug-related motor vehicle offenses. Similarly, the FAA has a clear safety basis for ensuring that an applicant for a medical certificate fully and accurately completes the application so that the individual can be evaluated in accordance with the medical standards.

In light of the FAA's statutory mandate to protect and enhance aviation safety, the FAA elects to adopt the majority of the proposals in the NPRM. The potential consequence to aviation safety and the public interest of individuals with a recent history of DWI or DUI offenses piloting aircraft is at least as serious as for those driving motor vehicles, a situation demonstrated daily on our nation's highways. The agency believes that an individual whose conduct results in multiple alcohol- or drug-related motor vehicle actions within a 3-year period should be subject to enforcement action with the potential for removal from the flying environment.

Difference Between Piloting an Aircraft and Driving an Automobile

Numerous objections to the proposals in the NPRM assert that there is little or no relationship between the task of piloting an aircraft and driving an automobile. The commenters contend that training and the environment surrounding the operations of motor vehicles and aircraft are drastically different and should not be subject to similar regulations. The Commenters state that pilots are carefully selected and subject to different medical requirements and training than those licensed solely to operate motor vehicles, and, therefore, cannot be so directly equated.

The FAA is well aware that there are differences in training for motor vehicle and aircraft operation. However, driving an automobile on our nation's roads requires some type of state medical examination, at a minimum an eye examination, as well as a statement of health from the applicant or driver. Commercial drivers usually undergo medical examinations while private automobile drivers usually must self-certify and take a vision test. Applicants must respond to questions concerning their prior driving records and medical status and must also demonstrate practical driving skills. These conditions have been an acceptable part of obtaining a driver's license for the vast majority of adult Americans who undergo this procedure regularly. Similar procedures are required for those choosing to pilot aircraft.

The FAA agrees with the commenters that a higher level of skill and care must be exercised by those piloting aircraft in the interest of the public. In comparison to driving, aviation-related errors in judgment can be more serious; there is potential for greater property damage; and a pilot, particularly when engaged in commercial aviation, is responsible for the safety of passengers as well as for others both in the air and on the ground.

Legal Concerns

Numerous commenters raise issues that they believe are legal in nature. Three commenters argue that the proposed regulations overstep FAA's statutory authority, which involves the safety of flying. They believe that FAA regulations should address only the act of flying while under the influence of alcohol or drugs.

The FAA does not agree with these commenters. Information about a person's driving record, including DWI and DUI offenses, has long been required as a part of the application process for airman medical certification. Moreover, the FAA believes that conduct outside the time actually spent flying can be relevant to a determination of a person's capability to pilot an aircraft. Multiple driving convictions or administrative actions involving alcohol or drugs have relevance to the issues of judgment, compliance disposition, and medical qualifications.

Twenty-three commenters, including three organizations, oppose the NPRM on the basis of its intrusive nature. They argue repeatedly that since there is no statistical evidence to support the linking of a pilot's past driving record with his or her potential for alcohol or drug use in the cockpit, very little relevance exists for requiring access to the records in the NDR. As a result, it is argued that such a requirement by the FAA is, by nature, an invasion of privacy. Several commenters say that until definite proof is presented linking the two types of operation, no justification exists for the proposals.

The FAA acknowledges that there may be an impact on the privacy of individuals by virtue of obtaining the information in the NDR, but the impact is neither large nor unwarranted. First, most information in the NDR is public record information from the participating states. Second, the medical application already requires an applicant to reveal his or her driving record. Therefore, accessing the information in the NDR should not result in developing any new information about the applicant. Third, Congress passed legislation explicitly granting the FAA the authority to receive information contained in the NDR. The legislation contains limitations that safeguard the privacy interests of individuals whose NDR records are disclosed to the FAA.

Regarding the express consent form to be attached to the medical application for use in obtaining NDR information, one commenter states that the FAA's obtaining "express consent by a deliberate and knowing act of administrative extortion" is without statutory authority. This commenter believes that it is inappropriate to withhold issuance of a medical certificate if a person refuses to give consent to access the NDR.

The FAA does not agree. Indeed, the statute granting the FAA authority to receive NDR information tied the use of the information specifically to the medical certification process. The statute provides that that information is to be used "to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards as prescribed by the Administrator to be issued an airman medical certificate." [23 U.S.C. 401 note]

Numerous commenters said that pilots' constitutional rights would be violated because there is no opportunity for a hearing or appeal following "automatic" certificate action for two DWI convictions.

The FAA does not agree. This rule provides that multiple motor vehicle actions against a person within a 3-year period are grounds for suspension or revocation of any certificate or rating issued to that person under part 61. There is no "automatic certification action." Rather, the FAA will initiate appropriate enforcement action, and the FAA's formal enforcement procedures will be followed. An airman will be afforded all of the procedural safeguards that are available generally in FAA certificate action proceedings. These proceedings could include notice of proposed certificate action and, possibly, a hearing before an administrative law judge, an appeal to the National Transportation Safety Board and, finally, judicial review of the determination.

Three commenters, including two organizations, state that retroactive enforcement is unfair. They note that pilots would have exercised more caution against receiving a DWI or DUI conviction if they had known such convictions might affect their pilots' licenses.

The FAA recognizes this concern. Under the proposed rule, at least one motor vehicle action would have had to occur after the effective date of the final rule. However, possible loss of an airman certificate is not the reason a person should comply with state laws related to alcohol or drug use in operation of a motor vehicle. These alcohol- and drug-related highway safety laws should be adhered to because they are the law. The failure to comply has serious adverse consequences. Alcohol- and drug-related traffic accidents result in the deaths of thousands of Americans every year. While other traffic offenses may result in accidents, alcohol and drug impairment clearly pose the greatest threat and are the result of conscious decisions. Motor vehicle actions reflect a lack of safety awareness, a lack of good judgment, and an indifference to the adherence to established requirements of law. Nevertheless, the FAA recognizes that directly linking an individual's compliance disposition toward critical safety requirements in the driving context to possible certificate action against that individual's pilot certificate is a fundamental change. The FAA agrees that the correlation should be prospective and has so provided in this final rule. To the extent that the rule has a deterrent effect, resulting in a proper compliance attitude toward the FAR, the rule will have achieved its goal.

Ten commenters, including three organizations, suggest that, in the words of one individual, the "rule is using a flawed base for its determinations" because DWI or DUI convictions are based on substantially different state laws. These differences include varying permissible blood alcohol concentrations (BAC) and differing state procedures for those charged with DWI or DUI offenses. Therefore, these commenters argue that the proposed rule could not be applied equally to all airmen.

The FAA is aware of impairment level and procedural differences among the states. However, these differences in state laws and procedures, which are a part of our Federal system, are not a reason for inaction. Every person driving an automobile is required to obey the laws of the state in which the vehicle is being operated. The fact that state laws differ is not a defense to charges of violating a law, nor do state law differences undermine a rule that uses convictions or state administrative actions under those varying laws. In the NPRM, the FAA requested specific comments on whether to treat state judicial proceedings involving "probation before judgment" and "deferred adjudication" as a "motor vehicle action," even though these proceedings may not result in a permanent record of conviction. The FAA agrees with a commenter who recommends that procedures such as probation before judgment and deferred adjudication not be considered motor vehicle actions. Further evaluation is needed of the possible impact on state procedures of including judicial proceedings that do not result in a conviction as a motor vehicle action under the rule. As defined in the rule, a motor vehicle action is a conviction; license cancellation, suspension, or revocation; or the denial of an application for a license to operate a motor vehicle by a state for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

Finally, two commenters, including one organization, note that the Federal Highway Administration (FHWA) regulations refer only to "on duty" alcohol- and drug-related motor vehicle actions. The FHWA rule initially was broader, and included off-duty convictions for operating a vehicle under the influence of alcohol. These commenters refer to a judicial decision involving the initial rule, *Whalen* v. *Volpe*, 348 F. Supp. 1235 (D. Minn. 1972), in which the court concluded that the FHWA rule was arbitrary, capricious, and unreasonable. The court found an absence of any rational basis to conclude that there was a correlation between a conviction for drunken driving while in a private automobile and future conduct driving a commercial vehicle. The decision was vacated later based on a stipulation and agreement entered into by the Parties. *Whalen* v. *Volpe*, 379 F. Supp. 1143 (D. Minn. 1973), and FHWA engaged in further rulemaking. These commenters do not believe that the FAA reasonably can proceed to a final rule in light of the *Whalen* case.

The FAA is not persuaded that the *Whalen* case precludes promulgating a final rule in this rulemaking. Since the decision was vacated it has no precedential value. Moreover, there are significant distinctions between the FHWA rule and that agency's statutory authority and the FAA's rule and its statutory authority. The FAA believes that the *Whalen* rationale is no longer persuasive and that there have been significant changes in the recognition of the dangers of driving while impaired by drugs or alcohol and the reasonable inferences that can be drawn from such conduct about a person's judgment and compliance disposition. The effects of substance abuse on the safety of transportation are clear and the courts have recognized the authority of government agencies to take action to prevent these effects. Therefore, the

FAA is not persuaded that a court today would reach the same conclusion that was reached by the court in the *Whalen* case.

Self-Policing

Eighteen commenters, including two organizations, believe that only a small segment of the flying population abuses drugs or alcohol. The commenters argue that the overwhelming majority of the pilot population is already doing an excellent job of self-policing; thus this rule is unnecessary.

The FAA agrees that the majority of the pilot community complies with the regulations by self-policing. The FAA accepts, and has so stated, that only a small percentage of the airman population may be affected by abuse of alcohol or drugs. However, a single impaired or intoxicated pilot could cause extensive and wide-spread damage to the public through loss of life or property damage. The FAA believes that this regulation will encourage greater self-policing and intends it to be primarily corrective in nature, assisting the agency, through deterrence, in attaining its primary mission, that of aviation safety.

Enforcement

Nineteen commenters say that they believe the FAA has become irrationally harsh in its enforcement policy, not improving compliance, and damaging FAA's credibility. They state that this rule is one more step in this onerous direction.

The FAA's compliance and enforcement programs have been modified recently. The opinions of the flying population, particularly general aviation pilots, have been taken into consideration in the agency's on-going effort to maintain a high level of safety. There will be continued insistence on total compliance with the rules and regulations that have made our aviation system as safe as it is. But agency responsibility to enforce the rules will not prevent the FAA from addressing the aviation community's concerns and enhancing the FAA's responsiveness to the users of the system. The goal is to be firm but fair. The FAA intends to use a number of tools, including good communications, training, education, counseling, and finally enforcement, to achieve the primary goal of safety.

The FAA has become aware that there is a good deal of misunderstanding about the enforcement process, leading to a sense of mistrust. Therefore, the new enforcement procedures will be more flexible, with greater emphasis on promoting compliance through education and open communication. The FAA will consider the need for simplification in some of the regulations to enhance understanding and promote compliance.

Nevertheless, clear-cut violations of regulations and a lack of compliance disposition must be handled decisively in the interest of promoting safety, particularly in such safety-sensitive areas as alcohol and drug abuse. The FAA regards violations in these areas as serious and will continue to expect strict adherence to the regulations. As stated in a recent FAA notice of enforcement policy (54 FR 15144; April 14, 1989), failure to disclose DWI or DUI convictions when applying for an airman medical certificate may be a violation of § 67.20 of the FAR. In pertinent part, that section provides that no person may make or cause to be made any fraudulent or intentionally false statement on any application for an airman medical certificate; so doing is a basis for suspending or revoking any airman certificate or rating held by that person.

Persons who make false statements on an application for an airman medical certificate also may be criminally prosecuted under 18 U.S.C. 1001, which carries a fine of not more than $10,000 or a term of imprisonment for up to 5 years, or both. While the FAA refers cases for consideration, the Department of Justice determines whether to prosecute a person under this statute.

Punishment

Twenty-one individuals and two organizations provided comment on the allegedly punitive nature of this rule. Seven commenters and one organization believe that the regulation should be more stringent, to include such issues as suspension of a pilot's license for a single DWI conviction.

The FAA considered basing enforcement on a single drug- or alcohol-related motor vehicle action, but chose not to do so because there are existing procedures that call for the review of any medical application in which the applicant discloses a past motor vehicle action. This review could lead to further action resulting in the denial, suspension, or revocation of a medical certificate. This review takes place at the time of the initial submission of a medical application, and is performed by the Aviation Medical Examiner (AME), followed by an additional agency review. Regarding the falsification issue, there is an existing FAR (§ 67.20) governing the providing of accurate information to the FAA, and Federal legislation exists (18 U.S.C. 1001) to address the criminal aspect of providing false information.

On the other hand, 13 commenters objected to the NPRM, making the argument that the "punishment" resulting from this rule is harsh and excessive. An airman certificate is required of all pilots; in the case of professional pilots, suspension or revocation would deprive them of their livelihood. This treatment, according to the arguments of the commenters, is too severe in comparison to other industries.

The FAA agrees that certificate suspension or revocation is a severe action, but one that fits the seriousness of the violation involved. The intent of these regulations is primarily corrective in nature, and to achieve the FAA's mandate to ensure safety in aviation. Therefore, the FAA will take appropriate enforcement action where pilots have violated laws related to substance use or abuse while operating a motor vehicle.

One organization states that virtually every pilot subject to an alcohol- or drug-related motor vehicle action will challenge any prosecution to the fullest extent of the law. While the FAA has no reason to doubt the comment's assertion, there are ample reasons to contest a DWI or DUI charge apart from the action being taken in this rule. The decision to challenge a criminal or administrative charge is an option available to any individual in our society. If a pilot's record is reviewed pursuant to § 61.15 for possible denial of an application for a certificate or a rating, or suspension or revocation of an existing airman certificate or a rating, it is because the pilot has violated an FAA regulation. The opportunity for due process, as always, is available both in a state's criminal and administrative proceedings and the FAA's administrative proceedings.

Medical Examination Form

As adopted, this rule amends § 61.15 to require a pilot to report to the agency's Civil Aviation Security Division in Oklahoma City each alcohol- or drug-related motor vehicle conviction or administrative action that occurs after the effective date of the rule. This reporting requirement is unrelated to the existing requirement that a pilot fully and completely answer all questions related to traffic and other convictions on an "Application for an Airman Medical Certificate or Airman Medical and Student Pilot Certificate", FAA Form 8500-8. One commenter contends that this requirement to describe any previous record of convictions should not be necessary as he is "* * * at a loss to see the relevance between an

airman making an illegal U-turn and his/her medical history."

The FAA considers an airman's conviction history pertinent to the medical certification process. An Aviation Medical Examiner (AME) uses this information, combined with the physical examination findings, as an important diagnostic tool. A history of traffic or other convictions may indicate a medical problem or may lead to further inquiry regarding an applicant's medical qualifications. While an illegal U-turn conviction, in and of itself, may not alert an AME to a possible medical problem, multiple traffic convictions might. Any reportable conviction information, coupled with a DWI or DUI conviction, could raise a question as to the applicant's fitness to perform the duties or exercise the privileges of an airman certificate. Given all the information, an AME and the agency can more accurately assess a pattern of behavior that may be indicative of a personality disorder that has repeatedly manifested itself by overt acts and, thus, may warrant denial of an application for, or suspension or revocation of, an airman's medical certificate.

Another commenter states that nowhere on the FAA Form 8500–8 does the seriousness of failing to disclose convictions appear. The agency refers that commenter to the lower left-hand corner of the form which contains a notice describing penalties for falsification or failure to disclose the information required.

Still other commenters believe that the possibility of an applicant overlooking a question, or of making an error in his or her response, is compounded by placing the conviction information the FAA is seeking within a small area in the medical history section of the form.

Data released on February 17, 1987, based on an audit conducted over a 7-year period by the OIG, indicate that more than 98.5 percent of the pilot population with convictions to report have done so successfully using the current form. The FAA, however, recognizes the merit of the commenters' desire to improve FAA Form 8500–8 to achieve an even higher degree of compliance and clarity and, thus, to lessen the opportunity for error.

At this time, the FAA is revising the current form for consistency with the amendment to part 67 as adopted in this final rule. The express consent provision is added to the form and is placed above the space provided for the applicant's signature. This provision allows the FAA to receive information about the applicant that has been reported to the NDR.

Along with the addition of the express consent provision, the agency is taking the opportunity to incorporate those suggestions that it deems will enhance the appearance and clarity of the form. Changes, in part, include revising the instructions for filling out the form; increasing the type-size, where possible; moving the conviction items to a more prominent location within the medical history section; and updating the portion that deals with penalties for falsification. The agency believes that these revisions will enable more applicants for an airman medical certificate to provide the required information accurately and with less effort.

Rehabilitation and Education

Several commenters believe there should be provisions made for rehabilitation and education. According to the commenters, the time and effort which the FAA would spend with this program would be better spent in developing and encouraging rehabilitation programs. The FAA is described by the commenters as more concerned with taking punitive measures taken to remove the offending individuals from the aviation community than with taking a more humane, restorative approach of "compassionate intervention and rehabilitation."

The FAA accepts and endorses education and rehabilitation as important and necessary facets of any drug or alcohol program. In fact, the agency has an active and successful employee assistance program (EAP). The FAA encourages the creation and use of industry EAPs. The FAA also encourages individuals to seek help if they have a substance abuse problem. Community health organizations generally have programs to assist such individuals. However, the primary mission of the FAA is aviation safety and the identification of associated safety problems.

Paperwork Burden

Four commenters say that this regulation would cause an undue paperwork burden on the FAA.

There admittedly will be an increase in workload among the various offices responsible for implementation of this rule. However, the agency believes that the potential for increased safety in the aviation community justifies the additional burden. Every effort will be made, however, to reduce the burden of the agency's new recordkeeping requirements. For example, in revising the application for medical certification, FAA Form 8500–8, the NDR access express consent provision will be printed on the form itself, thus eliminating an extra document that must be retained by the FAA. A detailed listing of the reporting and recordkeeping requirements can be found in Part IV of the Regulatory Evaluation which is contained in the docket.

Insufficient Reporting Time

Several respondents note that pilots should be given more than 60 days to report past alcohol- or drug-related driving convictions and administrative actions. They contend that 60 days from the effective date of the final rule does not allow sufficient time for a pilot to learn of the promulgation of the regulation and then to report past motor vehicle actions. One organization suggests pilots might find it necessary to contact state officials, determine the nature of certain prior state actions, and then seek counsel on whether reporting of a specific action is required under the regulations.

Although the NPRM proposed the reporting of each alcohol- or drug-related motor vehicle action received in the 3-year period prior to the rule, this provision is not being adopted. The final rule requires only reporting of alcohol- and drug-related motor vehicle convictions or state administrative actions received after the effective date of the rule. The notification of each motor vehicle action must be received by the agency within 60 days after the conviction or administrative action. Given the deletion of the requirement to report motor vehicle actions that occurred in the 3-year period prior to the effective date of the final rule, the FAA believes that the 60-day notification period is realistic and reasonable. In addition, the effective date of the final rule is 120 days after publication in the **Federal Register**. This fairly lengthy period should provide ample opportunity for the final rule requirements to be made widely known.

Proposed Amendment to § 61.23, Duration of Medical Certificates

The NPRM proposed amending § 61.23 by adding new paragraph (d) to change the duration of an airman medical certificate. The proposed amendment provided that any medical certificate would expire automatically on the 61st day after a pilot was convicted of, or a state had taken administrative action on, a single alcohol- or drug-related motor vehicle violation, unless the medical certificate would otherwise expire before the 61st day. The pilot could continue to operate an aircraft for 60 days after the date of conviction or

until expiration of the certificate, if earlier, as long as the pilot was not otherwise disqualified under part 67. The pilot could schedule and complete a new medical examination anytime after the date of the motor vehicle action. If the pilot chose to reapply within 60 days after the conviction, and, if based on this examination and the agency's review of the conviction or administrative action, the pilot continued to meet the medical standards of part 67, then he or she would be issued a new medical certificate and could continue to pilot an aircraft without interruption.

In addition, the NPRM proposed in new paragraph (d)(1) that each applicant be required to present to the AME, at the time of application and medical examination for a new certificate, any documents that substantiated participation in any court-ordered substance abuse treatment plan, and in new paragraph (d)(2), that each subject applicant be required to show the AME evidence of compliance with any other court-ordered program related to the conviction, such as community-service.

Numerous commenters contend that no measure should be taken to deny an application for, or suspend or revoke, an airman's medical certificate for a single DWI or DUI conviction or action but, rather, the airman should continue to be required to report convictions on the medical application form as a basis for further medical evaluation. The commenters support the FAA's efforts to deny medical certification to airmen with disqualifying alcohol-or drug-related medical conditions, but argue that a medical diagnosis seems unlikely based solely on a single alcohol- or drug-related motor vehicle conviction or state administrative action. Still others question the premise that, based on a single DWI or DUI aciton, the agency would discover pilots with alcohol or drug problems. These commenters believe that if the agency considered this proposition likely, the proposed amendment to § 61.23 would not have been drafted to allow such individuals the latitude to continue to pilot an aircraft for up to 60 days without having to undergo a medical evaluation.

Some commenters have taken the FAA to task over the requirement in the proposed rule to have the AME evaluate court and other administrative records, presented by the examinee, to determine compliance with any court-ordered program related to a conviction. These court-imposed programs could vary from attendance in a substance-abuse treatment program to participation in a community service program. Other commenters, themselves physicians, also express grave reservations over this issue. They believe that the AME would be placed in the unfamiliar role of reviewer and verifier of legal documents, and would further have to attempt to determine if the sanctions imposd had been, or were being, discharged accordingly.

The FAA has considered the commenter's views regarding the likelihood of obtaining significant results from requiring a pilot to reapply for a medical certificate after a single motor vehicle action (DWI, DUI, or state administrative action). The agency agrees that only rarely would a medical examination triggered as a result of a single motor vehicle action provide a basis for a diagnosis of alcoholism or drug dependency. The additional examinations that would have been triggered by the proposed requirement would be a significant increase in workload to the agency and an expenditure of community medical resources; conservatively, the FAA estimates that 7,000 additional applications for medical certification would be processed annually. Also of consequences would be the fees to be paid by the airmen in compliance with the reexamination requirment. If the findings from the additional examinations prove minimal, as expected, then imposing these requirements appears to be unwarranted.

The FAA has further determined that the provisions as proposed in § 61.23(d)(2) are beyond the scope of current AMEs' training or expertise. It is FAA policy that every DWI or DUI conviction or state motor vehicle administrative action noted on an application for an airmen medical certificate be reviewed by the Aeromedical Certification Division of the Civil Aeromedical Institute (CAMI) for indications of a condition warranting denial of an application or suspension or revocation of a medical certificate. This includes an additional medical review when multiple motor vehicle actions are listed on an application for a medical certificate. Two motor vehicle actions within 3 years, as provided by new § 61.15(d), still will provide grounds for certificate action against a pilot's airman certificate apart from any additional medical review. Thus, after considering all the comments received, the FAA has not adopted in this final rule the proposed amendment to § 61.23.

Pursuant to new § 61.15, the agency requires that a pilot report each alcohol- or drug-related motor vehicle conviction or administrative action that occurs after the effective date of the rule to the Civil Aviation Security Division (CASD) in Oklahoma City. The report of a motor vehicle action will result in a review of that pilot's medical file to determine if there is a basis for reconsideration of the individual's eligibility for medical certification.

The FAA is confident that the early identification mechanisms currently in place, the new reporting requirement, and the scheduled crosscheck of the airman medical records with the NDR, are sufficient to maintain the requisite high level of safety for the aviation community and the traveling public. Thus, the FAA has concluded that limiting the duration of a medical certificate after a single motor vehicle action is not warranted.

Costs

Four commenters, including one organization, raise economic issues. Three say that the administrative paperwork would not be "nominal," and that the FAA should attempt to quantify these costs. The FAA agrees, and has specified the step-by-step process, with the costs involved in each step, in Section IV of the Regulatory Evaluation.

Two of the commenters say that the loss of pilot employment or pay resulting from this rule should be considered as a cost of this rule. The FAA disagrees because this rule merely identifies those pilots already having received alcohol- or drug-related motor vehicle convictions or administrative actions. Any cost is related to these pilots' own actions rather than the FAA's actions.

One commenter notes that the FAA stated in the NPRM that the loss of employment is not a regulatory cost and "that the proposed rules would not have a significant economic impact * * * on a substantial number of small entities." This commenter asked whether a pilot is considered a small entity. The quoted language is based on the Regulatory Flexibility Act of 1980 (RFA) and comes from the Regulatory Flexibility Determination section of the NPRM. The FAA is required to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The criteria for a "substantial number of small entities" is one-third of the small firms subject to the final rule, but no fewer than 11 firms. This commenter understood "small entity" to mean an individual pilot, instead of a small firm. A firm, regardless of size, is made up of employees. In this case, the small firm being referenced here is made up of pilots and other employees. The loss of employment for an individual pilot may

or may not have a "significant economic impact * * * on a substantial number of small entities." In this case, the FAA has determined that this rule would not have such an impact.

Section-By-Section Discussion of the Rules

Several changes from the NPRM language have been made in the final rule. Some differences are intended to improve clarity; others are of a more substantive nature.

Section 61.15 Offenses Involving Alcohol or Drugs

Section 61.15(c) of the final rule has been modified to reflect that only motor vehicle actions that occur after the effective date of the rule must be reported to the FAA. The proposed rule had referenced reporting responsibility in the pilot's recent past as well as after the effective date. Reporting alcohol- or drug-related convictions or state motor vehicle administrative actions in the recent past is not a requirement of the final rule. This change is also reflected in paragraphs (d) and (e).

A modification was made to § 61.15(d) of the final rule to reflect that multiple motor vehicle actions as defined in the rule resulting from the same driving incident or factual circumstances will be viewed as one motor vehicle action for purposes of § 61.15(d). However, a pilot still must report each action to the FAA, regardless of whether it arises out of the same driving incident or factual circumstance. As part of the pilot's description of the action, the pilot should note that the action being reported is part of a single set of factual circumstances and reference any prior action arising out of the same facts.

Section 61.15(e) of the final rule differs from the proposed rule in the address to which the information must be sent. This has been changed from the Airman Certification Branch to the Civil Aviation Security Division.

Section 61.15(f)(1) of the final rule differs from the proposed rule (§ 61.15(e)(1)) in one minor respect. The final rule provides that the denial of any application for a certificate for a 1-year period dates from "the date of the last motor vehicle action" as compared to the proposed rule language which states "the date of the failure to report a motor vehicle action."

Section 61.23 Duration of Medical Certificates

The NPRM proposed amending § 61.23 by adding a new paragraph (d) to change the duration of an airman's medical certificate. This requirement has not been adopted in the final rule.

Section 67.3 Access to the National Driver Register

Two minor changes were made to this section. First, the rule has been changed to clarify that a person desiring to review the NDR information must request that the Administrator make the information available. Second, additional language has been added to clarify that the consent authorizes the Administrator to request the chief driver licensing official of the state to transmit information contained in the NDR about the person to the Administrator.

Finally, certain editorial changes in the final rule have been made for clarity.

Paperwork Reduction Act

Section 61.15(d) would require a pilot to report to the FAA each alcohol- or drug-related motor vehicle conviction and each alcohol- or drug-related state administrative action. Information collection requirements in the amendment to § 61.15(d) have been submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Regulatory Evaluation Summary

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory changes outweigh the potential costs to society. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

This final rule is determined not to be "major" as defined in the Executive Order, therefore a full Regulatory Impact Analysis evaluating alternative approaches is not required. A more concise Regulatory Evaluation has been prepared, however, which includes an analysis of the economic consequences of the regulation. This analysis has been included in the docket, and quantifies, to the extent practical, estimated costs as well as the anticipated benefits, and impacts.

A summary of the Regulatory Evaluation is contained in this section. For a more detailed analysis, the reader is referred to the full Evaluation contained in the docket.

The final rule establishes a basis for the denial of an application for a pilot certificate and a basis for the revocation or suspension of a pilot certificate for pilots convicted of alcohol- or drug-related motor vehicle offenses or for pilots penalized as a result of state administrative action for cause. Under this final rule, a pilot must report to the FAA any conviction or administrative action that occurs after the effective date of the rule. Failure to report even one conviction or administrative action to the FAA is grounds for denial of an application for an airman certificate and grounds for suspension or revocation of a certificate issued under part 61. This reporting requirement is distinct from the existing requirement to report traffic and other convictions on an application for an airman medical certificate.

The FAA's denial of an application and the suspension or revocation of an existing certificate will be based on two or more alcohol- or drug-related motor vehicle convictions, two or more administrative actions by a state for cause, or at least one conviction and one administrative action occurring within a 3-year period.

This final rule amends § 61.15 of the Federal Aviation Regulations (FAR) and affects an estimated 752,000 individuals currently holding active medical certificate in conjunction with student, private, commercial, airline transport, glider-only, and lighter-than-air pilot certificates and ratings issued by the FAA. Promulgation of this final rule could result in the denial, revocation, or suspension of the privilege to operate an aircraft for an estimated 1,000 to 12,000 pilots annually. The costs of suspension or revocation of a certificate issued under part 61 will be the negative economic impact associated with the temporary or permanent loss of employment for pilots engaged in commercial aviation. The FAA does not consider this a cost of the rule; rather it considers these costs to be the result of alcohol or drug use in connection with the operation of a motor vehicle.

The FAA has calculated the present value cost of this rule to be $4,409,794, discounted over a 10-year period, in 1988 dollars. The vast bulk of these costs are internal FAA administrative costs and will not be borne by the individual pilots. The costs occurring in the first year are estimated to be $1,116,864, in the second year are estimated to be $670,765, and in each subsequent year are estimated to be $644,158.

The FAA has incorporated a consent provision in the FAA medical application form (Form 8500–8, the "Application for Airman Medical Certificate or the Airman Medical and Student Pilot Certificate") for use in

searching for alcohol- or drug-related convictions or administrative actions reported to the National Driver Register (NDR). This consent will allow the FAA to query the NDR about every pilot who applies for an airman medical certificate.

Based on the requirements of the final rule, airmen will have 60 days to send a letter to the Civil Aviation Security Division (AAC-700) with their name, airman certificate number, and information about any DWI or DUI conviction or state administrative action acquired after the effective date of the rule.

Depending on the certificate held or the operations conducted, each pilot must have a physical examination every 6 months, 1 year, or 2 years; at that time, the following screening/checking process will begin for that pilot. An average of 10,000 pilots per week undergo FAA physicals. Thus, the FAA facility in Oklahoma City processes the 10,000 applications for medical certification per week. A tape with the pilot data will be sent each week, through the appropriate agencies, to the NDR. The NDR will match this tape against its register, and will create a tape of any pilot data entries that agree. This information will then be returned to the FAA, and will be used to obtain the necessary state driving records. The resulting data on the estimated 200 pilots per week will be compiled for comparison with medical history data and with the disclosures required for § 61.15.

The FAA expects that this rule will reduce the number of aviation accidents caused by pilots who may be impaired by alcohol or drugs during aircraft operations. However, the FAA has been unable to directly quantify the expected benefits of the final rule. Some observations can be made, however, regarding potential benefits. During the period from 1978 to 1987, 6.0 percent of general aviation pilots killed in aviation accidents had a blood alcohol level of at least 0.04 percent. During this same 10-year period, 11,213 people died in general aviation accidents. If 6.0 percent of these people died in accidents where the pilot was under the influence or impaired by alcohol, over 670 people died in accidents where alcohol may have been a contributing cause.

Based on this analysis, and using $4.4 million as the present value 10 year cost of the rule, the chart below shows the cost of saving one life as a function of the effectiveness of the rule in preventing accidents.

Effectiveness of rule (percent)	Cost of rule per life saved (dollars)
1	$640,000
10	64,000
20	32,000
30	21,300
40	16,000
50	12,800
60	10,700
70	9,100
80	8,000
90	7,100
100	6,400

At this time, the FAA cannot accurately predict how effective the rule will be in preventing fatalities such as discussed above. Even if it proves to be only 1 percent effective, however, the cost per fatality prevented appears to be less than values currently ascribed to a statistical life. The FAA believes that the rule will be more effective than 1 percent and concludes that the potential benefits of the rule will exceed potential costs.

Four commenters raise economic issues based on the cost/benefit analysis in the Notice of Proposed Rulemaking (NPRM). A discussion of these comments is contained in the final Regulatory Evaluation contained in the docket and elsewhere in the preamble to the rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Federal agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The FAA's criterion for a "substantial number" are a number which is not less than 11 and which is more than one-third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, 9 or less aircraft. The FAA's criterion for a "significant impact" are at least $3,800 per year for an unscheduled carrier, $53,500 for a scheduled carrier having an airplane or airplanes with only 60 or fewer seats, and $95,800 per year for a scheduled carrier having an airplane with 61 or more seats.

The FAA has determined that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. The basis of this determination is the FAA's opinion that any adverse economic consequences associated with the loss of the privilege to operate an aircraft for aviation pilots convicted of alcohol- or drug-related motor vehicle offenses or penalized as a result of State administrative action for cause is the direct consequence of alcohol or drug use in connection with the operation of a motor vehicle and not as a result of the rule. Since there are minimal economic consequences due to the rule, the total costs that could be attributable to a significant number of small entities are below the threshold dollar limits.

Trade Impact Statement

This final rule will affect only those individuals who hold an FAA-issued airman certificate and, therefore, would have no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

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 regulation would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a major regulation under the criteria of Executive Order 12291. In addition, the FAA certifies that this regulation 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. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcoholism, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 67

Airmen, Aviation safety, Health, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 61 and part 67 of the Federal Aviation Regulations (14 CFR parts 61 and 67) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 61.15 by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 61.15 Offenses involving alcohol or drugs.

* * * * *

(c) For the purposes of paragraphs (d) and (e) of this section, a motor vehicle action means—

(1) A conviction after November 29, 1990, for the violation of any Federal or state statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle by a state after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle by a state for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except in the case of a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC–700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. The report must include—

(1) The person's name, address, date of birth, and airman certificate number;

(2) The type of violation that resulted in the conviction or the administrative action;

(3) The date of the conviction or administrative action;

(4) The state that holds the record of conviction or administrative action; and

(5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously-reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the motor vehicle action; or

(2) Suspension of revocation of any certificate or rating issued under this part.

PART 67—MEDICAL STANDARDS AND CERTIFICATION

3. The authority citation for part 67 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By adding new § 67.3 to read as follows:

§ 67.3 Access to the National Driver Register.

At the time of application for a certificate issued under this part, each person who applies for a medical certificate shall execute an express consent form authorizing the Administrator to request the chief driver licensing official of any state designated by the Administrator to transmit information contained in the National Driver Register about the person to the Administrator. The Administrator shall make information received from the National Driver Register, if any, available on request to the person for review and written comment.

Issued in Washington, DC, on July 26, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–17827 Filed 7–26–90; 4:37 pm]

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Part III

Environmental Protection Agency

TSCA Chemical Substance Inventory; Removal of 207 Incorrectly Reported Chemical Substances From the TSCA Inventory; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81015A; FRL-3771-1]

TSCA Chemical Substance Inventory; Removal of 207 Incorrectly Reported Chemical Substances from the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In an earlier notice published in the Federal Register of August 24, 1989, EPA announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 217 chemical substances or classes of chemical substances which were believed to have been incorrectly reported and listed. Twenty comments were received in response to the August 24, 1989 notice. EPA has determined that 10 of the chemical substances mentioned in the August 24, 1989 notice have been manufactured or imported for distribution in commerce prior to the date of the notice or require additional consideration and review by the Agency. The remaining 207 chemical substances were incorrectly reported and listed on the Inventory. Accordingly, the 207 chemical substances listed in this document are deleted from the TSCA Inventory as of August 1, 1990.

EFFECTIVE DATE: The 207 chemical substances listed in this document are deleted from the TSCA Inventory as of August 1, 1990.

ADDRESSES: A record of the nonconfidential versions of these comments is available for viewing and photocopying in the TCSA Public Docket Office, Northeast Mall, Rm. G004, 401 M St., SW., Washington, DC. Documents may be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announced in the Federal Register of August 24, 1989 (54 FR 35241), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 217 chemical substances which were believed to have been incorrectly reported and listed. Prior to the August 24, 1989 notice, persons who had originally reported the 217 chemical substances informed EPA that the chemical identities they reported to the Agency and included on the Inventory were incorrect. The correct identities for these 217 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 217 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with EPA policy (OTS Order 7730.7) stating that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent to remove these chemical substances from the Inventory in the Federal Register of August 24, 1989.

The August 24, 1989 Federal Register, solicited public comments on the proposed removal action. EPA was specifically interested in knowing whether any of the 217 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulation (40 CFR 710.2), by anyone between January 1, 1975 through August 24, 1989. EPA was also interested in knowing whether any person could show that any of the 217 chemicals substances could have been properly reported for the Inventory, and solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received 20 comments in response to the August 24, 1989 notice. Most of the comments requested that certain chemical substances not be removed from the Inventory, while several others requested that EPA provide replacement Chemical Abstract Service (CAS) Registry Numbers in the Federal Register if the decision was made to delete a chemical substance from the Inventory. EPA also received requests to keep zeolites on the Inventory as separate chemical substances, and not as mixtures as the Agency originally proposed to do.

II. Agency Response to Comments

The submitters of comments concerning 10 chemical substances provided satisfactory evidence to indicate that these substances were in commercial production prior to August 24, 1989. After reviewing these comments, the Agency has determined that these 10 chemical substances will remain on the Inventory, and thus, Premanufacture Notification (PMN's) will not be required for the manufacture or import of these substances.

In response to submitters' requests to have replacement CAS Registry Numbers listed in the Federal Register, the Agency has decided to consider this suggestion for future delisting notices. Consistent with TSCA Confidential Business Information (CBI) policies, the Agency will not release replacement numbers for corrected chemical substances claimed as CBI by the original submitter. In the interim, persons who wish to inquire about the replacement CAS Registry Numbers may write directly to the Agency to receive such information. Such requests may be sent to: Document Control Officer, Environmental Protection Agency, Office of Toxic Substances, (TS-790), Document Receipt Office, Rm. 105 East Tower, 401 M St., SW., Washington, DC 20460, Attention: Chemical Inventory Section.

III. Agency Decision to Delete Zeolites from the Inventory

Zeolites are complex chemical products consisting of silica (SiO_2) and alumina (Al_2O_3), in various proportions plus metallic oxides and certain cations. For purposes of TSCA, zeolites are statutory mixtures. However, a limited number of companies were not aware of the TSCA status of zeolites during the Initial Inventory reporting period. As a result, six zeolites were reported and inadvertently listed in the TSCA Initial Inventory. The removal of these zeolite listings from the Inventory is necessary to accurately reflect EPA's policy concerning zeolites. The Agency's response to the comments on this issue is available in the public docket, located in the TSCA Public Docket Office (see the Addresses unit of this Federal Register for location and hours of operation).

IV. Substances Not to be Removed

The CAS Registry Number and Index Names of the chemical substances that are to be retained in the TSCA Inventory as explained above are as follows:

CAS Registry No.	Name
26100-51-6	Propanoic acid, 2- hydroxy-, homopolymer
26375-31-5	2-Propenoic acid, 2- methyl-, polymer with ethene and ethenyl acetate
27306-78-1	Poly(oxy-1,2- ethanediyl),.alpha.- methoxy-.omega.- [3- [1,3,3,3- tetramethyl-1- [(trimethylsilyl)oxy]disiloxanyl][propoxy]-
55850-01-6	3H-Indolium, 1,3,3- trimethyl-2- [(methylphenylhydrazono)methyl]-, chloride
63833-78-3	3-Pyridinecarbonitrile, 5-[(2-cyano-4-nitrophenyl)azo]-6-[(2- hydroxyethyl)amino]- 4-methyl-2-[[3-(2- phenoxyethoxy)propyl]amino]-
66558-73-4	Ethanamine, N,N',N''- [(2,4,6,8,8- pentamethylcyclotetrasiloxane-2,4,6- triyl)tris(oxy)]tris[N-ethyl-
68440-71-1*	Siloxanes and Silicones, di-Me, Me 3- (oxiranylmethoxy)propyl
68551-08-6*	Alchohols, C_{9-11} - branched
68911-68-2*	Amines, C_{12-14} -tert- alkyl, compds. with 2(3H)- benzothiazolethione
68953-01-5*	Fatty acids, tall-oil, esters with ethoxylated sorbitol

* CAS Registry numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representatives.

V. Substances That Are Removed From the Inventory

Several commenters requested that the Agency not remove certain chemical substances from the TSCA Inventory. However, after EPA review of the information available regarding these chemical substances and the circumstances surrounding their inclusion in the August 24, 1989 notice, it was decided that these chemical substances should nevertheless be removed from the Inventory because (1) the chemical substance was the subject of an accepted Inventory correction request and /or (2) the evidence provided by the commenters was not sufficient or satisfactory in supporting claims that the chemical substances were manufactured or imported between January 1, 1975 and August 24, 1989.

Consequently, EPA concluded that these 207 chemical substances were not manufactured, imported, or processed for TSCA commercial purposes between January 1, 1975 and August 24, 1984, thus are not eligible for continued inclusion on the Inventory. Therefore, PMN requirements of section 5(a) of TSCA will apply to future manufacture or import of any of these 207 chemical substances. The 207 chemical substances to be removed from the Inventory are listed below in ascending CAS Registry Number sequence, and by their corresponding CAS Index Names:

Chemical Substances Removed from the TSCA Inventory

CAS Registry No.	Name
80-63-7	2-Propenoic acid, 2-chloro-, methyl ester
925-76-8	2-Propenamide, N-[2-(dimethylamino)ethyl]-
1471-18-7	1-Propene, 3,3'-[[2,2-bis[(2-propenyloxy) methyl]-1,3- propanediy]bis(oxy)]bis-
1611-83-2	2-Propenamide, 2-methyl-N- phenyl-
2039-85-2	Benzene, 1-chloro-3-ethenyl-
2556-36-7	Cyclohexane, 1,4-diisocyanato-
3121-60-6	Benezenesulfonic acid, 4-hydroxy-5-(2-hydroxy-4- methoxybenzoyl)-2-methoxy-, monosodium salt
3435-51-6	Benzonitrile, 4-ethenyl-
3539-43-3	1-Hexadecanol, dihydrogen phosphate
4270-70-6	Sulfonium, triphenyl-, chloride
5045-40-9	1H-Isoindol-1-one, 3,3'-[(2- methyl-1,3- phenylene)diimino]bis[4,5,6,7- tetrachloro-
5339-85-5	Benzeneethanol, 2-amino-
6370-14-5	Chromate(3-), bis[5-chloro-2- hydroxy-3-[(2-hydroxy-1- naphthalenyl)azo] benzenesulfonato(3-)]-, trisodium
6709-58-6	Benzenediazonium, 4-[(2,6- dichloro-4-nitrophenyl)azo]- 2,5-dimethoxy-
7195-45-1	1,2-Benzenedicarboxylic acid, bis(oxiranylmethyl)ester
9022-52-0	Benzene, chloroethenyl-, homopolymer
10054-29-2	1-Tetradecanol, dihydrogen phosphate
10127-28-3	C.I. Solvent Orange 6
13103-75-8	Benzenamine, N,N-dimethyl-4- (2-pyridinylazo)
13401-85-9	2-Propenoic acid, 2-chloro-, butyl ester
14049-79-7	DCobaltate(3-), hexakis(cyano-C)-, zinc (2:3),OC-6-11)-.
18924-98-6	Phosphoric acid, monobutyl ester, diammonium salt
20640-71-5	Benzoic acid, 2-[(4-amino- 9,10-dihydro-9,10-dioxo-3-sulfo-1-anthracenyl)amino]-4[[2- (sulfooxy)ethyl]sulfonyl]-
23069-48-9	Disulfide, cyclohexyl ethyl
25086-42-4	Benzenamine, 4-ethenyl-, homopolymer
25765-19-9	2-Propenenitrile, polymer with 2,5-furandione
28107-22-4	Benzoic acid, 2-hydroxy-, methyl ester, polymer with formaldehyde
28677-93-2	1-Propanol, methoxy-
32445-13-9	Benzenediazonium, 4-[(4- methoxyphenyl)amino]-
34323-54-1	2-Propenoic acid, ethyl ester, polymer with ethenyl acetate and 2,5-furandione
34591-13-4	1-Hexadecanol, dihydrogen phosphate, monoammonium salt
38491-08-6	Phosphoric acid, dibutyl ester, ammonium salt
38808-51-4	2-Propenoic acid, 2-methyl-, oxiranylmethyl ester, polymer with ethenylbenzene and 2-propenoic acid
41989-08-6	Phosphoric acid, monooctyl ester, monopotassium salt
42986-19-6	2-Naphthalenesulfonic acid, 6- amino-4-hydroxy-5-[[2-sulfo-4-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-
46300-01-0	Benzenediazonium, 4-cyano- 2,5-dimethoxy-
47300-91-4	Benzenediazonium, 2-methoxy- 5-methyl-4-[(4-methyl-2-nitrophenyl)azo]-
52204-35-0	2-Anthracenesulfonic acid, 1- amino-4-[[4-[[3-[(2-chloroethyl)sulfonyl]benzoyl] methylamino]-2- sulfophenyl]amino]-9,10-dihydro-9,10-dioxo-
52371-97-8	1-Naphthalenesulfonic acid, 6- amino-5-[[2-sulfo-4-[[2-(sulfooxy)ethyl] sulfonyl]phenyl]azo]-
53802-03-2	C.I. Solvent Red 109

CAS Registry No.	Name
56512-49-3	Benzenesulfonyl chloride, 4- [[4-(dimethylamino)phenyl]azo]-
61670-11-9	2,7-Naphthalenedisulfonic acid, 4-hydroxy-5-[(2-hydroxy-1-naphthalenyl)azo]-3-[(2-hydroxy-3- nitro-5-sulfophenyl)azo]-
61951-72-2	C.I. Leuco Sulphur Yellow 1
63082-99-5	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monosodium salt
63450-32-8	2(3H)-Furanone, 4- hexyldihydro-
64346-12-9	Phosphoric acid, monooctadecyl ester, compd. with 2,2'-iminobis[ethanol] (1:1)
64346-51-6	Phosphoric acid, monodecyl ester, compd. with 2,2'-iminobis[ethanol] (1:2)
64346-58-3	Phosphoric acid, monododecyl ester, compd. with morpholine (1:1)
64509-06-4	Tetradecen-1-ol, hydrogen phosphate
64509-07-5	Octadecadien-1-ol, dihydrogen phosphate
64601-16-7	Docosanoic acid, compd. with 1,3-propanediamine acetate eicosanoate (1:1)
64611-70-7	Chromate(2-), [2-[[(2- hydroxyethyl)imino] methyl]phenolato(2-)-N,O,O'][6-hydroxy-5-[(2- hydroxy-4-nitrophenyl)azo]-1-naphthalenesulfonato(3-)]-, disodium
65104-37-2	Phosphoric acid, monododecyl ester, compd. with morpholine (1:2)
65104-38-3	Phosphoric acid, monododecyl ester, compd. with 2,2'-iminobis[ethanol] (1:1)
65104-39-4	Phosphoric acid, monododecyl ester, compd. with 2,2'-iminobis[ethanol] (1:2)
65104-55-4	1-Tetradecanol, dihydrogen phosphate, diammonium salt
65104-56-5	1-Tetradecanol, dihydrogen phosphate, compd. with 2,2'-iminobis[ethanol] (1:1)
65104-57-6	1-Tetradecanol, dihydrogen phosphate, compd. with 2,2'-iminobis[ethanol] (1:2)
65104-58-7	1-Tetradecanol, dihydrogen phosphate, monoammonium salt
65104-59-8	1-Tetradecanol, dihydrogen phosphate, compd. with morpholine (1:1)
65104-60-1	1-Tetradecanol, dihydrogen phosphate, compd. with morpholine (1:2)
65104-94-1	Hexadecadien-1-ol, hydrogen phosphate
65104-95-2	Hexadecen-1-ol, hydrogen phosphate
65104-96-3	Octadecadien-1-ol, hydrogen phosphate
65121-80-4	Phosphoric acid, monodecyl ester, compd. with morpholine (1:2)
65121-81-5	Phosphoric acid, monodecyl ester, compd. with 2,2'-iminobis[ethanol] (1:1)
65121-90-6	Tetradecen-1-ol, dihydrogen phosphate
65122-24-9	1-Hexadecanol, dihydrogen phosphate, compd. with 2,2'-iminobis[ethanol] (1:1)
65122-25-0	1-Hexadecanol, dihydrogen phosphate, diammonium salt
65122-28-3	Hexadecadien-1-ol, dihydrogen phosphate
65138-75-2	Phosphoric acid, monododecyl ester, diammonium salt
65138-76-3	Phosphoric acid, monododecyl ester, monoammonium salt
65138-84-3	1-Hexadecanol, dihydrogen phosphate, compd. with 2,2'-iminobis[ethanol] (1:2)
65151-42-0	1,5-Naphthalenedisulfonic acid, 3,3'-[carbonylbis(imino-4,1-phenyleneazo)]bis-, tetralithium salt
65151-45-3	1-Hexadecanol, dihydrogen phosphate, compd. with morpholine (1:1)
65151-46-4	1-Hexadecanol, dihydrogen phosphate, compd. with morpholine (1:2)
65151-78-2	Phosphoric acid, monooctadecyl ester, compd. with 2,2'-iminobis[ethanol] (1:2)
65151-79-3	Phosphoric acid, monooctadecyl ester, compd. with morpholine (1:1)
65151-80-6	Phosphoric acid, monooctadecyl ester, compd. with morpholine (1:2)
65151-84-0	Phosphoric acid, monooctyl ester, compd. with 2,2'-iminobis[ethanol] (1:1)
65151-85-1	Phosphoric acid, monooctyl ester, compd. with morpholine (1:1)
65151-86-2	Phosphoric acid, monooctyl ester, compd. with morpholine (1:2)
65151-91-9	Hexadecen-1-ol, dihydrogen phosphate
65180-68-9	1H-Pyrazole-3-carboxylic acid,1-[4-[[4-[bis [2-[(2-chloroethyl)sulfonyl]ethyl]amino]-6-chloro- 1,3,5-triazin-2-yl]amino]-2-sulfophenyl]-4,5-dihydro-5-oxo-4-[(2- sulfophenyl)azo]-
65253-54-5	1H-Imidazolium, 1-ethenyl-1- methyl-, methyl sulfate, polymer with ethenylbenzene and 2- methylpropyl 2-propenoate
65629-44-9	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfopheny)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]- 3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]- , pentahydrogen
65718-42-5	Chromate(5-), bis[4-hydroxy- 6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5- sulfophenyl)azo]-2-naphtalenesulfonato(4-)]-
66071-02-1*	Fatty acids, dehydrated castor-oil, polymers with pentaerythritol, phthalic anhydride and trimethylolethane
67663-01-8	2(3H)-Furanone, 5- hexyldihydro-4-methyl-
67689-48-9	Cuprate(2-), [3-[[4,5-dihydro-3-methyl-5-oxo-1-[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]-1H-pyrazol-4-yl]azo]-4-hydroxybenzenesulfonato(4-)]-, dihydrogen
67746-21-6*	Fatty acids, tallow, polymers with formaldehyde, phthalic anahydride and trimethylolpropane
67762-89-4*	Siloxanes and Silicones, di- Me, Me 3-(oxiranylmethoxy)propyl, reaction products with N- methylglycine sodium salt
67846-54-2	2-Anthracenesulfonic acid, 1-amino-4-[[3-[[3,6-dichloro-4-pyridazinyl)carbonyl]amino]-2,4,6-trimethyl-5-sulfophenyl]amino]-9,10-dihydro-9,10-dioxo-
67873-88-5*	1,2-Benzenedicarboxylic acid, polymer with 1,4-butanediol, (Z)-2-butenedioic acid and 1,2- ethanediol, reaction products with 3-(triethoxysilyl)-1-propanamine
67892-59-5	Cuprate(2-), [4-hydroxy-3- [[2-hydroxy-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-1- naphthalenesulfonato(4-)]-, dihydrogen
67923-16-4*	Siloxanes and Silicones, di- Me, [(3-mercaptopropyl)silylidyne]tris-
67939-48-4	1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2-a]imidazol-1-yl)methyl]-, monohydrochloride
67953-72-4	Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[2,4,6-tris(2-methylpropyl)phenoxy]-, sodium salt
67969-70-4	9,12-Octadecadienoic acid (Z,Z)-, dimer, polymer with 2,2'-[1,4-butanediylbis (oxymethylene)]bis[oxirane] and hexahydro-1, 3-isobenzofurandione
68025-49-0	Poly[oxy(methyl-1,2- ethanediyl)], .alpha., .alpha.', .alpha.''-phosphinylidynetris [.omega.-hydroxy-, polymer with 1,1'-methylanebis[4-isocyanatobenzene]
68039-62-3	Chromate(3-), bis[(6-[(5- chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1- naphthalenesulfonato(3-)]-, trihydrogen
68039-63-4	Chromate(3-), [6-[(5-chloro-2-hydroxy-4-nitrophenyl)azo]-5-hydroxy-1-naphthalenesulfonato(3-)][3-hydroxy-4-[(2-hydroxy-1-naphthanlenyl)azo]-1-naphthalenesulfonato(3-)]-, trihydrogen
68071-46-5*	Urea, polymers with formaldehyde, phenol and sulfonated o-cresol, sodium salts
68083-43-2	Methanaminium, N-[4-[[4-(dimethylamino)phenyl][4-(methylamino)phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-N-methyl- tetracosa-.mu.-oxododecaoxo[.mu.$_{12}$ -[phosphato(3-)-0:0:0:0':0':0':0'':0'':0'': 0''':0''']]dodecamolybdate(3-) (3:1)
68083-73-8	1,3-Isobenzofurandione, polymer with 2,2-bis[(2-propenyloxy)methyl]-1-butanol, 1,2- ethanediol, ethenylbenzene, 2,5-furandione and 1,2-propanediol
68083-96-5	Propanoic acid, 3-hydroxy- 2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester, polymer with oxirane
68155-48-6	Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2- naphthalenesulfonato(4-)]-, pentahydrogen
68155-90-8	Ethanol, 2-chloro-, phosphate (3:1), polymer with phosphorus oxide
69201-73-0	Chromate(5-), bis[4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato (4-)]-, pentahydrogen

CAS Registry No.	Name
68201-74-1	Chromate(5-), bis[6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2- naphthalenesulfonato(4-)]-, pentahydrogen
68214-71-1	1H-Imidazo[1,2-a]imidazole-1-carboximidamide, 2,3,5,6-tetrahydro-N-[imino(2,3,5,6-tetrahydro-1H-imidazo[1,2-a]imidazol-1-yl)methyl]-, sulfate (1:1)
68227-48-5	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compd. with 2,2',2''-nitrilotris[ethanol]
68227-50-9	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, monopotassium salt
68227-90-7	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(butylamino)ethyl]-.omega.-hydroxy-, compd. with acetic acid (1:1)
68258-66-2	2-Naphthalenecarboxylic acid, 3-hydroxy-4-[[1-(sulfomethyl)-2-naphthalenyl]azo]-, disodium salt
68295-50-1	2,5-Furandione, polymer with 2-methylbutene, 1-pentene and 2-pentene
68324-22-1	2-Cyclohexene-1-octanoic acid, 5-carboxy-4-hexyl-, compd. with 2,2'-iminobis[ethanol] (1:1)
68399-94-0	2-Anthracenesulfonic acid, 1- amino-9,10-dihydro-4-[[4-[(2-hydroxyethyl)sulfonyl]phenyl]amino]- 9,10-dioxo-
68411-30-3*	Benzenesulfonic acid, C_{10-13} - alkyl derivs., sodium salts
68412-61-3*	Phosphoric acid, di-C_{8-18} - alkyl esters, compds. with morpholine
68412-62-4*	Phosphoric acid, di-C_{8-18} - alkyl esters, ammonium salts
68427-33-8	1H,3H-Naphtho[1,8-cd]pyran-6- sulfonic acid, 1,3-dioxo-, potassium salt (2:1)
68427-34-9	1,8-Napthalenedicarboxylic acid, 4-sulfo-, potassium sodium salt (2:1:4)
68440-72-2*	Siloxanes and Silicones, di- Me, Me 3-(oxiranylmethoxy)propyl, reaction products with 2- (methylamino)ethanesulfonic acid
68441-40-7*	Benzenediazonium, 4-[(4- sulfophenyl)azo]-, chloride, reaction products with formaldehyde- salicylic acid polymer
68459-88-1	Oxirane, 2,3-dimethyl-, polymer with ethyloxirane and methyloxirane
68512-38-9*	Heparin, reaction products with N,N-didodecyl-N-methyl-1-dodecanaminium chloride
68513-70-2*	Castor oil, polymer with 2,4- TDI and trimethylolpropane
68515-41-3*	1,2-Benzenedicarboxylic acid, di-C_{7-9} -branched and linear alkyl esters
68515-42-4*	1,2-Benzenedicarboxylic acid, di-C_{7-11} -branched and linear alkyl esters
68517-01-1	Chromium, tris(5-hexadecyl-2- hydroxybenzoato-O^1,O^2)-
68526-68-1*	Amines, di-C_{8-20} -alkylmethyl
68540-40-9	Benzoic acid, 5-hexadecyl-2- hydroxy-, calcium salt (2:1)
68608-42-4*	Zeolites, manganese-contg.
68610-57-1*	Phenol, 4,4'-(1- methylethylidene)bis-, polymer with (chloromethyl)oxirane, reaction products with phenol and 2,4,4-trimethyl-1,6-hexanediamine
68610-81-1*	Benzenediazonium, 4-[(2- methoxy-5-sulfophenyl)azo]-2-methyl-5-[(2-nitro-4-sulfophenyl)amino]- , chloride, reaction products with formaldehyde-salicylic acid polymer
68647-92-7*	Fatty acids, C_{16-18} , polymers with glycerol and phthalic anhydride
68647-93-8*	Fatty acids, C_{16-18} -unsatd., polymers with benzoic acid, pentaerythritol and phthalic anhydride
68649-64-9*	2-Propenoic acid, polymer with 1,3-butadiene and 2-propenenitrile, reaction products with bisphenol A-epichlorohydrin polymer, 3-carboxy-1-cyano-1-methylpropyl-terminated polybutadiene and 4,4'-sulfonylbis[benzenamine]
68784-56-5*	Benzene, mono-C_{4-9} -alkyl derivs.
68815-25-8*	Sulfuric acid, mono-C_{12-18} - alkyl esters, compds. with triethanolamine
68908-59-8*	Phosphoric acid, di-C_{8-18} - alkyl esters, compds. with diethanolamine
68912-09-4	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68912-10-7	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]- 2-naphthalenesulfonato(4-)]-, pentahydrogen
68912-11-8	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][4-hydroxy-6-[(2-hydroxy-5-methylphenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentahydrogen
68918-02-5*	Zeolites, calcium-iron- magnesium-vanadium-contg.
68922-28-1	Chromate(5-), [6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)][6-(acetylamino)-4-hydroxy-3-[(2-hydroxy-5-nitro-3-sulfophenyl)azo]-2-naphthalenesulfonato (4-)]-, pentahydrogen
68953-32-2*	Fatty acids, tall-oil, mixed esters with myristyl alcohol and pentaerythritol
68953-48-0*	Fatty acids, tall-oil, lauryl esters, mixed with menhaden oil, oxidized
68954-64-3*	2-Oxepanone, homopolymer, carboxy-terminated
68954-77-8*	Phosphoric acid, di-C_{8-18} - alkyl esters
68989-20-8*	Zeolites, CaA
68989-21-9*	Zeolites, KA
68989-22-0*	Zeolites, NaA
68989-23-1*	Zeolites, NaX
69178-36-5	3,6,9,12,15,18- Hexaoxapentatriacontanoic acid, 34-methyl-
70025-18-2*	Ethanaminium, 2-hydroxy-N,N- bis(2-hydroxyethyl)-N-methyl-, monoesters with tall-oil fatty acids, Me sulfates (salts)
70210-14-9	2-Naphthalenesulfonic acid, 6- amino-5-[[4-chloro-2-(2-chlorophenoxy)phenyl]azo]-4-hydroxy-, monosodium salt
70693-26-4*	Urea, reaction products with formaldehyde, glyoxal, melamine and methanol
70788-60-2	Ethanaminium, N,N,N-trimethyl- 2-[(1-oxo-2-propenyl)oxy]-, polymer with N-(1,1-dimethyl-3-oxobutyl)- 2-propenamide and methyl 2-methyl-2-propenoate
70815-11-1	9-Octadecenamide, N-(2- hydroxyethyl)-N-[2-[[2-[(2-hydroxyethyl)amino]ethyl]amino] ethyl]- ,(Z)-
70815-19-9	Cobaltate(1-), [2,4-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][1-(2-hydroxyphenyl)azo]-2-naphthalenolato(2-)]-, hydrogen, compd. with 1-tridecanamine (1:1)
71002-38-5	Ethanaminium, N,N,N-triethyl- 2-[(1-oxo-2-propenyl)oxy]-, ethyl sulfate, polymer with 2-propenamide
71155-97-0	Phosphoric acid, monodecyl ester, compd. with morpholine (1:1)
71173-57-4	3-Oxazolidinepropanesulfonic acid, 5-[2-(3-ethyl-2(3H)-benzoxazolylidene)-1-methylethylidene]-4- oxo-2-thioxo-
71243-81-7*	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2-ethanediamine and aziridine, reaction products with epichlorohydrin and polyethylene glycol
71294-50-3	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2-ethanediamine, (chloromethyl) oxirane, 2,2-dimethyl-1,3-propanediol, 2-(methylamino)ethanol and 4,4'-(1-methylethylidene)bis[phenol], 2-hydroxypropanoate (salt)
71477-83-3	Spiro[5H-[1]benzopyrano[2,3- d]pyrimidine-5,1'(3'H)-isobenzofuran]-7,8-diamine, N^7,N^7-dibutyl- N^8,N^8-diethyl-4-methyl-
71566-78-4	Benzenesulfonic acid, dodecyl ester, compd. with 4-(phenylazo)-1,3-benzenediamine (1:1)
71889-16-2	1-Propanesulfonic acid, 2- methyl-2-[(1-oxo-2-propenyl)amino]-, polymer with N-ethenyl-N- methylacetamide and 2-propenamide
72088-98-3	Hexanedioic acid, polymer with N-(2-aminoethyl)-1,2-ethanediamine, aziridine and (chloromethyl)oxirane
72089-20-4	2,7-Naphthalenedisulfonic acid, 4-amino-6-[[4-[[[4-[(2,4-diaminophenyl)azo]phenyl] amino]sulfonyl]phenyl]azo]-5-hydroxy-3-[(4-nitrophenyl)azo]-
72175-36-1	9,10-Anthracenedione, 2-[2- (2-methoxyethoxy)ethoxy]-
72245-24-0*	Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with diazotized 5-amino- 8-[[4-[(4-nitro-2-sulfophenyl)amino] phenyl]azo]-2-naphthalenesulfonic acid disodium salt
72245-25-1*	Cobalt, 4-amino-5-hydroxy-6-[(2-hydroxy-5-nitrophenyl)azo]-1,7-naphthalenedisulfonate 2-[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-3-oxo-N-phenylbutanamide sodium complexes
72251-76-4*	2,7-Naphthalenedisulfonic acid, 4-[[2,4-dihydroxy(hydroxymethyl)phenyl]azo]-5-hydroxy-, coupled with diazotized 2-[(4-aminophenyl)amino]-5-nitrobenzenesulfonic acid monosodium salt
72269-57-9	1H-Thioxantheno[2,1,9- def]isoquinoline-1,3(2H)-dione, 2-(1-oxooctadecyl)-

CAS Registry No.	Name
72269-58-0	1-Naphthalenesulfonic acid, 4- hydroxy-3-[[4-[[[3-[[2-(sulfooxy)ethyl]sulfonyl]phenyl] amino]carbonyl]phenyl]azo]-
72403-26-0*	Benzoic acid, 2-hydroxy-, reaction products with formaldehyde, coupled with 2-[(4- aminophenyl)amino]-5-nitrobenzenesulfonic acid monosodium salt
72987-40-7	2,7-Naphthalenedisulfonic acid, 4-hydroxy-3-[[1-sulfo-6-[[2-(sulfooxy)ethyl]sulfonyl]-2- naphthalenyl]azo]-
73049-37-3*	Amides, C_{18-19} and C_{19} -unsatd., N,N'-(methylendi-1,4-phenylene)bis-
73157-49-0	1H-Pyrazole-3-carboxylic acid, 1-[3-[(4-amino-9,10-dihydro-9,10-dioxo-3-sulfo-1-anthracenyl)amino]- 5-sulfophenyl]-4,5-dihydro-5-oxo-4-[[4-[[2-(sulfoxy)ethyl]sulfonyl]phenyl]azo]-, 3-methyl ester
73297-17-3	Cobaltate(1-), [4-hydroxy-3- [(2-hydroxy-1-naphthalenyl)azo]benzenesulfonamidato(2-)] [8-[(2-hydroxyphenyl)azo]-2-naphthalenolato(2-)]-, hydrogen, compd. with 3- [(2-ethylhexyl)oxy]-1-propanamine (1:1)
73297-20-8	Xanthylium, 3-(diethylamino)- 9-[2-(ethoxycarbonyl)phenyl]-6-(ethylamino)-, [2,4-dihydro-4-[(2- hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4- yl)azo]benzoato(2-)]chromate(1-)
73378-64-0*	Copper, [29H,31H- phthalocyaninato(2-)-N^{29},N^{30},N^{31},N^{32}]-, chlorosulfonyl derivs., reaction products with 9-methyl-1-decanamine
73378-65-1*	Copper, [29H,31H- phthalocyaninetetrasulfonyl tetrachloridato(2-)-N^{29},N^{30},N^{31},N^{32}]-, reaction products with 4-methyl-1-pentanamine
73507-73-0	Cobaltate(3-), bis[2-hydroxy- 5-nitro-3-[[2-oxo-1-[(phenylamino)carbonyl]propyl]azo] benzenesulfonato(3-)]-, sodium dihydrogen
74411-37-3	Chromate(3-), bis[3-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]-2-hydroxy-5-nitrobenzenesulfonato(3-)]-trihydrogen, compd. with 3-[(2- ethylhexyl)oxy]-1-propanamine, (1:1)
74411-39-5	Chromate(1-), [2,4-dihydro-4- [(2-hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol-3-onato(2-)][2-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4- yl)azo]benzoato(2-)]-, hydrogen, compd. with 3-[(2-ethylhexyl)oxy]-1- propanamine (1:1)
75113-51-8	Ethanol, 2,2'-[[3-methyl-4- [[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]phenydrogen sulfate) (ester)
75150-07-1	Cuprate(4-), [3-[[8-[[4-[bis[2-[(2-chloroethyl)sulfonyl]ethyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]-1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-4-hydroxy-1,5-naphthalenedisulfonato(6-)]-, tetrahydrogen
75701-43-8	1,3-Benzenedicarboxylic acid, polymer with 1,4-butanediol, dimethyl 1,4-benzenedicarboxylate, 2,2- dimethyl-1,3-propanediol, 1,2-ethanediol and nonanedioic acid
78280-22-5	2-Anthracenesulfonic acid, 1- amino-9,10-dihydro-9,10-dioxo-4-[[4-[[2- (sulfoxy)ethyl]sulfonyl]phenyl]amino]-, potassium sodium salt
78592-92-4	Chromate(1-), bis[4-[[4-(ethylsulfonyl)-2-hydroxyphenyl]azo]-2,4-dihydro-5-methyl-2-phenyl- 3H-pyrazol-3-onato(2-)]-, hydrogen compd. with 1,6-hexanediamine (1:1)
81457-66-1*	Amines, C12-18 -alkyl, bis[2,4- dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-5-methyl-2-phenyl-3H-pyrazol- 3-onato(2-)]chromate(1-) (1:1)
83899-28-9*	Phosphoric acid, C_{6-18} -alkyl esters, compds. with 2-ethyl-1-hexanamine
85631-50-1*	Diphosphoric acid, C_{4-20} -alkyl esters, potassium salts
90247-37-3*	Diphosphoric acid, C_{4-20} - alkyl esters
90247-38-4*	Diphosphoric acid, C_{4-20} - alkyl esters, ammonium salts
90247-39-5*	Diphosphoric acid, C_{4-20} - alkyl esters, compds. with diethanolamine
90247-40-8*	Diphosphoric acid, C_{4-20} - alkyl esters, compds. with morpholine
90247-41-9*	Diphosphoric acid, mixed C_{14-18} -alkadienyl and C_{14-18} -alkenyl esters
101377-53-1*	Copper, [29H,31H- phthalocyaninato(2-)-N_{29},N_{30},N_{31},N_{32}]-, sulfo[[4-[[2- (sulfooxy)ethyl]sulfonyl]phenyl] amino]sulfonyl derivs., potassium sodium salts
106906-32-5	Xanthylium, 9-(2-carboxyphenyl)-3,6-bis(diethylamino)-,salt with dodecylbenzenesulfonic acid (1:1)
112764-80-4*	Amines C_{10-14} -alkyl, bis[3- hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo-7-nitro-1-naphthalenesulfonato(3-)]chromate(3-) (3:1)
112764-81-5*	Amines C_{10-14}-alkyl, [3-hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[2-hydroxy-4-nitorphenyl)azo]-2- naphthalenolato (2-)]chromate(2-) (2:1)
112764-82-6*	Amines C_{10-14}-alkyl, [3-hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo]-7-nitro-1-naphthalenesulfonato(3-)][1-[(2-hydroxy-5-nitrophenyl)azo]-2- naphthalenolato(2-)] chromate (2-) (2:1)

* CAS Registry numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representatives.

Accordingly, the 207 chemical substances listed above are deleted from the TSCA Inventory as of August 1, 1990.

Dated: July 17, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 90-17896 Filed 7-31-90; 8:45 am]

BILLING CODE 6560-50-F

federal register

Wednesday
August 1, 1990

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1991

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133C, 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1991

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. NIDRR intends to publish separate application packages for the programs funded under P.L. 100-407, the Technology-Related Assistance for Individuals with Disabilities Act of 1988 and for other programs which NIDRR will announce funding priorities.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Innovation Grants Program (CFDA No. 84.133C) 34 CFR Parts 350 and 358.

Rehabilitation Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Research Training Grants (CFDA No. 84.133P) 34 CFR Parts 350 and 360.

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER CERTAIN PROGRAMS FOR FISCAL YEAR 1991

CFDA No.	Program title	Deadline for transmittal of applications	Estimated available funds	Estimated No. of awards	Estimated range of awards	Estimated average award	Project period (months)
84.133G	Field-Initiated Research	Oct. 15, 1990	2,500,000	20	100,000-150,000	125,000	36
84.133P	Research Training Grants	Sept. 14, 1990	525,000	3	150,000-200,000	175,000	36
84.133F	Fellowships	Dec. 14, 1990	400,000	10	33,000-43,000	38,000	12
84.133C	Innovation Grants	Apr. 12, 1991	750,000	15	50,000	50,000	12

Title of Program: Innovation Grants.

Purpose: This program is designed to provide financial support to projects that: (a) test new concepts and innovative ideas; (b) demonstrate research results of high potential benefits; (c) purchase and evaluate prototype aids and devices; (d) develop unique rehabilitation training curricula; and (e) respond to special initiatives of the Secretary, including projects to conduct feasibility, planning, and evaluation studies and conferences, and other activities to disseminate specific research findings.

Selection Criteria: The Secretary uses the following selection criteria, as prescribed by 34 CFR 358.31, in Section 358.32 to evaluate applications under this program.

(a) *Importance of the project (50 points):* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purposes of this part.

(b) *Project design or methodology (25 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation (25 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

Eligible Applicants: Public and private organizations, including State agencies, institutions of higher education, and Indian tribes and tribal organizations, are eligible to apply for awards in this program.

Program Authority: 29 U.S.C. 762(b)(13).

Program Title: Rehabilitation Research Fellowships.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The reseach hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

Program Title: Field-Initiated Research.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Selection Criteria: The Secretary, in accordance with 34 CFR 357.32, uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop

or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypothesis.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the propose activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) the proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including State agencies, institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Program Title: Research Training Grants.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of

advanced clinical rehabilitation research.

(d)*Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible applicants: Institutions of higher education are eligible to receive awards under this progam.

Program Authority: 29 U.S.C. 761(a)(k).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80–0013).

Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009, Rev. 12/88) and instructions. (NOTE: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired-persons may call (202) 732–5316 for TDD services.

Authority: 29 U.S.C. 760–762.

Dated: July 26, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitation Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the Federal Register. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms and Certifications included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition NIDRR or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applications that are for training activities, including all applications in the Research Training grants program, should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR). Applicants in the FIR and Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs may be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, only *individuals* are eligible to apply for Fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

Innovation Grants (84.133C)
Research Fellowships (84.133F)
Field-Initiated Research (84.133G)
Research Training Grants (84.133P)

Public reporting burden for these collections of information is estimated to average 20 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 information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503. (Information collection approved under OMB control number 1820–0027. Expiration date: September 30, 1990.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR COMPLETION OF PART IV

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

PROJECT NARRATIVE FOR NEW APPLICATIONS

The successful narrative should include the basic information described below and, excluding resumes of key personnel, should be limited to:

* 40 pages for application under the Field-Initiated Research Program
* 20 pages for application under the Innovation Grants program
* 12 pages, which is the regulatory limit, for applications under the Fellowship Program

Should the proposed project be funded, the information provided in the "project narrative" will form the basis for evaluating progress for continuation funding.

The narrative for new applications may be organized under the major headings in the regulations governing the specific programs. The applicant must respond to the selection criteria of each regulation part listed below.

Regulations governing the Fellowship Program are included in 34 CFR 356.

Regulations governing Field-Initiated Projects are included in 34 CFR 357.

Regulations governing Innovation Projects are included in 34 CFR 358.

Regulations governing the Research Training and Career Development Program are included in 34 CFR 360.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) NCA

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OM
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 90-17925 Filed 7-31-90; 8:45 am]
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federal register

Wednesday
August 1, 1990

Part V

Department of Education

Notice Inviting Applications for New Awards under the Research Education of the Handicapped Program for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards under the Research in Education of the Handicapped Program for Fiscal Year 1991

CFDA No.: 84.023.

Purpose: To assist research and related activities, and to conduct research, surveys, or demonstrations, relating to the education of, and early intervention services for infants, toddlers, children and youth with handicaps.

Applications Available: 84.023C/8-15-90—84.023B/11-09-90.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85; and (b) the regulations for this program in 34 CFR part 324; and (c) the funding priorities described below.

General: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference under the Research in Education of the Handicapped program for Fiscal Year 1991 to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities. The Secretary has selected these priorities from the list of authorized projects set forth in 34 CFR 324.10. All applications submitted will be evaluated using the selection criteria at § 324.31 for research projects.

Priority 1: Field-Initiated Research Projects (CFDA 84.023C)

This priority provides support for a broad range of field-initiated research projects focusing on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purposes of the program as stated in 34 CFR 324.1. This priority allows projects to address problems identified by researchers/investigators in the field.

Priority 2: Student-Initiated Research (CFDA 84.023B)

This priority provides support for a broad range of student-initiated research projects focusing on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purposes of the program as stated in 34 CFR 324.1.

The Secretary particularly encourages applications for short-term projects (up to 18 months) that will develop research skills in postsecondary students. The Secretary further encourages projects that, while carried out by the student, include a principal investigator who serves as a mentor to the student/researcher. However, in accordance with 34 CFR 75.105(c)(1), applications that meet the criteria discussed in this paragraph will not be given a competitive or absolute preference over other applications.

RESEARCH PRIORITIES FOR FISCAL YEAR 1991

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated range of awards	Estimate size of awards	Estimated No. of awards	Project period in months
Field-Initiated Research Projects (CFDA No. 84.023C).	October 19, 1990	$2,000,000	$100,000–$157,000	$143,000 per year	14	Up to 60.
Student-Initiated Research Projects (CFDA No. 84.023B).	January 25, 1991	$203,000	$7,500–$15,000	$12,500 for entire project period.	16	Up to 18.

Contact Person: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3524-M/S 2640), Washington, DC 20202. Telephone: (202) 732-1099.

Authority: 20 U.S.C. 1441-1444.

Dated: July 25, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitation Services.

[FR Doc. 90-17924 Filed 7-31-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
August 1, 1990

Part VI

Environmental Protection Agency

40 CFR Part 372

Zinc Sulfide; Toxic Chemical Release Reporting; Community Right-to-Know; Denial of Petition

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400049; FRL-3766-4]

Zinc Sulfide; Toxic Chemical Release Reporting; Community Right-to-Know; Denial of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delete zinc sulfide from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The decision is based on evidence that zinc ion can become available from zinc sulfide through several mechanisms and that zinc ion can reasonably be anticipated to be toxic to aquatic organisms. In addition, zinc ion can reasonably be anticipated to cause adverse developmental effects in humans.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202. In Washington, DC and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The denial is issued under section 313(d) and (e)(1) of EPCRA (Pub. L. 99-499). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On January 29, 1990, EPA received a petition from Andrews and Kurth, on behalf of Ore and Chemical Corporation, to delete zinc sulfide from the EPCRA section 313 list of toxic chemicals. Zinc sulfide is reportable under the category "zinc compounds". The petition is based on the contention that zinc sulfide does not exhibit the toxicity that zinc and other zinc compounds exhibit, and thus does not meet the EPCRA section 313 criteria for listing. The statutory deadline for EPA's response is July 28, 1990.

III. EPA's Review of Zinc Sulfide

A. Chemistry Profile

Pure zinc sulfide (ZnS) is a white to straw colored crystalline solid which occurs in nature in two crystalline forms. The most common form has a cubic crystal structure with a melting point of 1850 °C at 150 atm. Generally, zinc sulfide is produced by the reaction of zinc sulfate with sodium sulfide. Zinc sulfide is also produced as a by-product of ammonia manufacture.

The reported water solubilities of zinc sulfide range from 2×10^{-7} g/L to 6.9×10^{-3} g/L. These variations are probably due, at least in part, to differences in the history of the samples used. The solubility of zinc sulfide at pH 1.0 is estimated to be approximately 7×10^{-2} g/L. Zinc sulfide is insoluble in organic solvents and organic acids, but is soluble in dilute mineral acids, especially nitric acid.

Zinc sulfide is a relatively inert compound with most of its chemical reactions taking place at elevated temperatures and/or pressures. While hydrolysis and photolysis reactions do not appear to proceed at detectable rates under ambient conditions, it is reported in several references that zinc sulfide is oxidized slowly to zinc sulfate in moist air. In addition, experimental data support both thermal and photo-oxidation of zinc sulfide to zinc sulfate in water. It was found that the half-life in the dark is approximately 20 days (0.5 percent of the sulfide was converted to the sulfate in 4.5 hrs) and in light, 2 days (4.5 percent converted in 4.5 hrs). Also, it has been reported that ozone readily reacts with zinc sulfide to produce zinc sulfate. The conversion of zinc sulfide to zinc sulfate is of importance because of the high solubility of the sulfate in water (approximately 419 g/L at 0 °C for $ZnSO_4$ and 960 g/L at 20 °C for $ZnSO_4 \cdot 7H_2O$) This high water solubility would make the zinc ion available.

B. Environmental Fate

Under many environmental conditions, zinc sulfide is converted to zinc sulfate which is highly soluble in water. The mechanisms that contribute most to the overall fate process include microbial degradation in water, photo- and thermal oxidation in water, and microbial degradation in sediments.

1. *Water.* Zinc sulfide's fate in aquatic ecosystems is complex. The compound may enter these ecosystems through discharges from manufacture, use, and disposal activities, and from deposition of air emissions. At neutral or alkaline pH values zinc sulfide is relatively insoluble and would, on balance, precipitate in aquatic sediments. There may be some limited degree of dissociation of the compound into both zinc and sulfide ions in the water column. Zinc sulfide may be converted to zinc sulfate in the water column microbially if conditions exist to permit the processes to occur. In aerobic waters, zinc sulfide will be abiotically oxidized to zinc sulfate, which will then dissociate into both zinc and sulfate ions.

When zinc sulfide is present in the aquatic environment, it precipitates to the sediment fraction in both aerobic and anaerobic waters. No known equilibrium forms, so any zinc sulfide remaining after oxidation to zinc sulfate will tend to partition to the sediments rather than remain in the water column.

Microbes degrade zinc sulfide in sediments with subsequent release of zinc ions. Nearly all assimilation of sulfur by organisms occurs in the sulfate

form. Under aerobic conditions in the water column and sediments, microbes such as *Beggiatoa* and *Thiobacillus* can oxidize the sulfide to sulfate.

Under anaerobic conditions, bacteria such as *Desulfovibrio* and *Desulfotomaculum* are involved in the reduction processes. Under reducing conditions, the sulfide will react to form hydrogen sulfide, ferric sulfide, or sulfur. The reduction processes make available sulfide ions that can react with zinc ions present in the water column or sediments. While the extent and direction of the oxidation/reduction process depends on the redox potential, pH, and the amount of oxygen present in the sediments, it can be reasonably anticipated that zinc ion would still be available given the presence of zinc sulfide in the water column or sediments.

In sediments, zinc sulfide is relatively stable in the absence of sufficient oxygen to oxidize the sulfide to sulfate, or turbulence (such as occurs during flooding, dredging, or spring overturn of lakes) which may resuspend the zinc sulfide into the oxidizing zones. It may be reasonably anticipated that the oxidation of the resuspended zinc sulfide can significantly add to the zinc ion concentration in the water column. It has been reported that as much as 70 to 90 percent of zinc ion in sediments of aquatic environments is associated with diagenetic sulfide minerals. Concentrations greater than 1,000 ppm of zinc ion have been reported in the benthic sediments of major shipping channels and harbors in the bays and rivers of the U.S. The need for frequent dredging of these channels may play a significant role in the availability of zinc ion as a result of resuspension and oxidation of zinc sulfide.

In near anaerobic environments zinc sulfide rapidly partitions to the sediment. If oxidizing (high oxygen content) conditions are created, desorption of some of the precipitated metal ion may occur. This would make available to aquatic organisms the dissociated zinc ions and sulfate ions. The amount of zinc ion present in the water column would then be controlled by the formation of an equilibrium with the aquatic environment.

In water and wastewater treatment, zinc sulfide is removed with the solids. Though no overall removal rate for zinc sulfide could be found in the literature, other zinc species have been reported to be removed at an efficiency of 50 to 75 percent. The remaining zinc complexes are released to surface waters or the drinking water distribution system. Because of the insolubility of zinc sulfide in water and the historical use of sulfide as a chelating agent for heavy metals, the overall removal of zinc sulfide in water and wastewater treatment may exceed the range reported for the zinc complexes.

2. *Land.* Zinc sulfide may be oxidized in soils to form zinc and sulfate ions. This process may occur chemically, but most frequently it is a biochemical process. It is carried out by a number of autotrophic bacteria of the genus *Thiobacillus*. This process occurs over a wide range of soil conditions and is more rapid than chemical oxidation.

In aerobic soils the sulfide ion oxidizes chemically or biochemically to the sulfate species, which are highly mobile and bioavailable. In anaerobic soils, the reverse occurs through a number of bacteria. The sulfide ion which forms will react immediately with any available metal cation. Inorganic sulfur is held as sulfate in aerobic soils. When introduced, sulfide species will readily oxidize (usually within several days) to form sulfate in well aerated or dry soils. Zinc ion which is released as a result of the oxidation of the sulfide to sulfate may then sorb to soil particles, forming complexes, and remain available for biotic uptake depending on soil conditions including pH.

Migration of zinc sulfide in landfills is considered negligible due to its low solubility in water. Conversion of zinc sulfide to zinc sulfate increases its solubility significantly. However, because zinc sulfate tends to freely dissociate, the zinc ions will form other complexes, reducing its ability to migrate to groundwater.

3. *Air.* Zinc sulfide may be present in the atmosphere as a dust in quantities much lower than other forms of zinc complexes (zinc oxide or zinc sorbed to submicron particles). Deposition of zinc sulfide generally occurs within a short period of time in the vicinity of the emission source by fallout or washout.

It has been reported that zinc sulfide will slowly oxidize in moist air to form the sulfate species. It has also been reported that ozone readily reacts with zinc sulfide to form zinc sulfate. However, due to the rates of these reactions (2 to 20 days for oxidation under laboratory conditions) and the conditions under which they occur, they are expected to be of little importance as an overall fate process in the atmosphere.

C. Toxicity Evaluation

EPA's health and environmental review addressed toxicity for zinc sulfide as well as zinc ion. All readily available data including those provided in the petition, studies retrieved from literature searches, and documents prepared by EPA were considered in the health and environmental assessment.

There is sufficient evidence to reasonably anticipate that zinc ion may cause environmental toxicity as well as developmental toxicity in humans. Zinc ion can become available in the environment from zinc sulfide through several mechanisms, including thermal and photo-oxidation and microbial degradation. Based on the availability of zinc ion, zinc sulfide may reasonably be anticipated to cause adverse environmental effects. Based on the expected bioavailability of zinc ion from zinc sulfide in exposed humans, zinc sulfide may reasonably be anticipated to cause developmental effects in humans. It should be noted that the predominant concern of most literature available on the toxicology of zinc ion deals with the effects of zinc ion deficit rather than excess. Zinc is classified as an essential nutrient. The National Academy of Science recommends a dietary allowance of 0.21 mg elemental zinc/kg/day. Zinc is also an essential nutrient to aquatic and terrestrial organisms; it is involved in the synthesis of nucleic acids and enzymes.

1. *Environmental effects.* By whatever route available, zinc ion exhibits high toxicity to aquatic organisms. This conclusion is based on the great amount of information available for zinc ion which includes acute toxicity values lower than 100 ppb, and bioconcentration values higher than 1,000. Numerous studies indicate that zinc ion also has a high chronic toxicity.

a. *Aquatic toxicity.* There is sufficient evidence to reasonably anticipate that zinc ion may cause aquatic toxicity. The available evidence indicates that zinc ion is highly toxic to aquatic organisms and has a high potential to bioaccumulate. The toxicity of sulfides is derived mainly from formation of hydrogen sulfide rather than from the sulfide ion itself. Hydrogen sulfide is a foul-smelling, anaerobic degradation product of sulfides or sulfates. Concentrations greater than 2 ppb may be hazardous to aquatic organisms. Because the sulfide ion itself does not pose a threat to the aquatic environment, it was not considered further for aquatic toxicity.

In natural waters, zinc ion occurs in both suspended and dissolved forms. It can exist as a simple hydrated ion, as various inorganic salts, in stable organic complexes, or adsorbed into, or occluded in, inorganic or organic colloids. The fractions of zinc ion in each of these forms is dependent upon the pH, the total amount of zinc available in water, and the presence of

other metal ions or organic and inorganic compounds. Zinc ion remaining in sediments may be toxic to, or bioaccumulated by, sediment organisms.

The levels of acute toxicity for various fish and invertebrates ranges from 40 ppb to 58,100 ppb. This wide range is partially due to the hardness of the water used in the studies, because generally as water hardness increases the acute toxicity of zinc ion decreases.

Zinc ion exhibits high chronic toxicity in the aquatic environment. The maximum acceptable toxicant concentration (MATC) in soft water was 36 to 71 ppb for rainbow trout fry (hatching from unexposed eggs). The MATC for fathead minnows, based on spawning and hatching success and fry survival, in hard water (200 mg/L as $CaCO_3$) was 30 to 180 ppb. The MATC for this fish in soft water was 78 to 145 ppb.

In invertebrates (*Daphnia magna*), reproduction was impaired by 10 percent after a 21-day exposure to 70 ppb zinc ion. Cell growth was inhibited in algae after exposure for 7 days at a concentration of 30 ppb; the EC_{95} for growth after exposure for 14 days was 68 ppb.

Numerous acute tests have been conducted on estuarine and marine invertebrates and fish. EC_{90} values of 310 and 166 ppb were calculated by testing oysters and hard shell crabs, respectively. Estuarine and marine fish were less sensitive to zinc ion than invertebrates. The LC_{50} values ranged from 2,730 ppb from larvae of Atlantic silversides to 83,000 ppb for larvae of mummichog. Chronic studies using estuarine and marine organisms are limited.

b. *Bioaccumulation.* Zinc ion can reasonably be anticipated to bioaccumulate in aquatic organisms. Bioconcentration factors (BCFs) of 1,130 and 432 were noted in mayflies and flagfish, respectively. BCFs for marine algae and oysters were noted to be 4,680 and 16,600, and 16,700, respectively.

2. *Absorption/bioavailability.* Zinc ion from zinc sulfide is expected to be readily bioavailable from the lung and the gastrointestinal (GI) tract. Solubility tests of a number of metal salts, including zinc sulfide and zinc oxide, were carried out in water, fetal calf serum, 2 percent albumin, and 2 percent glycine. It was shown that, while zinc sulfide is "insoluble" in water, albumin, and glycine (0.2 to 0.5 mg/L), its solubility increases by a factor of approximately 20 in serum (3.8 mg/L).

It should be noted that the solubility tests were performed under equilibrium conditions and that zinc sulfide will be in contact with an everchanging "fresh" supply of body fluids. The bioavailability of zinc ion from zinc sulfide will, therefore, be greater than indicated by the solubility.

3. *Reproductive and developmental toxicity.* Little is known regarding developmental toxicity due to excess zinc ion in humans. Anecdotal evidence implies that an excess of zinc ion affects pregnant women. In a study of 4 pregnant women, exposure to 100 mg zinc sulfate resulted in 1 stillbirth and 3 premature births.

Several studies in animals have demonstrated the developmental toxicity due to excess zinc ion. Exposure to excess zinc oxide, a zinc sulfide analog with considerable solubility, during gestation resulted in an increase in the incidence of resorptions. However, there was some disagreement as to what levels of excess zinc ion are required to cause this effect. A significant increase in resorptions was observed in rats after exposure to 4,000 ppm (200 mg/kg/day) of zinc oxide in one study and to 150 ppm (7.5 mg/kg/day) of zinc oxide in another study. However, a third study revealed no increased resorption at 2,000 ppm (100 mg/kg/day).

Postnatal survival in mice was also significantly reduced following prenatal exposure to 2,000 ppm zinc oxide (240 mg/kg/day). Postnatal growth was also reduced following exposure to excess zinc oxide, 2,000 ppm, during gestation and or lactation. In addition, exposure to 2,000 ppm zinc oxide during gestation, lactation, or post-weaning resulted in alopecia (baldness) and achromotrichia (abnormal hair pigmentation). This effect was thought to be due to copper deficiency related to excess zinc ion intake and the effect of the deficiency on melanin biosynthesis pathway.

Exposure of mice to 2,000 ppm zinc oxide (240 mg/kg/day) throughout development (gestation and post-weaning) or lactation and post-weaning, has been shown to affect the development of the immune system. This exposure resulted in a reduction in the plaque-forming cell response to sheep red blood cells, but did not affect splenic cell surface markers, mitogenic responsiveness, or lymphoid organ size.

These animal studies demonstrate that zinc ion is a developmental toxicant, but the data are inadequate to establish dose-response curves or no-effect levels. There is no information concerning the potential reproductive toxicity of zinc ion.

D. Production and Use

1. *Producers and importers.* There are at least 95 sites in the U.S. involved in the production or import of zinc sulfide. Of these, an estimated 34 sites produce zinc sulfide or zinc concentrate; 60 sites produce zinc sulfide as a byproduct of the manufacture of ammonia; and one site imports a significant quantity of zinc sulfide.

2. *Production volume.* In 1988 less than 3 million kilograms (6.6 million pounds) of high purity zinc sulfide was produced or imported into the U.S. of which less than 230,000 kilograms (500,000 pounds) was produced domestically. There are currently 30 mines and associated mills producing more than 366 million kilograms (806 million pounds) of low purity zinc sulfide annually. An additional 89 million kilograms (197 million pounds) of zinc sulfide was imported into the U.S. in the form of zinc concentrate.

3. *Marketing and use.* More than 90 percent of the high purity zinc sulfide consumed in the U.S. is used as a pigment or colorant. This includes use pigment, filler, and reinforcing agent in plastics as well as pigment in a wide range of both water- and solvent-based coatings with consumer and industrial applications. Although declining, zinc sulfide is still widely used as a phosphor in cathode ray tubes (CRTs) for televisions, computer monitors, and X-rays. It is used in the manufacture of optical lenses and filters and in the manufacture of white and opaque glass.

IV. Explanation for Proposed Denial

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313 of EPCRA. When granting a petition, EPA has an obligation to show how the granting of the petition fulfills the statutory criteria EPA is to use in section 313(d) when modifying the list of toxic chemicals. When denying a petition, EPA must issue an explanation of why the petition is denied.

B. Reasons for Denial

EPA is denying the petition submitted by Ore and Chemical Corporation to exempt zinc sulfide from reporting requirements under the "zinc compounds" category of the EPCRA section 313 list of toxic chemicals. Since several mechanisms, including thermal and photo-oxidation in water and microbial degradation in water and sediments, exist to convert zinc sulfide to zinc ion, zinc sulfide contributes to the overall loading of zinc ion to the environment. EPA has determined that zinc ion can reasonably be anticipated to cause a significant adverse effect on

the environment of a sufficient seriousness to warrant continued reporting of zinc sulfide under EPCRA section 313 because of zinc ion's high toxicity to aquatic organisms and its tendency to bioaccumulate in the environment.

In addition, zinc ion can reasonably be anticipated to cause developmental toxicological effects in humans. The effects noted for this chemical are in accordance with the criteria in section 313(d)(2)(B) of EPCRA.

V. Administrative Record

The record supporting this decision is contained in docket control number OPTS–400049. All documents, including an index of the docket are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 24, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–17897 Filed 7–31–90; 8:45 am]

BILLING CODE 6550–50–F

federal register

Wednesday
August 1, 1990

Part VII

The President

Executive Order 12721—Eligibility of Overseas Employees for Noncompetitive Appointments

Federal Register
Vol. 55, No. 148
Wednesday, August 1, 1990

Presidential Documents

Title 3—

The President

Executive Order 12721 of July 30, 1990

Eligibility of Overseas Employees for Noncompetitive Appointments

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 and section 301 of title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

Section 1. A United States citizen who is a family member of a Federal civilian employee, of a nonappropriated fund employee, or of a member of a uniformed service and who meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the executive branch within the United States (including Guam, Puerto Rico, and the Virgin Islands). The employing agency in the United States may waive a requirement for a written test for an individual appointed under this order if the agency determines that the duties and responsibilities of the position occupied overseas were similar enough to those of the position to which the individual is being appointed under this order to make the written test unnecessary.

Sec. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

Sec. 3. To the extent there is any conflict between this order and Civil Service Rule 8.2 (5 CFR 8.2), the provisions of this order shall control.

Sec. 4. (a) Executive Order No. 12362 of May 12, 1982, as amended, and Executive Order No. 12585 of March 3, 1987, are revoked.

(b) Existing regulations prescribed by the Director of the Office of Personnel Management under Executive Order No. 12362, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

Sec. 5. This order shall be effective upon publication in the **Federal Register.**

George Bush

THE WHITE HOUSE,
July 30, 1990.

[FR Doc. 90-18143
Filed 7-31-90; 10:52 am]
Billing code 3195-01-M

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Federal Register

Vol. 55, No. 148

Wednesday, August 1, 1990

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Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31175-31350.....1

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List July 31, 1990

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 276/Pub. L. 101-338

Designating the week beginning July 22, 1990, as "Lyme Disease Awareness Week". (July 27, 1990; 104 Stat. 382; 1 page) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	August 16	August 31	September 17	October 1	October 30
August 2	August 17	September 4	September 17	October 1	October 31
August 3	August 20	September 4	September 17	October 2	November 1
August 6	August 21	September 5	September 20	October 5	November 6
August 7	August 22	September 6	September 21	October 9	November 6
August 8	August 23	September 7	September 24	October 9	November 6
August 9	August 24	September 10	September 24	October 9	November 7
August 10	August 27	September 10	September 24	October 9	November 8
August 13	August 28	September 12	September 27	October 12	November 13
August 14	August 29	September 13	September 28	October 15	November 13
August 15	August 30	September 14	October 1	October 15	November 13
August 16	August 31	September 17	October 1	October 15	November 14
August 17	September 4	September 17	October 1	October 16	November 15
August 20	September 4	September 19	October 4	October 19	November 20
August 21	September 5	September 20	October 5	October 22	November 20
August 22	September 6	September 21	October 9	October 22	November 20
August 23	September 7	September 24	October 9	October 22	November 21
August 24	September 10	September 24	October 9	October 23	November 22
August 27	September 11	September 26	October 11	October 26	November 27
August 28	September 12	September 27	October 12	October 29	November 27
August 29	September 13	September 28	October 15	October 29	November 27
August 30	September 14	October 1	October 15	October 29	November 28
August 31	September 17	October 1	October 15	October 30	November 29