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Thursday
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: September 21, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building,
1100 Commerce Street,
Room 7A23–175,
Dallas, TX.
RESERVATIONS: 1–800–366–2998.

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Presidential Documents

Title 3—

The President

Proclamation 6176 of September 11, 1990

National Rehabilitation Week, 1990

By the President of the United States of America

A Proclamation

Each day, millions of Americans demonstrate by their example that a disability need not be an obstacle to success. In our schools, in our places of business, and in public office, persons with disabilities are not only serving in positions of leadership and responsibility, but also setting standards of achievement for others. These individuals have a wealth of talent and ideas to share. Helping greater numbers of persons with disabilities to enter the mainstream of American life is, therefore, more than a moral imperative—it is also a sound investment in our Nation's well-being.

This week we recognize the dedicated professionals and volunteers who—by providing various rehabilitative services—are helping individuals with disabilities to participate more fully in the social, economic, and political life of our country. Through rehabilitative agencies and facilities throughout the United States, these men and women are enabling Americans with physical, mental, and emotional impairments to gain greater independence and self-confidence.

On July 26, 1990, it was my privilege to sign into law the world's first comprehensive declaration of equality for persons with disabilities—the Americans with Disabilities Act of 1990. Expanding upon the goals of the Rehabilitation Act of 1973, this landmark legislation will ensure continued progress in efforts to help Americans with disabilities to live with greater freedom and independence. The Americans with Disabilities Act guarantees individuals with disabilities protection against discrimination; access to public accommodations, such as offices, hotels, and shopping centers; and improved access to transportation and telecommunications services.

All Americans have reason to celebrate our Nation's progress in eliminating the physical and attitudinal barriers that have, in the past, prevented many persons with disabilities from entering the mainstream of American life. Rehabilitation services and related research and education programs have played an important role in this progress, and, this week, we salute all those dedicated and hardworking men and women who have devoted their energy and skills to this important work.

In recognition of the many achievements of Americans with disabilities and in honor of all those who provide rehabilitative services for persons with disabilities, the Congress, by Senate Joint Resolution 279, has designated the week of September 16 through September 22, 1990, as "National Rehabilitation Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 16 through September 22, 1990, as National Rehabilitation Week. I urge all Americans to observe this week with appropriate ceremonies and activities, including educational programs designed to heighten awareness of rehabilitative services and of the ways such services enrich the lives of persons with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-21832
Filed 9-11-90; 4:47 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of August 18, 1990

Delegation of Authority To Make Certifications Under Section 41(d) of the Arms Control and Disarmament Act

Memorandum for the Director of the United States Arms Control and Disarmament Agency

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, you are hereby delegated the authority set forth in section 41(d) of the Arms Control and Disarmament Act (22 U.S.C. 2581(d)) to certify that the employment of persons referred to in that section in excess of the number of days set forth in that section is necessary in the national interest.

You are authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, August 18, 1990.

[FR Doc. 90-21819
Filed 9-11-90; 4:01 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 90–36 of August 26, 1990

Emergency Military Sales to Saudi Arabia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 614(a)(2) of the Foreign Assistance Act of 1961, 22 U.S.C. 2364(a)(2), I hereby determine that it is vital to the national security interests of the United States to sell M833 depleted uranium anti-tank ammunition, Stinger missiles, and associated equipment to Saudi Arabia, and hereby authorize such sales notwithstanding the requirements of sections 558 and 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), or any other provision of law within the scope of section 614 that would restrict such sales.

Pursuant to section 36(b)(1) of the Arms Export Control Act, 22 U.S.C. 2776(b)(1), I hereby certify that an emergency exists which requires the immediate sale of 150 M60A3 tanks and 24 F–15C/D aircraft to Saudi Arabia in the national security interests of the United States.

You are hereby authorized and directed to transmit this determination to Congress and to arrange for its publication in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 26, 1990.

[FR Doc. 90–21803
Filed 9–11–90; 3:17 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-175]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing from the list of quarantined areas in California portions of Los Angeles and Orange Counties. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

DATES: Interim rule effective September 6, 1990. Consideration will be given only to comments received on or before November 13, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-175. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations), in a document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146). Circumstances have compelled us to make a series of amendments to these regulations, in the form of interim rules, in an effort to prevent the further spread of the Mediterranean fruit fly. Amendments affecting California were made effective on September 14, October 11, November 17, and December 7, 1989; and on January 3, January 25, February 16, March 9, May 9, and June 1, 1990 (54 FR 38643-38645, Docket Number 89-169; 54 FR 42478-42480, Docket Number 89-182; 54 FR 48571-48572, Docket Number 89-202; 54 FR 51189-51191, Docket Number 89-206; 55 FR 712-715, Docket Number 89-212; 55 FR 3037-3039, Docket Number 89-227, 55 FR 6353-6355, Docket Number 90-014, 55 FR 9719-9721, Docket Number 90-031, 55 FR 19241-19243, Docket Number 90-050, and 55 FR 22320-22323, Docket Number 90-081).

In an interim rule effective August 3, 1990, and published in the **Federal Register** on August 8, 1990 (54 FR 32236-32238, Docket Number 90-151), we amended the Medfly regulations further by removing a portion of the quarantined area comprised of portions of Los Angeles, Orange and San Bernardino Counties, near Garden Grove and Sylmar, a separate portion of San Bernardino County near the city of San Bernardino, and the quarantined area in Riverside County, California.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that the Medfly has been eradicated from portions of the quarantined area in California in Los Angeles County, near Lynwood and South Gate, and the area including the San Fernando Valley east to Azusa, and in Orange County, California, near Anaheim. The last finding of the Medfly was made on January 24, 1990, in the Lynwood and South Gate area, on April 17, 1990, in the area that includes the San Fernando Valley east to Azusa and on November 17, 1989, in the area near Anaheim. Since then, no evidence of infestations has been found in these areas. We have determined that the Medfly no longer exists in these areas. Therefore, we are removing these areas from the list of areas in § 301.78.3(c) quarantined because of the Mediterranean fruit fly. A description of the areas that remain quarantined is set forth in full in the rule portion of this document. The quarantined area in Santa Clara County, California, is not affected by this rule.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. The areas in California affected by this document were quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, we have taken immediate action to remove restrictions from the noninfested areas.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles County in California. Within the previously regulated area there are approximately 969 entities that could be affected, including 490 fruit/produce vendors, 282 fruit vendors, 119 nurseries, 4 farmers markets, 1 wholesale market, 1 commercial processor, 53 commercial growers, 8 florists, 6 yard maintenance services, and 5 flea markets.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.78–3, paragraph (c), is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

California

Los Angeles, Orange, and San Bernardino Counties

That portion of the counties in the Rancho Cucamonga, Ontario, San Gabriel Valley, Lakewood, Buena Park, and Los Angeles areas bounded by a line drawn as follows: Beginning at the intersection of Towne Avenue and State Highway 60; then westerly along this highway to its intersection with the Los Angeles-San Bernardino County line; then southerly and westerly along this county line to its intersection with the Los Angeles-Orange County line; then westerly along this line to its intersection with State Highway 57; then southerly along this highway to its intersection with Chapman Avenue; then westerly along this avenue to its intersection with Commonwealth Avenue; then westerly along this avenue to its intersection with Beach Boulevard; then southerly along this boulevard to its intersection with Carson Street; then westerly along this street to its intersection with Lakewood Boulevard; then northerly along this boulevard to its intersection with Del Amo Boulevard; then westerly along this boulevard to its intersection with Downey Avenue; then northerly along this avenue to its intersection with Artesia Boulevard; then westerly along this boulevard to its intersection with Interstate Highway 710; then northly along this highway to its intersection with State Highway 60; then westerly along this highway to its intersection with Soto Street; then northeasterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Interstate Highway 110; then southerly along this highway to its intersection with Vernon Avenue; then westerly along this avenue to its intersection with Crenshaw Boulevard; then northwesterly along this boulevard to its intersection with Stocker Street; then southwesterly along this street to its intersection with La Cienega Boulevard; then northerly along this boulevard to its intersection with Rodeo Road; then westerly along this road to its intersection with Washington Boulevard and Robertson Boulevard; then northwesterly along Robertson Boulevard to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Motor Avenue; then northerly along this avenue to its intersection with Poco Boulevard; then northeasterly along this boulevard to its intersection with Beverely Drive; then northerly along this drive to its intersection with Wilshire Boulevard; then easterly along this boulevard to its intersection with Doheny Drive; then northerly along this drive to its intersection with Sunset Boulevard; then northeasterly and easterly along this boulevard to its intersection with Fairfax Avenue; then northerly along this avenue to its intersection with Hollywood Boulevard; then easterly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 210; then easterly along this highway to its intersection with State Highway 39 (Azusa Avenue); then northerly along this highway to its intersection with the Azusa city limits; then easterly and southerly along the Azusa city limits to its intersection with the Glendora city limits; then northerly and easterly along the Glendora city limits to its intersection with the San Dimas city limits; then easterly and southerly along the San Dimas city limits to its intersection with the Angeles National Forest boundary; then easterly along this boundary to its intersection with the La Verne city limits; then northerly, easterly, and southerly along the La Verne city limits to its intersection with the Angeles National Forest boundary; then easterly along this boundary to its intersection with the San Bernardino National Forest boundary; then easterly along this boundary to its intersection with Rancho Cucamonga city limits; then easterly along the city limits to its boundary with the San Bernardino National Forest boundary; then southerly and easterly along the boundary to its intersection with Rochester Avenue; then southerly along this avenue to its intersection with 8th Street; then westerly along this street to its intersection with

Miliken Avenue; then southerly along this avenue to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Holt Boulevard; then westerly along this boulevard to its intersection with Grove Avenue; then southerly along this avenue to its intersection with Philadelphia Street; then westerly along this street to its intersection with Towne Avenue; then southerly along this avenue to the point of beginning.

Santa Clara County

That portion of the county in the Mountain View area bounded by a line drawn as follows: Beginning at the intersection of State Highway 237 and Lawrence Expressway; then southerly along this expressway to its intersection with Interstate Highway 280; then northwesterly along this highway to its intersection with Page Mill Road; then northeasterly along this road to its intersection with Oregon Expressway; then northeasterly along this expressway to its intersection with U.S. Highway 101; then northwesterly along this highway to its intersection with San Francisquito Creek; then northeasterly along this creek to its intersection with the San Francisco Bay shoreline; then southeasterly along this shoreline to its intersection with Guadalupe Slough; then southerly along this slough to its end; then southerly along an imaginary line drawn from the end of Guadalupe Slough to the point of beginning.

Done in Washington, DC, this 6 day of Sept. 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-21614 Filed 9-12-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 082CE, Special Condition 23-ACE-53]

Special Conditions; Piper Model PA-46 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Correcion to final special conditions.

SUMMARY: This action corrects the description for the Piper Model PA-46 series airplane in the special conditions 23-ACE-53, which were issued on April 23, 1990, in the **Federal Register**. The special conditions describe the engine for these airplanes as turboprop instead of reciprocating.

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin E Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administratin, Room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

Special conditions 23-ACE-53 were issued for the Piper Model PA-46 series airplanes on April 23, 1990, in the **Federal Register**. These special conditions contain the requirements for the installation of electronic displays and the protection of them from high energy radiated electromagnetic fields (HERF).

The second sentence in the paragraph under Background describes the engine for the Model PA-46 airplane as a single-engine turboprop. It should have been described as a single reciprocating engine.

This action only corrects the description of the engine on the airplane. The requirements in the regulatory text for the installation of the electronic displays and the protection of them from HERF are not being affected.

Correction of Publication

Accordingly, the publication of the final special conditions, Docket No. 082CE, that was published in the **Federal Register** on April 23, 1990 (55 FR 15214), is corrected as follows:

On page 15214, under Background, in the second column, the second sentence should read "The Model PA-46 airplane is pressurized, single reciprocating engine powered of a conventional metal material, with 6 seats, with a maximum altitude of 25,000 feet."

Issued in Kansas City, Missouri on August 30, 1990.

Barry D. Clements,

Manager Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21557 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 90-AWA-7]

Alteration of VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule

SUMMARY: These amendments alter the descriptions of several VOR Federal airways and jet routes located in the northeast portion of the United States which lead into or originate from the Kleinburg, Ontario, Canada, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC). These airway and jet route changes are the result of the decommissioning of the Kleinburg VORTAC and the commissioning of the Simcoe, Ontario, Canada, very high frequency omnidirectional radio range (VOR) by Transport Canada.

EFFECTIVE DATE: 0901 u.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1990, the FAA proposed to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to realign VOR Federal Airways V-164 and V-252; and to realign Jet Routes J-53, J-95, J-522, J-531, and J-546 which lead into or originated from the Kleinburg, Ontario, Canada, VORTAC (55 FR 23234). These amendments are the result of the decommissioning of the Kleinburg VORTAC and the commissioning of the Simcoe, Ontario, Canada, VOR by Transport Canada. The proposed alteration of J-522 does not conform with the arrival/departure flows into the United States; the air route traffic control centers have asked that J-522 not be amended as proposed in the NPRM. Therefore, J-522 will not be amended as proposed in the NPRM. Instead, this rule will realign J-522 to accommodate the change of the jet route requested by Transport Canada and to maintain the existing arrival/departure flows into the United States.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Transport Canada wrote to inform the FAA that the name of the newly commissioned VOR in Ontario, Canada, has been changed from Sunde to Simcoe. Except for the previously mentioned change, the realignment of J-522, and editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The Rule

These amendments to parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of VOR Federal Airways V–164 and V–252; and Jet Routes J–53, J–95, J–522, J–531, and J–546 which lead into or originated from the Kleinburg, Ontario, Canada, VORTAC. The changes are the result of the decommissioning of the Kleinburg VORTAC and the commissioning of the Simcoe, Ontario, Canada, VOR by Transport Canada.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, Jet routes, VOR federal airways.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) are amended, as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–164 [Amended]

By removing the words "From Kleinburg, ON, Canada, INT Kleinburg 133° and Buffalo, NY, 338° radials;" and substituting the words "From Toronto, ON, Canada; via INT Toronto 116° and Buffalo, NY, 338° radials;"

V–252 [Amended]

By removing the words "From Kleinburg, ON, Canada; INT Kleinburg 133° and Geneseo, NY, 305° radials;" and substituting the words "From Toronto, ON, Canada; via INT Toronto 116° and Geneseo, NY, 305° radials;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for part 75 continues to read as follows:

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J–53 [Amended]

By removing the words "Ellwood City; to Kleinburg, ON, Canada. The portion within Canada is excluded." and substituting the words "to Ellwood City."

J–95 [Amended]

By removing the words "to Kleinburg, ON, Canada, excluding the portion which lies over Canadian territory." and substituting the words "to Toronto, ON, Canada. The portion within Canada is excluded."

J–522 [Amended]

By removing the words "Kleinburg, ON, Canada; Hancock, NY;" and substituting the words "INT Traverse City 098° and Toronto, ON, Canada, 289° radials; Toronto; INT Toronto 099° and Hancock, NY, 302° radials; Hancock;"

J–531 [Amended]

By removing the words "via Kleinburg, ON, Canada;" and substituting the words "via Toronto, ON, Canada;"

J–546 [Revised]

From Peck, MI; to Simcoe, ON, Canada. The portion within Canada is excluded.

Issued in Washington, DC, on August 23, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90–21556 Filed 9–12–90; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act; New Exempt System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The FTC amends Commission Rule 4.13(m) to include the "Office of Inspector General Investigatory Files—FTC" as a new exempt system of records under the Privacy Act of 1974, as amended. This action also renders effective the Privacy Act system notice previously published for this system of records.

EFFECTIVE DATE: September 13, 1990.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel (OGC), FTC, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2447.

SUPPLEMENTARY INFORMATION: The FTC received no comments from the general public in response to the proposed Privacy Act system notice and corresponding amendment to Commission Rule 4.13(m), 16 CFR 4.13(m), establishing and designating the investigatory files of the Office of Inspector General (OIG) as an exempt system of records within the meaning of the Privacy Act, 5 U.S.C. 552a. *See* 55 FR 20469 and 20527 (May 17, 1990) (proposed rule amendment and system notice, respectively). A comment from the House Subcommittee on Government Information suggested deleting the propopsed (j)(2) exemption for criminal investigatory records unless the OIG maintains an investigatory subunit. As already explained, the proposed system contains OIG investigatory records, and those records are generated or compiled by an investigatory staff subunit of the OIG. Accordingly, by this notice, the FTC formally adopts its proposed amendment to Rule 4.13(m) without change. This action makes the proposed system notice effective without change.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Act.

In consideration of the foregoing, the FTC amends title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.13(m) is amended by adding the following text to the end of the existing text:

§ 4.13 Specific exemptions.

* * * * *

(m) * * *

Office of Inspector General Investigative Files—FTC

In addition, pursuant to 5 U.S.C. 552a(j)(2), investigatory materials

maintained by an agency component in connection with any activity relating to criminal law enforcement in the following systems of records are exempt from all subsections of 5 U.S.C. 552a, except (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(j)(2):

Office of Inspector General Investigative Files—FTC

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–21581 Filed 9–12–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 90–70]

Steel Voluntary Restraint Arrangement Program

AGENCY: U.S. Customs Service, Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the Customs Regulations to set forth the entry requirements applicable to imported steel products which are subject to voluntary restraint arrangements negotiated between the United States and certain steel-exporting countries and enforced under the Steel Import Stabilization Act, as amended by the Steel Trade Liberalization Program Implementation Act.

DATES: Interim rule effective September 13, 1990. Comments must be received on or before November 13, 1990.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Frank Crowe, Office of Trade Operations (202–566–9262); Legal Aspects: William Rosoff, Office of Regulations and Rulings (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Since October 1984, pursuant to constitutional authority asserted by the President, quantitative limitations and other resirictions have been applied to U.S. steel imports under the terms of voluntary restraint arrangements (VRA's) negotiated between the United States and certain steel-exporting countries. President Reagan directed the United States Trade Representative (USTR) to negotiate the VRA's in September 1984 when he rejected a recommendation by the U.S. International Trade Commission to provide import relief under section 203 of the Trade Act of 1974 for the U.S. industry producing carbon and alloy steel products. Rather than providing such import relief, the President announced the establishment of a national policy for the steel industry which involved an adjustment program for domestic industry and the negotiation of VRA's to control surges of imports that resulted from subsidizing, dumping, or other unfair or restrictive trade practices on the part of steel-exporting countries.

Legislation providing the President with express authority to enforce the VRA's, for up to five years beginning on October 1, 1984, was enacted into law as the Steel Import Stabilization Act (title VIII of the Trade and Tariff Act of 1984, Public Law 98–573), codified at 19 U.S.C. 2253 note. Section 805(a) of the 1984 Act specifically provided that the enforcement actions taken by the President could include requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry of steel products into the United States. Section 805(c) of the 1984 Act stated that "the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States."

To implement President Reagan's steel program, USTR negotiated VRA's with the European Community (EC) and 19 steel exporting countries that had been alleged to be practicing dumping or subsidization in antidumping and countervailing duty petitions filed by domestic industry with the Department of Commerce. In view of the discretionary regulatory authority given to the Secretary of the Treasury in the 1984 Act, no regulations were published. Rather, the terms and conditions for entry of steel products under the VRA's, including a requirement that a valid export certificate accompany each shipment, were set forth in telexes sent to Customs field offices, and notice to the public of those terms and conditions was effected by posting the telexes on public bulletin boards at those field locations. The VRA's by their own terms, as well as the enforcement authority under the 1984 Act, expired on September 30, 1989.

On July 25, 1989, President Bush announced a program to exend the VRA's for two and one-half years. The President directed USTR to oversee implementation of the program, including renegotiation of the VRA's covering all major steel mill products and terminating no later than March 31, 1992. On December 12, 1989, the Steel Trade Liberalization Program Implementation Act (Pub. L. 101–221, 103 Stat. 1886) was enacted. Section 3(a) of the 1989 Act amended section 806(a) of the 1984 Act by extending, until March 31, 1992, the President's authority to enforce the VRA's, and section 4(a) of the 1989 Act amended section 805(a) of the 1984 Act by authorizing the President to take such actions as may be necessary, between October 1, 1989 and the date of concluding any new VRA, to ensure an orderly transition to that VRA. Section 4(c) of the 1989 Act amended the regulatory authority set forth in section 805(c) of the 1984 Act by replacing the word "may" with the words ", in consultation with the Secretary of Commerce, shall". Senate Report No. 101–206, 101st Congress, 1st Session, prepared by the Committee on Finance, states that the purpose of the amended regulatory authority provision "is to assure that the private sector is aware of the circumstances in which steel imports may be denied entry."

In spite of the expiration of the VRA's and the President's enforcement authority on September 30, 1989, and pending both successful negotiation of new VRA's and new legislative authority to enforce them, the steel import program nevertheless continued in uninterrupted operation after that date in accordance with understandings between the United States and the steel-exporting countries to which the old VRA's applied. Thus, quantitative limits have continued to be applied to steel products exported to the United States and, except in the case of the EC during the period from October 1, 1989 to December 18, 1989, export certificates have continued to be issued by the foreign governments. Most of the new VRA's have already been successfully negotiated, in each case retroactive to October 1, 1989, and it is anticipated that new VRA's with the remaining countries will be in place in the near future.

In light of the continuing operation of the steel import program, and as a result of the now mandatory regulatory authority conferred on the Secretary of the Treasury by the 1989 Act, regulations must be published setting

forth the circumstances in which steel imports may be denied entry. Although the Customs Service has no authority with regard to the scope, including the product coverage, of the steel import program and the VRA's negotiated thereunder, Customs is nevertheless charged with the responsibility for administering the laws regarding the entry of merchandise into the United States. Accordingly, the regulations as set forth and discussed below concern only the entry process under the VRA's and do not purport to set forth the specific product coverage or other details of the steel import program which fall under the jurisdiction of, and are available from, the Department of Commerce. It should also be noted that entry requirements and procedures under other Customs laws and regulations, including the filing of a Special Summary Steel Invoice (Customs Form 5520) under 19 CFR 141.89(b), my also apply to merchandise subject to the VRA's.

Section-by-Section Discussion

Section 10.321 Scope

This section sets forth a general statement of the purpose of the regulations, consistent with the statutory authority and legislative history relating thereto.

Section 10.322 Definitions

This section sets forth the definitions that apply to the steel import program. Thus, they serve to define, in a general sense, the scope of the program as it relates to a Customs context.

Paragraph (a) defines the term "arrangement" with reference to the negotiated VRA's. To ensure consistency with the program as administered by the Department of Commerce, the definition is identical to a definition contained in the short supply procedures regulations published by the Department of Commerce in the **Federal Register** on January 12, 1990, 55 FR 1348.

Paragraph (b) defines "arrangement product" generally, both with reference to the product coverage set forth in a VRA and with reference to products which originate in the country to which a specific arrangement relates. Both references are necessary because the VRA's cover specific steel products rather than all steel products and because VRA product coverage may vary from one foreign country to another. Inclusion in these regulations of a list of the specific steel products covered by the VRA's would be impractical because (1) such a list would by definition be very complicated, given the large number of Harmonized Tariff Schedule (HTS) numbers involved and the variations in VRA requirements from one country to another, and (2) any subsequent change in VRA product coverage or in HTS numbering would give rise to implementation problems given the need to first amend the regulations. The Department of Commerce will ensure that appropriate information is available to the public as regards specific product coverage, and the texts of all of the signed VRA's are available at the Import Administration Central Records Unit, Room B–099, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230. Supplemental information or clarification as regards the operation of the steel import program may be provided by Customs Headquarters to field offices and to the public as appropriate, as in the past, based principally on instructions from the Department of Commerce.

Paragraph (c) defines "entry" as entry or withdrawal from warehouse for consumption, entry under temporary importation bond, admission into a foreign trade zone, or release under immediate delivery procedures. This definition is consistent with the manner in which Customs has administered the entry aspects of the steel import program in the past. The last sentence in this paragraph is simply intended to clarify that, in the case of bonded warehouses and foreign trade zones, the entry requirements do not apply at the time of entry into warehouse or at the time of, or after, transfer from a foreign trade zone.

Paragraph (d) defines "United States" as comprising the Customs territory of the United States and any foreign trade zones located therein. This definition follows the terms of the VRA's.

Section 10.323 Requirements on Entry

This section sets forth the requirements for entry of steel products covered by the VRA's.

Paragraph (a) states the basic requirement that an export certificate (or, in the case of the People's Republic of China, and export license) shall be submitted at the time of entry of an arrangement product, unless the VRA in question specifically provides otherwise, and states that failure to submit the required document will result in a denial of entry. This documentation requirement, including the denial of entry for a failure to submit the documentation, is common to all VRA's.

Paragraph (b), which is included merely for information purposes, describes the basic elements of information that appear on each export certificate or license. Although there is no standard form that the documentation must take because each steel-exporting country essentially produces its own, the specific elements mentioned in the regulation, as well as the requirement that the information be set forth in English, are provided for in each VRA.

Paragraph (c) sets forth two circumstances in which submission of the export certificate or license may be required after entry. The first sentence concerns the fact that there was a period, after expiration of the original VRA's on September 30, 1989, and until new VRA's were in place, during which steel-exporting countries were not required to issue export certificates or licenses and, as a result, Customs merely treated the certificate or license as a requested document rather than as a required document. Although most steel-exporting countries continued to issue the documentation during this period, there may be circumstances where the Department of Commerce will require the documentation for post-entry verification purposes, consistent with the enforcement authority conferred on the President retroactive to October 1, 1989. The second sentence is intended to cover cases in which a determination is made after entry but prior to final liquidation that the imported merchandise constitutes an arrangement product for which an export certificate or license is required, for example where the claimed HTS classification is found to be incorrect. In view of the fact that submission of an export certificate or license is a mandatory condition for entry purposes, the third sentence states that failure to submit the required document will result in a demand for return of the merchandise to Customs custody.

Paragraph (d) mandates that privileged foreign status be elected for an arrangement product at the time that application is made for admission of the merchandise into a foreign trade zone. This requirement is necessary in order to avoid any appearance of inconsistency between the steel import program requirements (*i.e.*, the requirement that the export certificate or license be submitted when an arrangement product is admitted into a zone) and the Foreign-Trade Zones Act (19 U.S.C. 81a–u) and the regulations thereunder (19 CFR part 146), which normally do not require the submission of supporting documentation until an election for privileged foreign status is made.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to these regulations because they involve a foreign affairs function of the United States. The regulations implement procedures agreed upon in the bilaterally negotiated VRA's, and the absence of the regulations could provoke undesirable international consequences. In addition, because these regulations set forth procedures which the public needs to know in order to ensure the entry of steel products covered by the VRA's, it is determined pursuant to 5 U.S.C. 533(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons and because the regulations set forth the entry requirements of a program which is already in effect, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12291

Because this document concerns a foreign affairs function, it is not subject to E.O. 12291.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports, Steel Products.

Amendments to the Regulations

For the reasons set forth above, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The table of contents of part 10 is amended by adding at the end thereof a new heading followed by new §§ 10.321 through 10.323 to read as follows:

Steel Products Subject to Voluntary Restraint Arrangements

Sec.

2. The authority citation for part 10 is revised in part to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Sections 10.321–10.323 also issued under 19 U.S.C. 2253 note.

3. Part 10 is amended by adding at the end thereof a new heading followed by new §§ 10.321 through 10.323 to read as follows:

Steel Products Subject to Voluntary Restraint Arrangements

§ 10.321 Scope.

The provisions of §§ 10.322 and 10.323 of this part set forth the terms and conditions under which entry may be granted, or denied, to steel products which are subject to voluntary restraint arrangements between the United States and foreign steel-exporting countries.

§ 10.322 Definitions.

The following definitions apply for the purposes of § 10.323:

(a) *Arrangement.* "Arrangement" means an arrangement between the United States Government and a foreign government whereby the foreign government agrees to restrain voluntarily certain steel exports to, or destined for consumption in, the United States for the period of October 1, 1989 through March 31, 1992.

(b) *Arrangement product.* "Arrangement product" means any steel product which is designated in an arrangement as falling thereunder and which has as its origin the foreign country to which the arrangement relates.

(c) *Entry.* "Entry" means entry as defined in § 141.0a(a) of this chapter, withdrawal from warehouse for consumption, entry under temporary importation bond, admission into a foreign trade zone, or release under immediate delivery procedures. The term does not include entry for warehouse and does not apply to merchandise transferred to Customs territory from a foreign trade zone.

(d) *United States.* "United States" means the Customs territory of the United States and any foreign trade zone physically located within the Customs territory of the United States.

§ 10.323 Requirements on entry.

(a) *General.* Unless specifically exempted under the terms of an arrangement, for each shipment of arrangement products a valid and properly executed original export certificate as specified in the individual arrangement, or export license in the case of the People's Republic of China, issued by the country of origin of the arrangement products, shall be submitted at the time of entry in the United States. Failure to submit the required export certificate or license shall result in a denial of entry.

(b) *Information on certificate or license.* Each arrangement provides that the export certificate or license shall indicate the day, month and year in which the arrangement products were exported, the category and subcategory name and number or other arrangement product identifier specified in the applicable arrangement, and the tonnage exported. Each arrangement further provides that the information on the export certificate or license shall be set forth in the English language or, if in a foreign language, in an English language translation appearing thereon.

(c) *Retroactive submission of certificate or license.* Unless otherwise specifically provided for in an arrangement, Customs may require the submission of an export certificate or license covering any shipment of arrangement products for which entry was effected on or after October 1, 1989, but prior to the date on which the applicable arrangement was executed. In addition, where it is determined only after entry but prior to final liquidation that an imported product constitutes an arrangement product, Customs shall require submission of an export certificate or license covering the shipment in question. Failure to submit the required export certificate or license under these circumstances shall result in a demand for return of the merchandise to Customs custody under the provisions of § 141.113 of this chapter.

(d) *Admission into a foreign trade zone.* At the time of filing the application for admission of an arrangement product into a foreign trade zone, an application

for privileged foreign status shall also be made for such arrangement product.

Approved: August 27, 1990.

Carol Hallet,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-21514 Filed 9-12-90; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 12 and 178

[T.D. 90-72]

RIN 1515-AA74

Implementation of Import Sanctions Against Toshiba Machine Co. and Kongberg Trading Co.

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final regulations implementing the import sanctions against products produced by the Toshiba Machine Company ("Toshiba Machine") and the Kongsberg Trading Company ("Kongsberg") imposed by Executive Order No. 12261, pursuant to section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 ("the Act"). Executive Order No. 12661 imposed a 3 year import prohibition, subject to certain exceptions, on products of Toshiba Machine and Kongsberg. The Customs Service published interim regulations to implement the prohibitions in the **Federal Register** on January 31, 1989 (54 FR 4780). Although the interim regulations were effective upon publication, Customs invited members of the public to comment on the regulations. The comments received have been reviewed and were considered in the development of the final rule. Because the amendment requires submission of information to Customs, part 178, the list of sections which contain approved collections of information, is also being amended.

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch, U.S. Customs Service (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) ("the Act") required the President to impose, for a period of 3 years, a prohibition on the importation into the United States of all products produced by the Toshiba Machine Company ("Toshiba Machine"), the Kongsberg Trading Company ("Kongsberg"), and any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery and technology to the Soviet Union by Toshiba Machine and Kongsberg. The President issued Executive Order No. 12661, which announced the imposition of the sanctions imposed by section 2443(a)(2). In order to implement the Executive Order, the Customs Service issued interim regulations (T.D. 89-20) which were published on January 31, 1989 in the **Federal Register** (54 FR 4780). Although the interim regulations were effective upon publication, comments on the interim regulations were sought from members of the public. Those received have been analyzed and considered in the development of these final regulations.

Analysis of Comments

Comment: The identification of the "Toshiba Machine Company" as "Toshiba" in the regulation creates the potential for unnecessary confusion at ports of entry.

Response: While Customs believes that the regulations clearly indicate that, for the purposes of these sections, the word "Toshiba" refers to only the Toshiba Machine Company, we will modify the language of the final regulation to eliminate the possibility of confusion. In selecting an alternate to "Toshiba", we reject the abbreviation "TMC" because it does not publicize to a casual reader that sanctions have been imposed against a Toshiba company, and that it could also possibly be confused with some other corporate abbreviation. Accordingly, the Toshiba Machine Company will be referred to as "Toshiba Machine" in the final regulation.

Comment: Two commenters said that the interim regulations unjustifiably extended the sanctions to subsidiaries and affiliates of Toshiba Machine Company and Kongsberg Trading Company.

Response: Customs does not agree with this position. The legislative history of the sanctions make it clear that while sanctions are not to be imposed on subsidiaries, affiliates, successor entities, or joint ventures of the Toshiba Corporation or Kongsberg Vappenfabrikk, there is no such prohibition on the application of the sanctions to the subsidiaries, affiliates, successor entities, or joint ventures of Toshiba Machine Company or Kongsberg Trading Company. The Customs position is reiterated in the Office of Management and Budget Guidelines. In imposing the sanctions, Congress clearly intended that the sanctioned companies be unable to circumvent the importation prohibitions, and specifically envisioned the possibility that attempts to evade the sanctions might be made by creating successor entities, or by assigning banned merchandise to another person for the purpose of facilitating indirect purchase or performing any such operation such as repacking or relabeling, which would not amount to a substantial transformation of the merchandise.

Comment: Three commenters stated that the Customs requirement that documentation be presented with each entry to establish the specific need for the importation of spare parts was unduly burdensome on U.S. business interests.

Response: In order for an import ban for which exceptions apply to be effective, it is necessary that a complete statement be made, at the time of making entry, of which exception applies to the article being imported. This requirement cannot be waived for a particular exception. However, the regulations do recognize that some companies have a legitimate need for an adequate supply of spare parts to prevent a prolonged disruption of operations should a finished product or machine break down. Section 12.142(c) provides for this by allowing the importation of individual pieces, parts or subassemblies that are intended for the logistic support, as well as repair, of a finished product. The inclusion of the term "logistic support" would permit the importation of critical spare parts.

Comment: Two commenters claim that the Customs definition of "technology" is too narrow and should be revised. In support of their comment, they refer to a "wider" definition of "technology" which appears to be contained in OMB procurement guidelines. The comments further assert that sole source finished products should not be subject to a mandatory exportation requirement or the requirement that they be imported solely for demonstration purposes.

Response: It is Customs position that the definition of "technology" is consistent with the Congressional intent of the Act providing for sanctions against the importation of products of Toshiba Machine and Kongsberg. It is noted that "technology" includes products, and most of the sanctioned corporation's products might represent technological advances. Additionally, the OMB guidelines require that "[t]echnology acquired from Toshiba Machine Company and Kongsberg

Trading Company must comply with the Treasury regulations." By requiring the use of a temporary importation bond and restricting the types of articles to those listed in subheading 9813.00.30 of the Harmonized Tariff Schedule, the regulations meet the purpose of the exception without eliminating the ban on the importation of the sanctioned products.

In response to the contention that the Customs definition of technology is unduly restrictive, Customs points out that Congress recognized that the sanctions would possibly impose hardships on domestic businesses. It provided exceptions to relieve undue hardships, rather than remove all possible hardships.

Comment: Some comments objected to the requirement that full documentation and exemption certificates be presented at entry to verify that the merchandise falls within an exemption from the sanctions.

Response: Customs believes that the statute clearly requires documentation of the claimed exemption at the time of entry in order for it to properly determine that all requirements of the law have been met and that the sanctions are being enforced uniformly. Such a requirement is not analogous to pre-shipment licensing, but simply falls within Customs authority spelled out in 19 U.S.C. 1484 and 19 CFR 142.3(a)(5), to require documentation at the time of entry so that the agency can determine whether the merchandise may be released from its custody.

Comment: Some comments expressed the opinion that the definition of substantial transformation was more restrictive than Congress intended.

Response: Customs belives that the definition of substantial transformation is correct.

Comment: One comment stated that the sanctions should not apply to used Toshiba products that are imported by a non-targeted concern.

Response: The regulations permit the importation of used products imported by or for the primary user, which were covered by written obligations performed before June 30, 1987. Used products contracted for after that date cannot be imported, unless their importation is permitted under some other exception. The Act under which the Executive Order was promulgated authorized the President to impose import restrictions on all products of the sanctioned parties. If the sanctions did not apply to used products, it is conceivable that a sanctioned firm could sell new articles to an importer with offices or operations overseas, who, after a minimal amount of use, could then import the now "used" item into the United States. It would be too easy for the sanctioned parties to circumvent the intended impact of the sanctions.

Comment: One comment suggests that the regulations be amended to provide that in instances where an article could possibly perform several functions, at least one of which could be the basis of denying the article an exemption from the sanctions, the importer could certify that it would exercise its "best efforts" to assure that the article would retain the use under which an exemption was granted. An example suggested would be a pump which could be either a finished product, a component part, or a spare part.

Response: Customs does not believe that any change to the regulation is necessary to address this concern. The regulations already require an importer to file, at the time of making entry, a declaration setting forth a complete statement of the exception under which such article is imported.

Determination

After consideration of all the comments received in response to publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0166. The estimated average burden associated with the collection of information in this final rule is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Imports.

19 CFR Part 178

Collections of information, Reporting and recordkeeping requirements, Paperwork requirements.

Amendments to the Regulations

Parts 12 and 178, Customs Regulations (19 CFR parts 12 and 178), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 is revised in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.140–12.143 also issued under 50 U.S.C. app. 2401a, note.

2. Part 12, Customs Regulations (19 CFR part 12) is amended by adding a new center heading "Sanctions Against Toshiba Machine Company and Kongsberg Trading Company", and §§ 12.140–12.143 as set forth below:

Sanctions Against Toshiba Machine Company and Kongsberg Trading Company

Sec.

Sanctions Against Toshiba Machine Company and Kongsberg Trading Company

§ 12.140 Applicability, prohibited importations.

Except as otherwise provided by these regulations, the importation into the United States of products produced by Toshiba Machine Company (Toshiba

Machine) or Kongsberg Trading Company (Kongsberg) is prohibited for a period of three years following December 28, 1988.

§ 12.141 Exceptions.

The prohibition contained in § 12.140 shall not apply to:

(a) Products provided under contracts or other binding agreements entered into before June 30, 1987;

(b) Spare parts;

(c) Component parts, but not finished products, essential to United States products or production;

(d) Routine servicing and maintenance or products;

(e) Information and technology; and

(f) Excepted defense articles.

§ 12.142 Definitions.

For the purposes of these regulations:

(a) The term "products produced by Toshiba Machine or Kongsberg" means products manufactured or produced by Toshiba Machine, Kongsberg, their successors or assigns, or any other entity directly or indirectly owned or controlled by any of the foregoing, provided that such products are not subsequently substantially transformed by another party.

(b) The term "contracts or other binding agreements entered into before June 30, 1987" means:

(1) Written obligations entered into before June 30, 1987, and performed or to be performed on or after June 30, 1987, that require the purchase for delivery in the United States of products to which the prohibitions contained in § 12.140 would otherwise apply, and that are without condition or qualification other than as provided by force majeure clauses or similar clauses;

(2) With respect to used products imported by or for the primary user, written obligations performed before June 30, 1987, whether or not they provide for delivery in the United States; and

(3) Agreements under which:

(i) Products are designated to a purchaser's specifications and marketed in the United States under the purchaser's trademark, brand or name; and

(ii) The purchaser clearly documents a pattern of trade that began before June 30, 1987, and continued to the time of the importation. For purposes of these regulations, no contract or other binding agreement may exist between Toshiba Machine or Kongsberg and any entity directly or indirectly owned or controlled by Toshiba Machine, Kongsberg, or by any parent or subsidiary of Toshiba Machine or Kongsberg.

(c) The term "spare part" means any individual piece, part or subassembly which is intended for the logistic support or repair of a finished product and not as a finished product itself.

(d) The term "component part" means any article which is not usable for its intended function without being imbedded in or integrated into any other product and which, if used in the production of a finished product, would be substantially transformed in that process.

(e) The term "finished product" means any article which is usable for its intended function without being imbedded or integrated into any other product, but in no case shall the term be deemed to include an article produced by a person other than Toshiba Machine or Kongsberg that contains parts or components produced by Toshiba Machine or Kongsberg if the parts and components have been substantially transformed during their production of the finished product.

(f) An article is "substantially transformed" when, by means of a substantial manufacturing or processing operation, the article is converted or combined into a new and different article of commerce having a new name, character and use.

(g) The term "essential to United States products or production" with respect to component parts means component parts which are produced by Toshiba Machine, Kongsberg, or both, that are necessary for the manufacture or processing of United States products, and for which there is no suitable alternative. The term "suitable alternative" refers to an article—

(1) That can be substituted for an article produced by Toshiba Machine or Kongsberg,

(2) That will perform the same functions or is capable of the same use, and

(3) Is available at a competitive price.

(h) The term "routine servicing and maintenance" means customary servicing and maintenance, including repairs or installation of spare parts or component parts. The term shall also include the temporary importation of tools and equipment necessary to perform such servicing or maintenance, as well as reimportation of products exported for routine servicing and maintenance.

(i) The term "information and technology" includes plans, drawings, and other written and pictorial data in any form or medium, and personal transmissions of any of the foregoing. The term shall also include component parts, finished products, or other articles to which these prohibitions would otherwise apply if temporarily imported under the provisions of subheading 9813.00.30 of the Harmonized Tariff Schedule of the United States solely to demonstrate such technology and which are thereafter exported.

(j) The term "excepted defense article" means any defense article, as defined in section 47 of the Arms Export Control Act (22 U.S.C. 2794), that the Secretary of Defense or his designee certifies:

(1) Are produced under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(2) Are essential defense articles of which Toshiba Machine or Kongsberg is a sole-source supplier and for which no alternative supplier can be identified; or

(3) Are essential to the national security under defense coproduction agreements.

(k) The term "United States" includes its territories and possessions.

§ 12.143 Procedures for exempted products.

(a) Importers of products of Toshiba Machine or Kongsberg under any of the exemptions set forth above in § 12.141, shall file with the U.S. Customs Service, at the time of making entry, a declaration setting forth a complete statement of the exception under which such article is imported, including a copy of any certification provided by the Secretary of Defense or his designee pursuant to § 12.142. An importer of articles claimed to be exempt as "component parts" pursuant to § 12.141 shall file with the U.S. Customs Service, at the time of making entry, a certificate that such importer has made reasonable efforts to obtain a suitable alternative. Such reasonable efforts may include—

(1) Open and public solicitations of known suppliers, or

(2) Advertising in appropriate trade journals or periodicals of general circulation.

(b) Importers shall also provide any other information or documentation deemed necessary by Customs to determine the admissibility of the articles in question.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the

appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB control No.
*	* * * *	*
§ 12.143 ..	Declaration of exception from import sanctions.	1515-0166
*	* * * *	*

Carol Hallett,

Commissioner of Customs.

Approved: August 22, 1990.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-21515 Filed 9-12-90; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 101

[T.D. 90-69]

Extension of Laredo, TX, Port Limits

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to extend the boundaries of the Laredo, Texas, port of entry. The extension of boundaries is part of the ongoing efforts of Customs to improve the efficiency of its field operations.

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), to extend the geographical limits of the port of entry of Laredo, Texas. The extension of the port limits enables Customs to service proposed points of entry without establishing separate port administrations. The new boundary encompasses the city of Laredo, the Laredo International Airport, the proposed international bridge between the U.S. and Columbia, Nuevo Leon, Mexico, and the proposed Union Pacific Railroad switching yard.

The revised boundary is as follows: Beginning at the intersection of the extended road of Chapote-Mezas Road and the easterly water's edge of the Rio Grande River; then in a northeasterly direction along the projected extension of Chapote-Mezas Road to its intersection with F.M. 1472; then in a southeasterly direction to the intersection of Las Tiendas Road and San Juan Road; then in a northeasterly direction along San Juan Road to its intersection with U.S. Highway 83 and Webb Road; then in a southeasterly direction along Webb Road to its intersection with Interstate Highway 35; then in a southeasterly direction to San Ignacio Road at a point 17 miles northeast from the intersection of Interstate Highway 35 and San Ignacio Road; then in a southeasterly direction to the intersection of State Highway 359 and Rubio; then in a southwesterly direction to Mangana-Hein Road at the point in tract 1, portion 42 of Webb County, Texas, where the road begins a westerly direction; then in a westerly direction along Mangana-Hein Road to its intersection with U.S. Highway 83; then proceeding in a westerly direction along a projected extension of Mangana-Hein Road to its intersection with the easterly water's edge of the Rio Grande River; then in a northwesterly direction along the meanders of the Rio Grande River to its intersection with the projected extension of Chapote-Mezas and Point-of-Beginning.

Comments

Notice of the proposed amendment was published in the **Federal Register** on November 29, 1989 (54 FR 49078). One comment was received favoring the extension of the port limits.

Authority

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch.II), and pursuant to authority provided by Treasury Department Order No. 101-5, February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 603, 604) are not applicable to this document.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies).

Amendment to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101, Customs Regulations (19 CFR part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b), Customs Regulations (19 CFR 101.3(b)) is amended by adding immediately after "LAREDO" in the column headed "Ports of Entry, in the Laredo, Texas, Customs District of the Southwest Region, the phrase, "including the territory described in T.D. 90-69.".

Carol Hallett,

Commissioner of Customs.

Approved: August 27, 1990.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-21400 Filed 9-12-90; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 192

[T.D. 90-71]

Exportation of Self-Propelled Vehicles

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the 3-day advance presentation requirement for self-propelled vehicles exported at land border points and by requiring, instead, that such vehicles be presented to Customs only on the day of actual exportation. The amendment is intended to avoid storage and related problems at land border ports occasioned by the 3-day requirement.

EFFECTIVE DATE: September 13, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce Nunziata, Office of Inspection and Control, (202-566-2140).

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1989, Customs published as T.D. 89–46, 54 FR 15402, regulations implementing the provisions of section 205 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), codified at 19 U.S.C. 1672a, which is intended to prevent the importation or exportation of stolen self-propelled vehicles, vessels, aircraft, and parts thereof. The regulations, contained in part 192 of the Customs Regulations (19 CFR part 192), are directed specifically to used self-propelled vehicles and set forth the procedures which must be followed for the lawful exportation of, as well as the penalties and liabilities for the unlawful importation or exportation of, such vehicles.

Section 192.2 of those regulations (19 CFR 192.2) concerns the procedural requirements for lawful exportation of used self-propelled vehicles. Paragraph (a) sets forth the basic requirement that the person attempting to export the vehicle must present to Customs, at the port of exportation, both the vehicle and a document which describes the vehicle and includes the Vehicle Identification Number (VIN) or other product identification number if no VIN exists. Paragraph (b) specifies the types of documentation that must be presented to Customs to establish lawful ownership, *e.g.*, an original or certified copy of the Certificate of Title and two facsimiles thereof. Paragraph (c) concerns the time for presenting the vehicle and documentation to Customs: where the vehicle is to be transported by vessel or aircraft, presentation of both vehicle and documentation must take place at least three days prior to landing, and in the case of a vehicle to be transported by rail, highway, or under its own power (*i.e.*, to be exported at a land border point), the vehicle and documentation must be presented "3 days prior to exportation of the vehicle." Paragraph (d) sets forth the procedures for authentication of the presented documentation by Customs.

The 3-day advance presentation requirement was included in section 192.2 in order to ensure that there would be sufficient time, prior to actual exportation, to verify ownership documents, make required vehicle identification checks, examine the vehicle as necessary, authenticate documentation, and forward documentation to the National Automobile Theft Bureau for recordkeeping purposes. However, in actual practice, advance presentation of vehicles at land border locations has given rise to certain problems not anticipated when the final regulations were promulgated.

These problems result from a lack of adequate and secure storage facilities to hold the vehicles during the 3-day period. Customs facilities at land border ports of entry in many cases are inadequate for this purpose. Exporters and their agents have complained that, as a result, Customs sometimes refuses to accept vehicles presented in accordance with the regulatory time limits, requiring instead that the vehicle be brought back to Customs at a later date (*i.e.*, on the day of actual exportation), thereby causing the exporter to incur additional transportation, loading and unloading expenses. Moreover, the absence of adequate storage space often results in vehicles being left unattended on roadsides near ports of entry, and this in turn has led to potentially dangerous roadside conditions and has increased the risk of vandalism and theft of the unattended vehicles.

Customs believes that the regulations should be amended to obviate these problems. The best approach would be to amend § 192.2(c) to require presentation of the vehicle at land border points only on the day of actual exportation; the requirement for 3-day advance presentation of documentation would remain unchanged. In view of the fact that the documentation verification procedure is the mechanism whereby a stolen vehicle is identified, and because the inspection of the vehicle serves only to verify that the exported vehicle is the same as the one described on the verified documentation, Customs does not believe that any enforcement capabilities would be compromised if the vehicles were presented and inspected only on the day of exportation. The new procedure would be limited to land borders and thus would not apply to vehicles transported by vessel or aircraft, as to which the problems described above have not arisen.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment reduces the burden on, and does not take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 192

Customs duties and inspection, Exports, Imports, Vehicles.

Amendments to the Regulations

Part 192, Customs Regulations (19 CFR part 192), is amended as set forth below:

PART 192—EXPORT CONTROL

1. The authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a.

2. Section 192.2(c) is revised to read as follows:

§ 192.2 Requirements for exportation.

* * * * *

(c) *When presented.* If the vehicle is to be transported by vessel or aircraft, the documentation and vehicle must be presented at least 3 days prior to lading. If the vehicle is to be transported by rail, highway, or under its own power, the documentation must be presented 3 days prior to exportation of the vehicle, and the vehicle must be presented on the day of exportation.

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: August 29, 1990.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90–21513 Filed 9–12–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB47

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Safety and Pollution-Prevention Equipment

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: Current rules governing offshore oil and gas operations require that safety and pollution-prevention equipment (i.e., surface safety valves (SSV), underwater safety valves (USV), and subsurface safety valves (SSSV)) be manufactured in accordance with a quality assurance program specified in the rule. The Minerals Management Service (MMS) has reviewed and has determined that the changes in the third edition of the American Petroleum Institute (API) Spec Q1 and addendum d to SPPE–1–1988 are minor and do not require public review because they do not have a significant impact on the current documents incorporated by reference.

This final rule amends the existing rule by updating the two recognized quality assurance programs that are incorporated by reference into 30 CFR 250.126. The API quality assurance program, API Spec Q1, is updated from the 1988 edition to the 1990 edition and the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) quality standard, SPPE–1–1988, is updated to include "Addenda" SPPE–1d–1990.

DATES: This regulation is effective October 15, 1990. The incorporation by reference of certain publications listed in the regulations is approved by Director of the Federal Register as of October 15, 1990, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

FOR FURTHER INFORMATION CONTACT: Marshall L. Courtois, Chief, Offshore Inspection and Enforcement Division; Minerals Management Service; Mail Stop 4800, 381 Elden Street, Herndon, Virginia 22070–4817, or telephone (703) 787–1576.

SUPPLEMENTARY INFORMATION: On March 22, 1990, MMS issued a notice of final rulemaking (NFR) (55 FR 10614) that amended 30 CFR 250.126 to recognize the second edition of API's quality assurance program (API Spec Q1) and to update the ASME/ANSI quality assurance program from the 1985 edition to the 1988 edition with addenda a, b, and c. This NFR became effective on April 23 1990.

The API recently replaced its second edition of API Spec Q1 with the third edition, dated June 1, 1990. In an effort to incorporate the most current editions of the quality assurance programs recognized in § 250.126, MMS reviewed this new edition of determine if the changes between editions were significant and if the 1990 edition should be adopted in place of the 1988 edition that is currently incorporated by reference in the § 250.126. The MMS determined that the incorporation by reference of the third edition of API's quality assurance program does not differ significantly from the quality assurance programs presently incorporated by reference in § 250.126; therefore, this action does not require public review.

The third edition contains several minor changes from the 1988 edition, including reorganization of the foreword and policy sections, minor revisions to clarify several definitions, editorial changes, corrections, deletion of Appendix I, and some minor changes to the quality assurance program. The most notable change in the third edition is the revised procedure that allows the use of nonconforming materials and products provided they still can accomplish their design function. The handling of nonconforming parts was an area of expressed concern in the comments received during MMS's evaluation of the second edition of the API quality assurance program to determine whether it should be adopted as an acceptable alternative to the approved ASME/ANSI quality assurance program. Incorporation of the third edition of the API quality assurance program will result in the handling of nonconforming materials and products in a manner similar to the manner in which such materials are treated under the ASME/ANSI quality assurance program.

The MMS also reviewed ASME/ANSI SPPE–1d–1990, the fourth semiannual addendum to SPPE–1–1988, and determined that it does not represent a significant modification of SPPE–1–1988 and thus does not require public review prior to adoption.

Executive Order 12291

The Department of the Interior (DOI) has determined that this rule will not cause an increase in costs or prices for consumers or industry; therefore, this rule does not constitute a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required. The DOI has also determined that this amendment will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the complexity and financial resources necessary to conduct such activities.

Information Collection Requirements

This rule does not contain collections of information which require approval by the Office of Management and Budget in 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

This rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

Author

This document was prepared by William S. Hauser, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 15, 1990.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set out in the preamble, title 30, chapter II, subchapter B of the Code of Federal Regulations is amended as set forth below.

PART 250—[AMENDED]

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.1 paragraphs (c)(5) and (d)(1) are revised as follows:

§ 250.1 Documents incorporated by reference.

* * * * *

(c) * * *

(5) ASME/ANSI SPPE–1–1988 and SPPE–1a–1988, SPPE–1b–1989, SPPE–1c–1989, and SPPE–1d–1990 (addenda), Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incoporated by Reference at § 250.126 paragraphs (c)(2), (e)(1), and (e)(3).

* * * * *

(d) * * *

(1) API Spec Q1, Specification for Quality Programs, Third Edition, June 1990, API Stock No. 811–00001, Incorporated by Reference at: § 250.126(c)(3).

* * * * *

3. In § 250.126, paragraphs (c)(2), (e)(1), and (e)(3) are revised to read as follows:

§ 250.126 Quality assurance and performance of safety and pollution prevention equipment.

* * * * *

(c) * * *

(2) Be certified by the manufacturer as having been produced under a quality assurance program that meets the requirements of ASME/ANSI SPPE–1–1988 and addenda a, b, c, and d, or

* * * * *

(e) * * *

(1) Equipment certified under paragraph (c)(2) shall be reported in accordance with section OE–2670 of ASME/ANSI SPPE–1–1988 and addenda a, b, c, and d.

* * * * *

(3) Equipment certified under both paragraphs (c)(2) and (c)(3) shall be reported in accordance with both section OE–2670 of ASME/ANSI SPPE–1–1988 and addenda a, b, c, and d, and section 2 of appendix C of API Spec 14A or API Spec 14D, as appropriate.

* * * * *

[FR Doc. 90–21560 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1–90–040]

Drawbridge Operation Regulations; Newtown Creek, NY (East Branch), et al.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New York City Department of Transportation (NYCDOT), the Coast Guard is changing the regulations governing the following four bridges: Grand Street/Avenue drawbridge over the East Branch of Newtown Creek at mile 3.1 between the boroughs of Brooklyn and Queens, New York; the Roosevelt Island drawbridge over the East River at mile 6.4 between Roosevelt Island and Queens, New York; and, the Borden Avenue and Hunters Point Avenue drawbridges over Dutch Kills at miles 1.2 and 1.4, respectively, in Queens, New York. The changes allow the NYCDOT to man and operate these NYC moveable highway bridges on an advance notice basis with a roving team normally based at the Grand Street/Avenue bridge across Newtown Creek (East Branch). These changes are being made to provide timely openings and achieve more efficient utilization of manpower. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw of the Grand Street/Avenue bridge and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective October 15, 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: On May 17, 1990, the Coast Guard published proposed rules (55 FR 20477) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1–718 dated 7 June 1990. In each notice interested persons were given until 2 July and 28 June 1990, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, project attorney.

Discussion of Comments

The only comments received were made by the requesting agency; the NYCDOT. In response to comments received, several minor changes have been made to the proposed regulations. These include: (1) A change from Borden Avenue to Grand Street/Avenue bridge as the base of operation for the roving patrol due to the recent increase in the number of vessel transits caused by reactivation of a closed facility; (2) increase from one hour to two hours advance notice for openings of the Roosevelt Island bridge to facilitate adequate coordination with New York City Fire, Police and Emergency Medical Service (EMS) personnel (this bridge provides the only vehicular access to this heavily populated island); (3) and, change the point of contact for advance notice to reflect recent New York City Department of Transportation organizational changes.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation will not prevent the passage of vessels but just require giving advance notice of arrival at Grand Street/Avenue bridge. Additionally, less notice is required for the other three bridges than presently required. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.777 [Removed]

2. Section 117.777 is removed and §§ 117.781 and 117.801 are revised to read as follows:

§ 117.781 East River.

The following requirements apply to the Roosevelt Island bridge, mile 6.4 at New York City, as follows:

(a) Public vessels of the United States Government, state or local vessels used for public safety, and vessels in distress

shall be passed through the draws of each bridge as soon as possible without delay at anytime. The opening signal from these vessels shall be four or more short blasts of a whistle, horn or radio request.

(b) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(c) The draw of the Roosevelt Island bridge shall open on signal if at least two hour advance notice is given to the drawtender at the Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), the New York Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office. In the event the drawtender is at Borden Avenue or Hunters Point Avenue bridges mile 1.2 and 1.4, respectively, across Dutch Kills, up to an additional half hour delay may be required.

§ 117.801 Newtown Creek, Dutch Kills, English Kills and their tributaries.

(a) The following requirements apply to all bridges across Newtown Creek, Dutch Kills, English Kills and their tributaries:

(1) Public vessels of the United States Government, state or local vessels used for public safety, and vessels in distress shall be passed through the draws of each bridge as soon as possible without delay at anytime. The opening signal from these vessels shall be four or more short blasts of a whistle, horn or radio request.

(2) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less that 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraphs (b) through (e) of this section, each draw shall open on signal.

(b) The draws of the Long Island Railroad bridges, mile 1.1 across Dutch Kills, both at New York City shall open on signal if at least six hours notice is given to the Long Island Railroad Movement Bureau except as provided in paragraphs (a)(1) and (a)(3) of this section.

(c) The draw of the Borden Avenue bridge, mile 1.2 across Dutch Kills at New York City (NYC), shall open on signal if at least one hour advance notice is given to the drawtender at the Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), the New York City Department of Transportation (NYCDOT) Radio Hotline, or NYCDOT Bridge Operations Office. In the event the drawtender is at the Roosevelt Island bridge, mile 6.4 across East River of the Hunters Point Avenue bridge, mile 1.4 across Dutch Kills, New York, up to an additional half hour delay may be required.

(d) The draw of the Hunters Point Avenue bridge, mile 1.4 across Dutch Kill, New York City, shall open on signal if at least one hour advance notice is given to the drawtender at the Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), the New York City Department of Transportation (NYCDOT) Radio Hotline, or NYCDOT Bridge Operations Office. In the event the drawtender is at the Roosevelt Island bridge, mile 6.4 across East River, or the Borden Avenue bridge, mile 1.2 across Dutch Kills, up to an additional half hour may be required.

(e) The draw of Grand Street/Avenue bridge, mile 3.1 across Newtown Creek (East Branch), at New York City, shall open on signal unless the drawtender is at the Borden Avenue or Hunters Point Avenue bridges, mile 1.2 and 1.4, respectively, across Dutch Kills, New York, or the Roosevelt Island bridge, mile 6.4 across East River. In this event, a notice to New York City Department of Transportation Radio Hotline, or NYCDOT Bridge Operations Office shall be given, to which a delay of up to one hour may be required.

Dated: August 29, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90-21273 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD07-90-50]

Safety Zone; Entrance Channel to Boca Grande Pass, Boca Grande, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has designated the Entrance Channel to Boca Grande Pass, Boca Grande as a Safety Zone. This zone is necessary due to shoaling which has reduced the controlling depth and the width of the channel. The channel is prohibited to vessels with a maximum draft of greater than 25 feet. Vessels with a draft of 24 or greater are restricted to operating during periods of daylight when the height of tide is one or more feet above mean low water. Vessels with a maximum draft of less than 24 feet are not restricted. These restrictions are necessary to protect vessels from the shoaling and to protect the environment from oil and chemical spills resulting from ship damage.

DATES: This regulation becomes effective on August 30, 1990. It terminates on May 1, 1991 unless terminated earlier because of completion of the channel dredging project. Comments on this regulation must be received on or before October 31, 1990.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, Tampa, FL 33606-3598. The comments will be available for inspection and copying at Commanding Officer, U.S. Coast Guard, Marine Safety Office, Tampa, FL 33606-3598, Port Operations Building Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant S.P. Metruck, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest since immediate action is required to prevent damage to deep draft vessels and the possible environmental harm caused by pollution from damage.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based on comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant S.P. Metruck, project officer for the Captain of the Port and Lieutenant G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

A vessel grounded in the entrance channel to Boca Grande Pass on 25 April 1990. A resulting investigation revealed that the grounding was caused by shoaling in the waterway.

This regulation is required because shoaling has encroached into the channel limiting the size (draft) of vessel that can safely navigate in the channel. Vessels with maximum drafts greater than 25 feet are prohibited from the waterway. Vessels with drafts from 24 to 25 feet are prohibited from operating during periods of drakness; passage is permitted for these vessels ony during daylight hours when the height of tide is one or more feet above mean low water. Vessels with drafts less than 24 feet are not restricted.

These restrictions are necessary to prevent vessels from running aground in the channel. Concern that a grounding in the channel could result in significant damage to a vessel and the release of oil or chemicals in an environmentally sensitive area makes immediate action necessary.

Charlotte Harbor Channel Lighted Buoy 5 (Light List Number 16875) was relocated to mark the shoaling, reducing the width of the channel by one half. Notice of the channel conditions and buoy relocation was given in the Seventh Coast Guard District Local Notice to Mariners number 15–89 dated April 11, 1989.

Dredging of the channel by the U.S. Army Corps of Engineers is tentatively scheduled to begin in Fall 1990.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

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

Economic Assessment and Certification

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

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The amount of commercial traffic in Boca Grande Pass is very low. The vessels primarily affected are tank vessels calling on the Florida Power and Light Plant located at the Port of Boca Grande and due to the hazards involved with the shoaling, the tank vessels are already observing the draft restrictions of the regulations.

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

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

PART 165—[AMENDED]

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

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

2. Section 165.T07–90–50 is added to read as follows:

§ 165.T07–90–50 Safety Zone: Entrance Channel to Boca Grande Pass, Boca Grande, Florida.

(a) *Location:* The following is a safety zone: Entrance Channel to Boca Grande Pass, Boca Grande, Florida.

(b) *Effective date:* This regulation becomes effective on August 30, 1990. It terminates on May 1, 1991 or unless terminated earlier due to completion of channel dredging project.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part:

(1) Vessels with a maximum draft greater than 25 feet are prohibited.

(2) Vessels with a maximum draft of greater than 24 feet are restricted to operate during periods of daylight when the height of tide is one or more feet above mean low water.

Dated: August 30, 1990.

R.E. Bennis,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Tampa, Florida.

[FR Doc. 90–21274 Filed 9–12–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–3829–5]

Designation of Areas for Air Quality Planning Purposes; Ozone Attainment Status Designations; Gregg County, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Texas submitted a request on September 26, 1989, to redesignate Gregg County from nonattainment to attainment for ozone in accordance with section 107(d)(5) of the CAA. On April 11, 1990, EPA proposed to redesignate Gregg County from nonattainment to attainment of the ozone standard. Texas has shown evidence of an implemented EPA approved control strategy and ozone air quality data through April 1990 which show no exceedances of the ozone National Ambient Air Quality Standard (NAAQS) and less than 1.0 expected exceedance averaged over a three year period (March 1, 1987—April 30, 1990). EPA is designating Gregg County from ozone nonattainment to attainment.

EFFECTIVE DATE: September 13, 1990.

ADDRESSES: Copies of the State's designation request, technical support document, and the supporting air quality data are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Rebecca Caldwell, (214) 655–7214 or FTS 255–7214..

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of EPA has promulgated the national ambient air quality standards (NAAQS) attainment status for all areas within each State. These area designations are subject to revision whenever sufficient air quality data become available to warrant a redesignation and other requirements are met (see 51 FR 26272, July 22, 1986). For areas designated nonattainment for ozone, a revised ozone State Implementation Plan (SIP) was required

which satisfies the requirements of section 110(a) and part D of the CAA, and which provides for attainment and maintenance of the ozone NAAQS.

Gregg County Ozone State Implementation Plan (SIP)

On April 13, 1979, the TACB submitted to EPA a SIP to accomplish Volatile Organic Compounds (VOC) emission reductions in the rural and urban areas of the State as required by the 1977 CAA. The SIP provided for emission reductions by December 31, 1982, to demonstrate attainment of the ozone standard in Gregg County, which had been identified as a "rural" ozone nonattainment area. The TACB adopted VOC controls, Regulations V, "Control of Air Pollution from Volatile Organic Compounds", in Gregg County on July 11, 1980, as specified in EPA's Set I and II Control Technique Guidelines. In addition, emission reductions were achieved from the Federal Motor Vehicle Control Program (FMVCP) administered by the Federal government. The VOC controls required by TACB Regulation V were effective as of August 22, 1980, and all persons affected by these rules were required to be in compliance as soon as practicable, but not later than December 31, 1982. EPA approved the 1979 SIP for Gregg County on March 25, 1980 and May 3, 1982. More information related to the VOC emission reductions can be found in the Technical Support Document.

The Ozone NAAQS

The NAAQS for ozone is violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than 1.0. A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm. (See "Guideline for the Interpretation of Ozone Air Quality Standard", EPA–450/4–79–003, which has been included in the record for this rulemaking action.) The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (due to invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days (EPA–450/4–79–003). Further information on specific criteria for ozone redesignations can be found in the proposed April 11, 1990 **Federal Register** notice.

Public Comment

EPA received public comments from government officials in Gregg County, citizens of Longview, and industries located in Gregg County. The comments received supported the ozone redesignation of Gregg County from nonattainment to attainment and maintaining an adequate ozone monitoring network. Only one commenter, Southwestern Electric Power Company, did not support maintaining the ozone monitoring network. EPA believes maintaining the ozone monitor in Gregg County will ensure that continued compliance is achieved and will assure the citizens in Gregg County that the ozone air quality standards are being maintained. Therefore, it is essential to maintain the ozone monitor in Gregg County.

Final Designation

On April 14, 1989, the Texas Air Control Board adopted a resolution recommending that Gregg County be reclassified as an attainment area for ozone. The TACB submitted the resolution and supporting documentation to EPA on September 26, 1989, and additional requested information on December 7, 1989.

In order to redesignate an ozone nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 averaged over a three year period. Texas has submitted ambient air quality data collected at the Gregg County monitoring site from 1977 to 1988 except for 1986 and the early part of 1987.

The most recent three years of data needed to designate Gregg County to attainment would include 1987, 1988, and 1989. Texas did not start monitoring in 1987 until May 1, 1987; therefore, in order to have a complete three years of data, Texas had to provide ozone air quality monitoring data through April 1990.

The expected exceedance calculation is zero in 1987, 1988, and 1989 since there were no ozone exceedances. There were no ozone exceedances through April 1990, therefore, the expected exceedance calculation remains less than 1.0 averaged over the May 1, 1987 through April 30, 1990 time period. Gregg County has the appropriate monitoring data to redesignate the county to attainment.

Final Action

The State's request to redesignate Gregg County from nonattainment to attainment status for ozone provides evidence that Gregg County has an approved and implemented SIP, verifies that the major VOC sources are in compliance in the county, and that attainment has been achieved through real enforceable emission reductions and not as a result of economic downturn in the economy.

Therefore, EPA is redesignating Gregg County from nonattainment to attainment for the ozone NAAQS since ozone monitoring data through April 1990 show no ozone exceedances and the expected exceedance calculation remains less than 1.0 averaged over the three year period from May 1, 1987 to April 30, 1990.

Today's action is contingent upon the State maintaining an adequate ozone ambient air quality monitoring network and continuing full implementation of their nonattainment plan. Under the reasoning of *Bethleham Steel Corp* v. *EPA*, 723 F. 2d 1304 (7th Cir. 1983), EPA believes that it may not have the authority to redesignate an area of nonattainment without first receiving a request to do so from the affected state. Therefore EPA anticipates that should violations of the ozone NAAQS occur in the future, the state will request that EPA redesignate the area nonattainment. Also, this redesignation does not in any way relieve sources from their obligation to meet all applicable requirements of the approved ozone nonattainment plans (SIPs), nor does it authorize the State to delete or relax RACT emission limiting regulations. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

As noted elsewhere in this notice, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act (CAA), petitions for judicial review of this action must be filed in the

United States Court of Appeals for the appropriate circuit by November 13, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: July 31, 1990.

Robert E. Layton, Jr.,

Regional Administrator.

40 CFR part 81, subpart C, is amended as follows:

PART 81—[AMENDED]

Subpart C—Texas

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.344 the Texas—ozone (O_3) table is amended by revising the entry for "AQCR 022" to read as follows:

§ 81.344 Texas.

Texas—Ozone (O_3)

Designated area	Does not meet primary standard	Cannot be classified or better than national standards
AQCR 022:		
Gregg County	X	
Remainder of AQCR.	X	
* * * * *		

[FR Doc. 90–21598 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 761

[OPTS–66008I; FRL 3797–2]

Polychlorinated Biphenyls (PCB's): Manufacturing, Processing, and Distribution in Commerce, Stay of Interpretation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay of interpretation.

SUMMARY: Section 6 of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyl (PCBs). It also provides a procedure where persons may petition the Administrator, for good cause shown, for an exemption from these prohibitions. This notice announces EPA's stay of an interpretation of 40 CFR 761.20(c)(1) which was included in the preamble to the PCB Manufacturing, Processing, and Distribution in Commerce Exemption Rule that was published in the Federal Register (55 FR 21023) on May 22, 1990.

EFFECTIVE DATE: This stay is effective as of July 3, 1990.

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 Telephone: (202) 554–1404, TDD: (202) 554–0551.

ADDRESSES: The official record for the PCB exemptions is located in the TSCA Public Docket Office, Rm. G004, NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The record is available for copying and inspection from 8 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: EPA has determined to stay the interpretation of § 761.20(c)(1) in the preamble to the Polychlorinated Biphenyl (PCB) Exemption Rule, 55 FR 21023, only insofar as it requires entities, such as the Electric Apparatus Service Association, Inc. (EASA) to obtain an exemption to buy or sell PCB Transformers or PCB-Contaminated Transformers, as found in the PCB Manufacturing, Processing, and Distribution in Commerce Exemptions Rule published in the Federal Register on May 22, 1990 (55 FR 21025). This stay does not affect any exemption petition addressed in that rule or any other aspect of that rule or preamble to the rule. In granting this stay, EPA intends to reevaluate its interpretation of TSCA section 6(e) and 40 CFR 761.20(c)(1) along with broader issues regarding buying and selling of PCB Transformers and PCB-Contaminated Transformers. Accordingly, the interpretation requiring entities such as EASA obtain an exemption to buy and sell intact, non-leaking PCB or PCB-Contaminated Transformers is hereby stayed.

Dated: August 29, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 90–21380 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Cape Alava to the Queets River, Washington, at midnight, September 3, 1990, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 5,400 coho salmon for the subarea will be reached by September 3, 1990. The closure is necessary to conform to the preseason announcement of 1990 conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from Cape Alava to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, September 3, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 1661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until September 25, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at

§ 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 recreational fishery for all salmon species in the subarea from Cape Alava to the Queets River, Washington, would begin on July 2 and continue through the earliest of September 20 or the attainment of either subarea quota of 3,300 coho salmon or the overall quota of 37,500 chinook salmon north of Cape Falcon, Oregon. The subarea quota for coho salmon was modified on July 29 to 5,400 fish (55 FR 32259, August 8, 1990). Based on the best available information, the recreational fishery catch in the subarea is projected to reach the 5,400 coho salmon quota by midnight, September 3, 1990. Therefore, the fishery in this subarea is closed to further recreational fishing effective 2400 hours local time, September 3, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding a closure of the recreational fishery between Cape Alava and the Queets River, Washington. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the **Federal Register**, through September 25, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: September 10, 1990.

David S. Crestin,

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

[FR Doc. 90–21673 Filed 9–10–90; 5:01 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 178
Thursday, September 13, 1990

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

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

RIN 1515-AA80

Cargo Release Notification to Certain Vessel and Air Carriers and Bonded Facilities That Are Not Part of the Automated Manifest System

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The document proposes to amend the Customs Regulations to provide that Customs may notify certain parties of the release of their cargo by posting in each Customs district at the start of each business day a computer-generated list of shipments which have been authorized for release from Customs custody. It is proposed that release notification will be communicated in this manner to vessel carriers, air carriers and bonded facilities which are not participants in the Automated Manifest System, if entry data has been transmitted through the Automated Broker Interface, and the cargo qualifies for electronic entry filing. This procedure would greatly decrease the amount of paperwork involved in Customs processing of release notifications. A notice was published previously concerning this matter. After consideration of comments received in response to this notice, certain modifications were made. The modified proposal is being republished for further comments.

DATES: Comments must be received on or before October 15, 1990.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Pfeifer, Office of Cargo Enforcement and Facilitation (202) 566-8151.

SUPPLEMENTARY INFORMATION:

Background

Section 1448 of title 19, United States Code (19 U.S.C. 1448) provides that no merchandise shall be removed from the place of unlading until a permit for its delivery is issued by Customs. Pursuant to 19 U.S.C. 1484(j), merchandise shall be released from Customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from Customs custody only to or upon the order of the proprietor of the warehouse.

Prior to Customs efforts to automate, carriers and bonded warehouse proprietors were notified of the release of their shipments by Customs by receiving a paper copy of a Customs document (usually the Customs Form 3461) for each shipment which was authorized for release by Customs.

In Customs efforts to automate all phases of its entry processing of merchandise into a single automated system, the Automated Commercial System (ACS), Customs has developed a new method of informing carriers and bonded facilities of the release of cargo.

Two integral modules of the ACS, the Automated Manifest System (AMS) and the Automated Broker Interface (ABI), play a role in the creation of the new method of notification of cargo release.

ABI permits qualified trade participants to interface directly with Customs computer and transmit entry release and entry summary data for merchandise being imported. ABI speeds entry processing and provides two-way communciation between the user and Customs. In this manner, participants are able to ensure the accuracy and completeness of data by accessing Customs automated reference files. Further, when Customs determines to release a shipment, it can transmit this message electronically to an ABI entry filer.

AMS is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the AMS with automated Customs entry data submitted through ABI, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise. One of the advantages AMS provides to participants is an electronic notification of Customs action authorizing the release of the cargo and its delivery to the consignee.

While AMS and ABI participants receive electronic status notifications regarding the release of cargo when entry data is furnished via ABI, vessels, aircraft or bonded facilities which are not participants in AMS do not receive electronic notification of the releases. Accordingly, a broker may receive electronically through ABI a cargo release notification before a carrier or bonded facility operator is aware that Customs has approved the release of the cargo. Until a recent test program, non-AMS carriers were notified of the release of their cargo in the same manner as pre-automation; they were notified of release of shipments by receipt of paper copies of documents authorizing release.

On August 15, 1988, Customs published a notice in the **Federal Register** (53 FR 30696), proposing to discontinue the practice of providing separate copies of release documents with respect to transactions of non-AMS carriers and bonded facility operators for which entry data is furnished via ABI and which based on Customs analysis represent the most minimal risk of violation of the Customs laws. In these types of transactions, where the cargo qualifies for electronic entry filing (electronic transmission of the entry data), it was proposed that each Customs district will post at the start of each business day a computer generated list of the shipments which have been authorized for release from Customs custody. A message that the cargo is released will still be transmitted through ABI to the ABI entry filer.

This procedure will greatly reduce Customs administrative burden, Currenlty, in excess of 50 percent of all entries are transmitted electronically to Customs. In response to the increasing inflow of data that is received electronically, this new procedure permits Customs to decrease the amount of paper documentation that is generated.

Ten comments were received in response to the proposal. An analysis of the comments follows:

Discussion of Comments

Comment: Commenters were concerned that carriers may have to wait as long as 24 hours for release data in an environment where time is of the essence. While they may receive information earlier about the release from an ABI filer, this would not be official notice of release and they may be liable if they accept a "release" from an ABI filer for merchandise that does not appear on the posted release listing in the customshouse.

Response: These commenters are correct in stating that information received by a carrier from an ABI filer is not an official notice of release, and that carriers may be liable if they accept a "release" from an ABI filer. If a carrier is misinformed by an ABI filer that Customs has released merchandise and duties are unpaid on merchandise the carrier releases, the carrier would be liable for the duties under 19 U.S.C. 1448, even if the merchandise was released in good faith.

Comment: A commenter suggested that Customs prohibit the release of cargo on an ABI generated Customs Form 3461 unless the ABI generated form is accompanied by a copy of the broker's print-out of the on-line Customs release data.

Response: It is not possible for all ABI brokers to generate a print-out of the broker's release message from ACS. Software packages in use by ABI filers provide a variety of message formats that are likely to mean little or nothing to a carrier.

Comment: A few commenters questioned Customs testing of this proposal before the proposal was published. They also claimed that carriers would be economically affected significantly by this proposal and that the implementation of the testing of the proposal prior to the publication of the notice of proposed rulemaking deprived the carriers of an opportunity to participate in the development of the policy.

Response: Customs often tests programs before determining to proceed with the program. In this particular case, the test was already well underway and in receipt of considerable support when the decision was made to implement the program as a matter of policy. Publication of the notice was necessitated by the favorable responses received following implementation of the test. The carrier and the broker national represntatives were included in all consultations in advance of initiating the test. Customs has concluded that the regulations will not have a significant economic impact on a substantial number of small entities and no evidence has been submitted to cause us to reevaluate this conclusion.

Comment: A commenter suggested that: (1) The posting of the release information in the customshouse be provided more than one a day; (2) the posted listing be sorted by carrier code or name; (3) the delivery document received from an ABI filer be considered an official notice of release; and (4) the format of release document be consistent from district to district.

Response: Customs does not have the resources to post a listing more than once a day. While the ability to sort the posting by carrier code or name is attainable, this cannot be accomplished without major systems reprogramming. Regarding the suggestion that the ABI flier be permitted to send an official notice of release, section 1484 of title 19, United States Code, provides that Customs shall release merchandise from its custody only to or upon the order of the carrier who brought the merchandise into the U.S.; a statutory change would be necessary for the broker to be allowed to give official notice of release. Regarding the consistency of the release document, the basic Customs release document is Customs Form 3461 and it is consistent from district to district.

Comment: Some commenters were concerned that the possibility exists that carriers can make mistakes when transcribing information from the daily posting of the release information in the customshouse.

Response: While transcription errors are indeed a possibility, Customs believes that implementation of the unique bill of lading requirements (Treasury Decision 88–69), facilitates the identification of carriers by the Standard Character Alpha Code (SCAC), substantially lessening the chance of such errors.

Comment: A commenter believed that additional costs would be required of carriers in order to have the daily posting transcribed.

Response: Customs believes that due to the new unique bill of lading requirements, carriers could actually save money. Because all bills of lading are uniquely identified, transcription errors are decreased. Further, the unique identifier prefixes afford the carriers the opportunity to acquire all releases in a central location without expending time traveling from location to location within the port.

Comment: A commenter questioned the legality of Customs posting a listing of releases in the customshouse as an adequate notice of release. The commenter also was concerned that release information would not be timely.

Response: Section 1448 of title 19, United States Code (19 U.S.C. 1448) provides that no merchandise shall be removed from the place of unlading until a permit for its delivery is issued by Customs. Customs believes that the posting of a listing of releases in the customshouse for carriers to see complies with 19 U.S.C. 1448 as long as the information posted is sufficiently specific for the carriers to identify the merchandise that they are permitted to release. Customs further believes that posting all releases for the previous business day fulfills any timeliness obligation.

Comment: A commenter stated that carriers have a continuing need for paper documents as audit control evidence.

Response: The expanded use of electronically transmitted messages lessens the need for Custms paper requirements. Customs believes that carriers can adapt their procedures to the automated environment. Expanded electronic transmission of entry and manifest data should occur concurrently with a decreased reliance on paper documentation. Favorable acceptance of the test procedures implied agreement of the carriers with this procedure. This acceptance precipitated implementing this procedure as policy.

Comment: A commenter suggested that Customs posting for air cargo include the carrier name or code; the flight number and flight date; and the master, house, or subhouse air waybill number at the lowest level of detail.

Response: After further evaluation, Customs has concluded that the posting for air cargo shall include the carrier name or code and the flight number. It is believed that this will provide more specific notification to air carriers. Accordingly, we are publishing a second proposal to indicate that this information will be provided for the air carriers.

Comment: A commenter suggested that Customs provide non-AMS carriers and/or their agents with an electronic release when the filer is on ABI and the cargo qualifies for electronic entry filing. Alternatively, the commenter suggests that Customs, under these circumstances, continue to provide the non-AMS carrier with a paper release.

Response: In the absence of a commitment to transmit manifest data to Customs, Customs cannot provide electronic release data to non-AMS participants. The purpose of this regulation is to decrease reliance on paper documentation and encourage participation in AMS. Accordingly, if entry data is transmitted through ABI

and the cargo qualifies for electronic entry filing, but a carrier is non-AMS, it would be counter to the purpose of the regulation to provide the carrier with an electronic release. Paper releases will continue to be issued to non-AMS carriers, however, if entry data is not filed through ABI or the cargo does not qualify for electronic entry filing.

Conclusion

The original proposal has been modified, as noted in the above discussion. Customs is republishing the proposal with the modifications to allow interested parties additional opportunity to submit comments.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229. Commenters on the original proposal need not resubmit their comments. The previously submitted comments will be reconsidered with any new comments received in response to this notice.

Executive Order 12291

The document does not meet the criteria for a "major rule" as defined in Section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, Release of merchandise, vessels.

Proposed Amendments

It is proposed to amend part 4 of the Customs Regulations (19 CFR part 4) as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, Customs Regulations (19 CFR part 4) would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

2. It is proposed to revise § 4.38(a), Customs Regulations, to read as follows:

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the district director only after the merchandise has been entered and, except as provided for in § 141.102(d) or part 142 of this chapter, the duties thereon, if any, have been estimated and paid. Generally, the permit shall consist of a document authorizing delivery of a particular shipment or an electronic equivalent. Alternatively, the permit may consist of a report which lists those shipments which have been authorized for release. This alternative cargo release notice may be used when the manifest is not filed by the carrier through the Automated Manifest System, the entry has been filed through the Automated Broker Interface, and cargo qualifies for Electronic Entry Filing. The report shall be posted in an area to which the public has access.

(1) Where the cargo arrives by vessel, the report shall consist of the following data elements:

(i) Vessel Name or Code, if transmitted by the entry filer;

(ii) Carrier code;

(iii) Voyage Number, if transmitted by the entry filer;

(iv) Bill of Lading Number;

(v) Quantity Released; and

(vi) Entry Number (including filer code).

(2) Where the cargo arrives by air, the report shall consist of the following data elements:

(i) Air Waybill Number;

(ii) Quantity Released;

(iii) Entry Number (including filer code);

(iv) Carrier code; and

(v) Flight number, if transmitted by the entry filer.

(3) In the case of merchandise traveling via in-bond movement, the report will contain the following data elements:

(i) Immediate Transportation Bond Number;

(ii) Carrier code;

(iii) Quantity Released; and

(iv) Entry Number (including filer code). When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The carrier or facility operator shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

* * * * *

Carol Hallett,

Commissioner of Customs.

Approved: August 22, 1990.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-21512 Filed 9-12-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD33

Loan Guaranty; Approval and Withdrawal of Automatic Processing Privileges

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments—extension of comment period.

SUMMARY: On August 17, 1990, the Department of Veterans Affairs (VA) published in the **Federal Register** (55 FR 33724) proposed amendments to its loan guaranty regulations (38 CFR part 36) to set forth the requirements that lenders must satisfy to process VA guaranteed home loans on the automatic basis and to prescribe standards and procedures for withdrawal of automatic processing authority. It has been determined that the public comment period on these proposed amendments should be extended for an additional 30 days, i.e., until October 17, 1990.

DATES: Comments must be received on or before October 17, 1990. Comments will be available for public inspection until October 26, 1990. VA proposes to make these regulatory amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, (271A) 810 Vermont Avenue NW., Washington, DC 20420.

All written comments will be available for public inspection in room 132, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3042.

Charles A. Fountaine,

Records Management Service.

[FR Doc. 90-21587 Filed 9-12-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-05; Notice 3]

RIN 2127-AA46

Federal Motor Vehicle Safety Standards; Seating Reference Point

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

ACTION: Supplementary notice of proposed rulemaking.

SUMMARY: This notice reopens the rulemaking action proposing to change the definition of "seating reference point" (SRP) in this agency's safety standards. The SRP identifies a single adjustment point for each seating position, which point is then used to determine whether that seating position of the vehicle complies with requirements set forth in several of the safety standards.

This notice proposes to make clear in the definition of SRP that the SRP does not establish the absolute rearmost point to which a seat can be adjusted. This notice would also amend the current definition of SRP to provide that the SRP is established using 95th percentile adult male leg segments, instead of the smaller 90th percentile adult male leg segments in the current definition. The agency believes that these proposed changes would make the definition of SRP consistent with current industry practice. The public is asked to provide information about the impacts on the vehicle design process that would result from these proposed changes.

DATES: Comments must be received by NHTSA not later than November 13, 1990.

If adopted as a final rule, this change in the definition of SRP would take effect September 1, 1992.

ADDRESSES: Comments should refer to Docket No. 82-05; Notice 3 and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. John Hinch, Crash Avoidance Division, NRM-11, room 5307, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5398).

SUPPLEMENTARY INFORMATION:

Seating Reference Point

The term *seating reference point* is defined in 49 CFR 571.3 as:

[T]he manufacturer's design reference point which—

(a) Establishes the rearmost normal design driving or riding position of each designated seating position in a vehicle;

(b) Has coordinates established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional templates described in SAE Recommended Practice J826, "Manikins for Use in Defining Vehicle Seating Accommodations," November 1962.

The four conditions set forth in the definition of "seating reference point" are intended to ensure that only one point will be the "seating reference point" for any seating position, and to ensure that all parties can agree where that "seating reference point" is located. The "seating reference point" (hereinafter referred to as "SRP") is then used, either directly or indirectly, as a reference point to determine compliance with several of the agency's safety standards. Standards No. 103, 104, 107, and 111 each use the SRP as a reference point to define a field of view or certain areas of the windshield that must comply with specified requirements. Standards No. 201, 202, 207, and 210 each use the SRP as a reference point for determining the components that are subject to the requirements of the standard or for positioning the seats to determine compliance with the requirements of the standard.

Summary of This Proposal

Before discussing the lengthy history of this rulemaking action, it might be helpful to the reader to have a brief summary of this rulemaking action. This notice proposes to follow the course originally suggested in the agency's advance notice of proposed rulemaking. That is, the SRP would not necessarily represent the absolute rearmost position of an adjustable seat, but would represent the adjustment position determined using 95th percentile male leg segments on the drafting template. This proposed approach is substantively identical to the recommended practice of the Society of Automotive Engineers.

The 1986 notice of proposed rulemaking had proposed to abandon this course because of a perceived safety need to ensure that Standard No. 210 compliance testing was conducted with adjustable seats adjusted to the absolute rearmost position. Standard No. 210 has subsequently been amended to ensure such positioning without referring to the SRP. Hence, there is no longer any safety need to redefine the SRP to ensure that the upper anchorage location will be measured with the seats positioned as far rearward as possible. This notice proposes to abandon the course proposed in 1986 and substitute an approach that appears to be accepted by the industry and by other governments.

The detailed history of this rulemaking and the agency's current proposal is set forth below.

Mercedes-Benz's Petition to Amend the Definition of SRP

Mercedes-Benz of North America, Inc. (hereinafter referred to as "Mercedes") filed several petitions asking for a change in the definition of SRP and for changes in how particular safety standards use SRP as a reference. Mercedes' petitions posed the question of whether the existing definition of SRP successfully accomplished its purpose of identifying one particular point for each designated seating position that is the SRP, or whether there is an inconsistency between paragraphs (a) and (d) in the definition of SRP.

Specifically, paragraph (a) in the definition of SRP states that the SRP establishes the rearmost normal design driving or riding position for each seat. Mercedes argues that this language suggests that the SRP may be located forward of the rearmost seat adjustment

position. According to this argument, if the agency intended the SRP to be located at the rearmost adjustment position for the seat, there was no reason to include the word "normal" in paragraph (a). Instead, paragraph (a) would simply specify that the SRP establishes the rearmost design driving or riding position. Since paragraph (a) actually specifies that the SRP establishes the rearmost normal design driving or riding position, the SRP may be located at some seat adjustment position other than the rearmost position, according to this argument.

If one accepts this course of reasoning, the issue then becomes how one determines which seat adjustment position represents the "rearmost normal design driving or riding position" for purposes of the SRP. The Mercedes petition contends that this question is answered in paragraph (d) of the definition of SRP. Paragraph (d) provides that the SRP must be the reference point employed to position the two dimensional templates described in the November 1962 version of SAE Recommended Practice J826. The November 1962 version of that SAE Recommended Practice includes specifications for thigh and lower leg segments in the 10th percentile, 50th percentile, and 90th percentile lengths. Since paragraph (a) of the SRP definition provides that the SRP is the rearmost normal position for the seat, one must choose the thigh and lower leg segments for the template that result in the rearmost seat adjustment position. By definition, the 90th percentile segments are larger than the 10th and 50th percentile leg segments. Therefore, Mercedes argued that paragraph (d) of the SRP definition seems to require the use of 90th percentile thigh and lower leg segments to determine the location of the SRP.

Mercedes' petition asked that the definition of SRP be amended so that the 95th percentile thigh and lower leg segments be used to determine the location of the SRP. According to Mercedes, the use of these longer leg segments on the template would bring the definition up to date with current industry practices and promote the harmonization of United States and European motor vehicle safety standards.

Advance Notice of Proposed Rulemaking on SRP Definition

After evaluating the Mercedes' petition, NHTSA published an advance notice of proposed rulemaking (ANPRM) granting the petition on March 8, 1982 (47 FR 9865). The ANPRM stated that the SRP did not represent the absolute rearmost position to which the seat could be adjusted. This conclusion was explained as follows:

> The definition of Seating Reference Point establishes limitations on where manufacturers must locate that point, but does not prevent manufacturers from extending seat track travel behind the point. The first part of the definition indicates that the Seating Reference Point is the manufacturer's design reference point which establishes the rearmost normal design driving or riding position. As such, it represents the rearmost design point from which manufacturers are required to meet various performance standards. It does not establish the absolute rearmost point to which a seat may be adjusted. 47 FR 9866.

The ANPRM included the following discussion with respect to Mercedes' request to use the 95th percentile leg segments in lieu of the 90th percentile leg segments specified currently:

> The agency finds merit in Mercedes-Benz's request that 95th percentile male leg segments instead of 90th percentile male leg segments be referenced in the definition of Seating Reference Point. To the extent that industry now uses 95th percentile male leg segments instead of 90th percentile male leg segments in its design efforts, implementation of safety standards written on 90th percentile male leg segments necessitates largely duplicative, although slightly different, measurements to be made. 47 FR 9866.

The ANPRM stated that NHTSA planned to issue a notice of proposed rulemaking with respect to the definition of SRP. The purpose of the ANPRM was to allow interested parties an opportunity to raise issues and provide information that the agency should consider when formulating its proposal.

Notice of Proposed Rulemaking on SRP Definition

After evaluating the comments received on the ANPRM and other pertinent information, NHTSA published a notice of proposed rulemaking (NPRM) on this topic on June 5, 1986 (51 FR 20536). The agency's thinking with respect to the Mercedes' petition had changed substantially since the ANPRM. On the subject of the relationship of the SRP to the seat adjustment position, the NPRM stated that the interpretation set forth in the ANPRM was incorrect. The agency explained its shift in thinking as follows:

> Because Standard No. 210 uses the SRP as its reference point, the requirement that the seats be in the absolute rearmost position would dictate that the SRP be established with the seat in that position. A manufacturer could not establish two seating reference points, so that the location dictated by Standard No. 210 would prevent a manufacturer from having seat positions to the rear of the SRP. In effect, the SRP usage in Standard No. 210 would decide the question presented by Mercedes in favor of the rearmost position.

The agency surveyed the location of the SRPs in vehicles it tested during its most recent compliance testing program, and found that, without exception, the manufacturers had determined the SRP with the seat in its rearmost position.

These circumstances have led the agency to modify the SRP interpretation announced in the ANPRM. That interpretation could lead a manufacturer to conclude that a seating position rearward of the SRP could be occupied while the vehicle is in motion. However, there is test data indicating that an anchorage positioned forward of the SRP may allow for increased head movement. It is therefore the agency's opinion that the reference in the SRP definition to the "rearmost normal design driving or riding position" means the rearmost position to which a seat can be adjusted when the vehicle is in operation. To further clarify this meaning, the agency is proposing to delete the word "normal" from the SRP definition. 51 FR 20538.

On the topic of which leg segments (the 90th or 95th percentile male) should be used with the two dimensional template to determine the location of the SRP, the ANPRM had indicated that the agency was considering amending the definition of SRP to specify that the two dimensional template use the 95th percentile male leg segments to determine the location of the SRP. The NPRM proposed a different course of action as follows:

Upon reviewing the comments, the agency has tentatively concluded that the best way to deal with the question posed by the incorporation of SAE J826 would be to limit the incorporation to aspects of SAE J826 other than leg segment length. One constant feature of SAE J826 throughout its successive editions has been the location of the template's H-point with reference to the seat cushion and seat back. This location has not varied with the changes in leg segment length, and would appear to be a uniform design consideration in the manufacturers' placement of their SRPs. The agency is accordingly proposing to limit the reference to SAE J826 in the definition of SRP, thereby excluding leg segment length as a factor in the location of the SRP. 51 FR 20537.

Leg segment length is a factor in the existing definition of SRP, because the length of those segments is related to the seat adjustment position at which the SRP will be located. Under the approach proposed in the NPRM, the seat adjustment position at which the SRP

will be located was specified as the rearmost position. Since the appropriate seat adjustment position was achieved without reference to any particular leg segment length, and since there was no other reason for referring to a particular leg segment length in the definition of SRP, the NPRM proposed to delete the reference to leg segment length from the SRP definition.

Notice of Proposed Rulemaking on Standard No. 210

Standard No. 210, Seat Belt Assembly Anchorages (49 CFR 571.210) sets performance requirements for safety belt anchorages to ensure their proper location for effective occupant protection and to reduce the likelihood of the anchorages' failing when exposed to crash forces. After receiving comments on the NPRM proposing to redefine SRP, NHTSA published a notice of proposed rulemaking to amend Standard No. 210 (52 FR 3293; February 3, 1987).

The NPRM for Standard No. 210 included some discussion relevant to the rulemaking to amend the definition of SRP, because Mercedes had submitted a separate petition to amend Standard No. 210. That standard had provided that, for the purposes of determining compliance with the upper anchorage location requirements, a seat is to be placed in its full rearward and downward position and the H-point of the two dimensional template is to be located at the SRP. Mercedes' separate petition to amend Standard No. 210 asked that this standard be amended to delete the reference to the seat in its full rearward position, because Mercedes believed that this seat positioning was inconsistent with the requirement that the template's H-point be located at the SRP.

The Standard No. 210 NPRM included the following discussion of the SRP:

> In 1985, during the agency's compliance testing on Standard No. 210, NHTSA gathered data on the relationship of the SRP to the rearmost position of the seat on the seat track. NHTSA found that the SRP coincided with the rearmost position of the seat in all of the cars tested. Recently, manufacturers have provided additional information on this issue to the agency. In responding to the agency's June 1986 (51 FR 20536) notice of proposed rulemaking on redefining the term "seating reference point," several manufacturers indicated that they now provide extended seat track travel in some of their vehicles. For example, Ford said that most of its passenger vehicles and some of its light trucks have extended seat track travel and American Motors said that about 50 percent of its current and planned vehicles have extended seat track travel. *Thus, in those vehicles the seating reference point would not coincide with the rearmost position of the seat on its track.*
>
> * * * * *
>
> However, the agency plans to use *the existing seating reference point, which may not be the rearmost position,* for testing to determine whether the lap portion of a lap belt or a lap/shoulder belt meet the minimum and maximum mounting angle requirements. The agency is concerned that the minimum lap belt angle for 5th percentile adult females would, in all likelihood, be marginal *if the rearmost seating position is used, rather than the seating reference point.* 52 FR 3296 (Emphasis added).

The emphasized language in this notice makes clear that NHTSA's 1987 interpretation of SRP was that set forth in the ANPRM. That is, the SRP is not necessarily located at the absolute rearmost point to which a seat can be adjusted. Instead, the SRP would be located using the 90th percentile leg segments on the two-dimensional template. However, this 1987 interpretation meant that the SRP used in the United States would be inconsistent with the European standard, which uses the 95th percentile leg segments on the two-dimensional template to locate the SRP. Further, this 1987 interpretation did not change the fact the NHTSA had published an NPRM in 1986 that proposed to locate the SRP with the seat in its absolute rearmost adjustment position.

Proposed New Definition of SRP

NHTSA recognizes that any change, no matter how seemingly innocuous, to the definition of SRP will affect the design process and decisions for millions of vehicles every year. The SRP is directly or indirectly referenced in eight different safety standards (Standards No. 103, 104, 107, 111, 201, 202, 207, and 210). The location of the SRP necessarily and directly affects the length of the seat track, the location of the inside rear view mirror, and so forth. These design decisions must be made very early in the design process. Further, these design decisions directly influence the occupant protection capibilities of the vehicle. Because of these far-reaching consequences, NHTSA must thoroughly analyze all the effects of any proposed change to the definition of SRP.

Upon further consideration, NHTSA has tentatively concluded that the approach proposed in the NPRM would not be the best approach for the agency to follow in this rulemaking action. The NPRM based its proposed approach on the fact that Standard No. 210 uses the SRP as the reference point for the upper shoulder belt anchorage. There are test data indicating that an anchorage positioned forward of an occupant's shoulder can allow increased head movement, thus potentially increasing the risk of head injury. These data led to the conclusion that Standard No. 210 should not permit upper anchorages to be located forward of an occupant's shoulder, regardless of the seat adjustment position. The rearmost seat adjustment position is the position in which an upper anchorage would be most likely to be forward of an occupant's shoulder. Since Standard No. 210 used the SRP to define the seat adjustment position used to determine compliance with the standard's anchorage location requirements, the NPRM proposed to define SRP as the rearmost position to which a seat can be adjusted while the vehicle is in operation. This proposal would have used the definition of SRP as the means of ensuring that an upper anchorage could not be located forward of the occupant's shoulder at any seat adjustment position.

This approach now appears needlessly intrusive into the vehicle design process, because there are simpler, but equally effective, means of ensuring that seats are positioned in the rearmost position. For example, NHTSA recently amended Standard No. 210 so that it no longer refers to the SRP as the means of indentifying the seat adjustment position used to determine compliance with the standard's upper anchorage location requirements. 55 FR 17970; April 30, 1990. In place of the SRP, Standard No. 210 now specifies that the design "H" point of the seat for its full rearward and downward position will be used to determine compliance with the upper anchorage location requirements. Accordingly, Standard No. 210 no longer provides sufficient justification for amending the definition of SRP to ensure seats will be positioned at the rearmost adjustment position. Moreover, if any other safety standard that currently refers to the SRP to define the seat adjustment position should, for safety reasons, have the seat adjusted to the rearmost position for compliance testing, as was the case with Standard No. 210, any such standard could be amended in the same way as was Standard No. 210. Hence, the agency tentatively concludes that there is no reason to proceed along the lines proposed in the previous NPRM on this subject.

Having tentatively decided to abandon the course proposed in the NPRM, the agency is now proposing to return to the approach contemplated in the ANPRM for this rulemaking. This approach would be implemented by amending the definition of SRP to be

similar to the SgRP concept used by the Society of Automotive Engineers (SAE). This concept is defined in SAE Recommended Practice J1100 JUN 84, "Motor Vehicle Dimensions," as follows:

> Seating reference point (SgRP)—The manufacturer's design reference point which—
>
> (a) Establishes the rearmost normal design driving or riding position of each designated seating position which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;
>
> (b) Has X, Y, Z coordinates established relative to the designed vehicle structure;
>
> (c) Simulates the position of the pivot center of the human torso and thigh; and
>
> (d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 APR 80.

The effect of adopting a definition similar to this definition in a final rule would be to provide that the SRP need not reflect the rearmost adjustment position for a seating position. Instead, under the definition proposed in this notice, the SRP would reflect the adjustment position for a seating position that accommodates a drafting template using leg segments representative of a 95th percentile adult male. If a seating position provided adjustment positions to accommodate persons larger than the 95th percentile adult male, any such adjustment positions would not affect the location of the SRP.

NHTSA's proposed definition of SRP would include three minor technical differences from the current SAE definition of SgRP. First, this proposed definition would include references to SAE J1100 JUN 84 to define the term "design H-point" in the introductory text of the proposed definition and the "X, Y, Z coordinates" in subparagraph (b) of the proposal. These references will ensure that there are no ambiguous or undefined concepts in the proposed definition.

Second, this proposed definition would refer in subparagraph (d) to the two-dimensional drafting template with the 95th percentile leg described in SAF J826 MAY 87. This is a more recent version of SAE J826 than the April 1980 version referenced in SAE J1100. This more recent version of SAE J826 did not make any changes to either the two-dimensional drafting template or the 95th percentile leg from the specifications set forth in the April 1980 version of the standard. Since there are no substantive differences in the relevant portions of the newer and older versions of this SAE standard, the agency prefers to propose to use the provisions in the newer version, because this version is more readily available. This proposed substitution of the more recent version of SAE J826 would also be consistent with the agency's April 30, 1990 amendment of Standard No. 210 (55 FR 17970). In that rule, NHTSA substituted the description of the two-dimensional drafting template in the most recent version of SAE J826 for an older version of the SAE standard, since there had been no changes in the provisions for the two-dimensional template.

Third, this proposed definition includes a provision in the event that a seating position cannot accommodate a person the size of the two-dimensional drafting template with the 95th percentile leg segments. For example, the seating positions in some small cars, particularly the rear seats, may be too small to position the two-dimensional drafting template with the 95th percentile leg segments attached. When the drafting template with the 95th percentile leg segments cannot be positioned properly in a seating position, the SRP would be defined as the rearmost adjustment position for the seat.

After reviewing the comments on the NPRM and other information, NHTSA believes that the approach proposed in this supplemental notice would be consistent with existing industry practice. NHTSA specifically solicits comments on any safety or economic impacts that would be associated with a final rule making the changes to the definition of SRP proposed in this notice. Would changes be needed from the existing practices to reflect this proposed change in the definition of SRP? If so, would those changes be primarily minor and of a technical nature or would those changes require some redesign or recertification of existing vehicles? NHTSA is especially interested in learning about any concrete impacts this proposed change would have on any current or planned future vehicles, as opposed to theoretical impacts that could occur on some theoretical vehicles.

Economic and Other Impacts

NHTSA has examined the impacts this proposed change to the definition of SRP would have if it were adopted as a final rule. Based on the available information, NHTSA has determined that this proposed rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As explained above, the agency believes this proposed amendment would make NHTSA's regulatory definition of SRP consistent with existing industry practice in designing vehicles. Some minor cost savings could result if manufacturers no longer need to locate the SRP for purposes of NHTSA's standards at a different point than the SRP used in designing vehicles, that is, with the 95th percentile male legs. Such savings would be minimal, especially on a per vehicle basis. Accordingly, NHTSA has not prepared a full preliminary regulatory evaluation.

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that any final rule adopting the changed definition of SRP proposed in this notice would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA believes the impacts of this proposal would be either nonexistent or minimal.

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

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

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

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

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

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

2. Section 571.3 would be amended by revising the definition of "seating reference point" in paragraph (b), to read as follows:

§ 571.3 Definitions.

* * * * *

(b) *Other definitions.* * * *

Seating reference point means the unique design H-point, as defined in SAE J1100 (June 1984), which:

(1) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(2) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(3) Simulates the position of the pivot center of the human torso and thigh; and

(4) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SEA J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is the most rearward adjustment position of the seating position.

* * * * *

Issued on September 7, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–21509 Filed 9–12–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for a Plant, "Argyroxiphium kauense" (Ka'u silversword), and for Two Na Pali Coast Plants: "Hedyotis st.-johnii" (Na Pali Beach Hedyotis) and "Schiedea apokremnos" (Ma'oli'oli); Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Corrections to proposed rules.

SUMMARY: This action corrects a number of errors that were indvertently introduced into two recently published proposed rules: (1) The proposal to list *Argyroxiphium kauense* (Ka'u silversword) as an endangered species, published August 6, 1990 (**Federal Register** Vol. 55, No. 151, pp. 31860–31864); and (2) the proposal to list two Na Pali Coast plants: *Hedyotis st.-johnii (Na Pali Beach hedyotis)* and *Schiedea apokremnos* (ma'oli'oli) as endangered species, published August 3, 1990 (**Federal Register** Vol. 55, No. 150, pp. 31612–31616).

FOR FURTHER INFORMATION CONTACT: Dr. Joan Canfield, Honolulu Field Station, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Corrections

Argyroxiphium kauense (55 FR 31860)

The more substantive errors in this proposed rule should be corrected as follows:

On page 31862, in the first column, lines 29–33: replace "The population has continued to decline, and now number fewer than 300 individuals (K. Sunada, pers. comm., 1990). Almost all larger (mature) plants were dead" with "The population has continued to decline, and now numbers fewer than 300 individuals (K. Sunada, pers. comm., 1990). In 1984, almost all larger (mature) plants were dead".

On page 31863, in the third column, line 9 under References Cited: replace "pp. 258–26" with "pp. 258–262".

Hedyotis st.-johnii and Schiedea apokremnos (55 FR 31612)

The more substantive errors in this proposed rule should be corrected as follows:

On page 31613, in the second column, 8th and 9th lines from bottom: replace "Some *S. apokremnos* individuals are functionally females" with "Some *S. apokremnos* individuals are functionally female".

On page 31614, in the second column, 3rd to 6th lines from bottom: replace "Other than that site, however, goat predation apparently already has eliminated *H. st.-johnii,* elsewhere at all sites goats are capable of reaching" with "Other than that site, however, goat predation apparently already has eliminated *H. st.-johnii* from all sites goats are capable of reaching".

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–21446 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Threatened Status for the Louisiana Black Bear and Proposed Designation of Threatened by Similarity of Appearance of all Bears of the Species Ursus americanus Within the Historic Range of U. a. luteolus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: notice of public hearing and reopening of comment period.

SUMMARY: The Service gives notice that a public hearing will be held on the proposed determination of threatened status for the Louisiana black bear, *Ursus americanus luteolus,* and proposed designation of threatened by similarity of appearance of all bears of the species *U. americanus* within the historic range of *U. a. luteolus.* The comment period on the proposal is reopened. The proposal was published in the **Federal Register** on June 21, 1990 (50 FR 25341). The Louisiana black bear

is presently restricted to the Tensas and Atchafalaya River basins with remnant numbers in the lower Mississippi River Delta and the bluffs south of Vicksburg, Mississippi. This hearing and comment period will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened September 13, 1990. The public hearing will be held from 7 to 10 p.m. on October 11, 1990, in Baton Rouge Louisiana. The comment period, which originally closed on August 20, 1990, now closes on October 21, 1990.

ADDRESSES: The public hearing will be held in the Louisiana Room in the Louisiana Department of Wildlife and Fisheries Building at 2000 Quail Drive, Baton Rouge, Louisiana. Written comments and materials should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The Service proposed to determine the Louisiana black bear, *Ursus americanus luteolus*, to be a threatened species and proposed to designate other bears of the species *U. americanus* within the historic range of *U. a. luteolus* as threatened by similarity of appearance on June 21, 1990 (55 FR 25341). The Louisiana black bear is threatened by dwindling range due to habitat loss and by the possibility of illegal killing. Historically, this bear occurred throughout Louisiana, east Texas and south Mississippi, but it is now confined to small numbers in Mississippi close to the Mississippi River, and to core populations in the Tensas and Atchafalaya River basins in Louisiana.

Section 4(b)(5)(e) of the Endangered Species Act requires that a public hearing be held on a proposed listing if requested within 45 days of publication in the **Federal Register**. Public hearing requests were received during the allotted time period from Luther F. Holloway and Joe M. Haas. The comment period on the proposal originally closed on August 20, 1990. In order to accommodate the public hearing, the Service reopens the public comment period. Written comments may now be submitted until October 21, 1990, to the Service in the **ADDRESSES** section.

Author

The primary authority of this notice is Wendell A. Neal (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (126 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 7, 1990.

David B. Allen,

Acting Regiondl Director.

[FR Doc. 90-21595 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 178
Thursday, September 13, 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

Agricultural Stabilization and Conservation Service, 1990–91 Marketing Quotes and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination of 1990–91 marketing quotas and acreage allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1990, with respect to the 1990 crop of dark air-cured tobacco. In addition, to other determinations, the Secretary declared the national acreage allotment to be 4,361 acres and the national poundage quota to be 8.8 million pounds.

This notice also announces the results of the referendum held during March 26–30, 1990, in which producers of dark air-cured tobacco disapproved marketing quotas on a poundage basis for the 1990–91, 1991–92, and 1992–93 marketing years.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) nor Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determination of the national marketing quota for the 1990 crop of dark air-cured tobacco which was announced by the Secretary on March 1, 1990 and to set forth certain other determinations with respect to this kind of tobacco. On March 1, 1990, the Secretary also announced that a referendum would be conducted by mail with respect to dark air-cured tobacco to determine whether those producers desired quotas on an acreage basis for the 1990–91 marketing year or a poundage basis for three marketing years beginning October 1, 1990.

During March 26–30, 1990, eligible dark air-cured producers participated in a referendum. Of the producers voting, 42.5 percent favored marketing quotes on a poundage basis for dark air-cured tobacco. Since less than 50 percent of producers voting in referendum favored poundage quotas, quotas for this kind will remain in effect on an acreage basis for the 1990–91 marketing year.

In addition to the proclamation of poundage quotas, sections 312 and 313 of the Agricultural Adjustment Act of 1938, as amended, (the Act) provides that the Secretary shall announce the reserve supply level and the total supply of dark air-cured tobacco for the marketing year beginning October 1, 1989, and the amount of the national marketing quota, national acreage allotment, and national acreage and poundage factor for apportioning (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for dark air-cured tobacco for the 1990–91 marketing year.

Acreage Allotments

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco with an acreage allotment program is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of this kind of tobacco generally produce less than their respective national acreage allotment, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in year of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the

marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On February 8, 1990, a Notice of Proposed Determination was published (55 FR 4461) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Five written responses were received in response to the Notice of Proposed Determination. Three comments recommended that quotas remain unchanged from the previous year's level, while two others recommended that quotas be increased 10 percent.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1989–90 marketing year was approximately 11.7 million pounds. The average annual quantity produced domestically and exported during this period was 1.9 million pounds (farm sales weight basis). Both domestic use and exports have fluctuated erratically. Accordingly, 12.0 million pounds have been used as a normal year's domestic consumption and 1.9 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 37.9 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1989, of 36.6 million pounds. The 1989 dark air-cured tobacco crop is estimated to be 6.0 million pounds. Therefore, the total supply for the market year beginning October 1, 1989, is 42.6 million pounds. During the 1989–90 marketing year, it is estimated that disappearance will total approximately 12.5 million pounds. By deducting this disappearance from the total supply, a carryover of 30.1 million pounds at the beginning of the 1990–91 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1990, is 7.8 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the past 5 years, less than 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1990–91 marketing year of 8.8 million pounds is necessary to make available production of 7.8 million pounds. This results in a national marketing quota for the 1990–91 marketing year of 8.8 million pounds.

In accordance with section 313(g) of the Act, the 1990–91 national marketing quota divided by the 1985–89 5-year national average yield of 2,018 pounds per acre results in a national acreage allotment of 4,360.75 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 28.0 acres, by the total of 1990 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Poundage Quotas

The sum of preliminary farm marketing quotas as determined by section 319(e) of the Act for dark air-cured tobacco for use in determining the marketing quota for the 1990–91 marketing year is 9,057,262. The national yield factor in accordance with section 319(d) of the Act is 1.00, based on the national average yield goal of 2,067 pounds divided by the weighted average of preliminary farm yield of 2,067, as determined in accordance with section 319(d) of the Act.

The national marketing quota of 8.8 million pounds, less a reserve of 56,504 pounds divided by the revised sum of the preliminary farm marketing quotas (factored by the national yield factor) results in a national poundage factor of 0.9654.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1990 are affirmed:

Proclamations of National Marketing Quotas for Dark Air-Cured Tobacco

Marketing quotas on a poundage basis for Dark air-cured tobacco for each of the 3 marketing years beginning October 1, 1990, October 1, 1991, and October 1, 1992, is proclaimed.

Referendum Results

Marketing quotas on a poundage basis shall not be in effect for the 1990–91 marketing year for dark air-cured tobacco. In a referendum held during March 26–30, 1990, 42.5 percent of those voting favored marketing quotas on a poundage basis.

The following is a summary, by State, of the results of the referendum:

	Total votes	Yes votes	No votes	% Yes votes
Indiana	9	5	4	55.6
Kentucky	6,292	2,875	3,417	45.7
Tennessee	1,367	381	986	27.9
Total	7,668	3,261	4,407	42.5

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1990:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 37.9 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1989, is 42.6 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1990, is 30.1 million pounds.

(d) *National marketing quota.* The 1990–91 national marketing quota for dark air-cured tobacco for the marketing year beginning October 1, 1990, is 8.8 million pounds.

(3) *National acreage allotment.* The national acreage allotment is 4,360.75 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0.

(g) *National poundage factor* for use in determining marketing quotas on a poundage basis for the 1990–1991 marketing year is 0.9654.

(h) *National yield factor.* The national yield factor for use in calculating farm marketing quotas on a poundage basis for 1990–91 marketing year is 1.00.

(i) *National average yield goal.* The national average yield goal for use in determining farm marketing quotas on a poundage basis or the 1990–91 marketing year is 2,067 pounds per acre.

(j) *National reserve.* The national acreage reserve is 28 acres of which 8 acres are made available for the 1990 new farms and 20 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, DC on September 7, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–21585 Filed 9–12–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Black Creek National Scenic River, Desoto National Forest, Perry County, Mississippi; Boundary Establishment and Management

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The final boundary and management documents of the Black Creek National Scenic River are being transmitted by the National Forests in Mississippi to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Joe Duckworth, District Ranger, Black Creek Ranger District, Wiggins, MS, telephone (601) 928–4422.

SUPPLEMENTARY INFORMATION: The Black Creek Scenic River boundary and management documents are available for review at the following offices: USDA Forest Service, Recreation, Auditors Building, 201 14th Street, SW., Washington, DC 20250; Southern Regional Office, 1720 Peachtree Road, NW., Atlanta, GA 30367; National Forests in Mississippi, 100 West Capitol St., Suite 1141, Jackson, MS 39269; and the Black Creek Ranger District, Wiggins, MS.

Public Law 99–590, October 30, 1986, designated a 21-mile segment of the Black Creek, in Mississippi, as a National Scenic River, to be administered by the Secretary of Agriculture. The final delineation of the river corridor boundaries, based on the provisions of Public Law 99–590, was approved by the Regional Forester and is being transmitted to Congress. Unless changed by Congress, the boundaries will become final ninety days after Congress receives the transmittal.

The management document for the Black Creek Scenic River was approved by the Regional Forester on January 30, 1990. This document contains information to implement management actions along the river.

Dated: August 5, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90–21579 Filed 9–12–90; 8:45 am]

BILLING CODE 3410–11–M

Exemption; Tonto and Coconino National Forest, Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice, bray fire area decision appeal exemption.

SUMMARY: The 500 acre bray fire in Arizona damaged timber and other resources. The Tonto and Coconino National Forests are conducting environmental analyses on the impact of this wildfire. It will be necessary to rehabilitate sections of the fire area and recover timber resources in as short a time as possible to minimize damage to the resources as a result of the fire. Damaged timber that is selected to be harvested needs to be removed within 3 months or the value will decrease due to deterioration. If decision documents resulting from these environmental analyses are appealed under 36 CFR Part 217, valuable time in rehabilitation and resource recovery are likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving rehabilitation and timber recovery within the Bray Fire area are exempt from appeal.

EFFECTIVE DATE: September 22, 1990.

ADDRESSES: Direct comments to: David F. Jolly, Regional Forester, 1570 Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW, Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: Marlin Q. Hughes, Director, Timber Management or Art Briggs, Assistant Director, Timber Management (505) 842–3240 or (505) 842–3242. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: September 4, 1990.

David F. Jolly,

Regional Forester.

[FR Doc. 90–21580 Filed 9–12–90; 8:45 am]

BILLING CODE 3410–11–M

Calypso Timber Sale, Gifford Pinchot National Forest, Skamania County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for a proposal to implement a timber sale project. The EIS will tier to the 1990 Land and Resource Management Plan (Forest Plan) for the Gifford Pinchot National Forest. The proposed project will be in compliance with the Forest Plan which provides the overall guidance for management of the area. The project area lies within a portion of the Dry Creek drainage, in an area known as the Bourbon Roadless Area, on the Wind River Ranger District. Specific activities for this proposal include: (1) Harvesting approximately 3 to 10 million board feet of timber from one or two timber sales; (2) development of an associated road network of about 3 to 10 miles of new road; (3) possible fuel reduction and site preparation treatments; and (4) reforestation of all harvested acres. Implementation is scheduled for fiscal year 1992. The Gifford Pinchot National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal in order to provide interested and affected people information about how they may participate and contribute in the planning process.

DATES: Comments concerning the scope of the analysis should be received in writing by October 24, 1990.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Geof Wilson, District Ranger, Wind River Ranger District, Carson, WA. 98610.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Julie Knutson, EIS Team Leader, Wind River Ranger District, Carson, WA 98610, phone (509) 427–5645.

SUPPLEMENTARY INFORMATION: The proposed action is listed in appendix A of the Forest Plan, however, since the Forest Plan was published (June 1990), the project area has been reduced in size due to the establishment of a "no harvest" Spotted Owl Habitat Conservation Area (HCA), which encompasses the southern half of the Bourbon Roadless Area. The proposal is summarized below:

Fiscal year	Sale name	Legal description	Volume MMBF	Road C miles	Harvest method
1992	Calypso	T.5N, R.6E, Sec. 11, 12,13, & T.5N, R.7E, Sec. 7, 18, WMS.	3–10	3–10	CC(r)

Abbreviations used above:
T=Township; N=North; R=Range; W=West; WMS=Williamette Meridian, surveyed; CC(r)=Clearcut with various levels of tree retention; C=Construction

The Calypso EIS will tier to the Forest Plan, which provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area descriptions that will be utilized for implementing projects on the Forest.

The Calypso area contains about 2400 undeveloped acres within the 5000 acre Bourbon Roadless Area. Bourbon Roadless Area was considered but not selected for Wilderness designation. The area is adjacent to the Trapper Creek Wilderness and Sisters Rock Natural Research Area. The Calypso area is divided into three management area categories: (1) Unroaded Recreation (no timber harvest), (2) Deer and Elk Winter Range (limited timber harvest), and (3) Timber Production (full timber harvest).

Applicable issues for the Calypso proposal were identified during five years of extensive public involvement (1985–1990), utilizing scoping meetings, field trips, open houses and newsletters. Issues currently identified to be addressed in the EIS include the potential effects of proposed management activities on: Water quality, fish habitat, soil productivity, old growth forest, biological diversity, primitive recreation, trails and trail-loops, Trapper Creek Wilderness, future options for re-allocation to non-development land uses, visual quality, timber productivity, timber supply and social-economics, threatened, endangered and sensitive species (including spotted owls), big game habitat, windthrow potential, wildfire potential, and cultural resources.

A range of alternatives for the project area will be considered. One alternative will be No Action. One will consider maximizing timber production opportunities. One alternative will consider using helicopter logging in order to maintain the future option of allocating the area to other non-roaded use. At least one alternative will be designed to minimize fragmentation of the large, contiguous block of old growth forest in the Big Hollow subdrainage. At least one alternative will involve harvest practices that help maintain or enhance the diversity and sustainability of forest ecosystems. Other alternatives will consider various timber sale and road development proposals that address key issues.

Scoping and public involvement are continuing, in order to identify any new issues, and to determine objectives for the alternatives and the depth of analysis needed for each issue. The Forest Service is seeking information, comments, and assistance from other agencies, organizations or individuals who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and member of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is important that those interested in the management of the Gifford Pinchot National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *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). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the EIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion by May, 1992. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Robert W. Williams, Forest Supervisor, is the Responsible Official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: September 7, 1990.

Robert W. Williams,

Forest Supervisor.

[FR Doc. 90–21584 Filed 9–12–90; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posted Stockyards; Tahlequah Livestock Auction, Inc., Oklahoma, et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

	Facility no., name, and location of stockyard	Date of posting
OK-208...	Tahlequah Livestock Auction, Inc. Tahlequah, Oklahoma.	July 16, 1990.
TX-337....	Raz Livestock Sales, Inc. Harper, Texas.	December 7, 1987.
TX-331....	Tri-county Livestock Market, Inc. New Summerfield, Texas.	August 26, 1986.

Done at Washington, DC this 7th day of September 1990.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 90-21586 Filed 9-12-90; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Zone Management; Federal Consistency Appeal by the International Paper Realty Corp. From an Objection by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Dismissal of appeal.

The Deputy Under Secretary for Oceans and Atmosphere has considered the threshold legal issue of whether, pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, the South Carolina Coastal Council's (SCCC) December 22, 1988, objection to International Paper Realty Corporation's permit application to modify an existing facility to create a multi-use marine terminal facility in the Savannah River is timely. Based upon a review of case law applicable to the requirements of notice, the Deputy Under Secretary has concluded that the SCCC has not rebutted a presumption of notice to the SCCC through a notice sent to J.M. Waddell, Jr., the Chairman of the SCCC.

Based on the evidence in the record, the Deputy Under Secretary has found that the SCCC had actual notice of the permit application in May 1987. On December 22, 1988, the SCCC indicated that the proposed International Paper project was inconsistent with the South Carolina Coastal Zone Management Program. The SCCC's consistency objection was not timely because it failed to respond to the notice within thirty days of receipt as required. 15 CFR 930.54(a). Accordingly, concurrence by the State agency is conclusively presumed.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Acting Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 673-5200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: September 5, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90-21590 Filed 9-12-90; 8:45 am]

BILLING CODE 3510-08-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeals by Puerto Rico Houseboat Owners to Objections by the Territory of Puerto Rico

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeals.

On January 15, 1988, the U.S. Army Corps of Engineers (Corps) issued a number of cease and desist orders to owners of permanently moored houseboats in La Parguera Sector, Lajas, Puerto Rico, who had not obtained the necessary Federal permits. The Puerto Rico Planning Board subsequently objected to the coastal zone consistency certification of several after-the-fact permit applications. Twenty-nine applicants appealed the denial of consistency to the Secretary of Commerce pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H.

Since the filing of these appeals, the Corps has submitted detailed comments resolving the permit status of the houseboat owners. The Corps disapproved the permit applications of the following appellants in part because their houseboats posed a threat to an endangered species: Demetrio Amador, Olga Arill-Miranda, Luis Boothby, Michael Cacio, Edwin Garcia, Reginald and Glenna Garner, Ana Irizarry, Rene Irizarry, Efrain Irizarry, Milton Irizarry, Luis Irizarry, Benjamin Leduc, Ivonne Lucero-Cuevas, Nelson Mercado, Roberto Mercado, Pedro Monzon, Sharon Padilla, Lolin Paz, Carlos Gonzalez-Redriguez, German Rodriguez, Lucia del Rodriguez, Carmen Rodriguez, Vicente Rodriguez, German Seda and Manuel Vargas. The Corps deactivated the permit application of Luis Aponte-Quinones because he moved his houseboat from the area. Finally, the Corps determined that the houseboats of Mercedes Mulet, Hiran Trabal and Isabel Witte-Hoffmann did not require a permit because they were in fact boats.

Accordingly, the appeals have been dismissed for good cause pursuant to 15 CFR 930.128. The appellants are barred from filing other appeals from Puerto Rico's objections to their original consistency certifications.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Acting Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 5, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90-21591 Filed 9-12-90; 8:45 am]

BILLING CODE 3510-08-M

[Docket No. 900826-0226]

Groundfish and Crab Fisheries of the Bering Sea and Aleutian Islands Area, Groundfish Fisheries of the Gulf of Alaska, and Pacific Halibut Fisheries off the State of Alaska; Correction

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

ACTION: Correction of notice of intent to develop measures to limit access to the groundfish, crab, and halibut fisheries off Alaska, and notice of control date for entry into the fisheries.

SUMMARY: This document corrects errors concerning a date that appears in the summary and the supplementary information of a document concerning groundfish, crab, and halibut fisheries off Alaska that was published in the **Federal Register** on September 5, 1990 (55 FR 36302). In each instance in the document where the date, September 17, 1990, appears, that date must be corrected to read September 15, 1990.

The intent of the North Pacific Fishery Management Council was and remains that the control date mentioned extensively in the original document (55 FR 36302; September 5, 1990) should have been designated as a date of exactly ten days after the date of publication. Because the document was published on September 5, 1990, the control date should be September 15, 1990. Therefore, the date of September 17, 1990, where it appears in FR Doc. 90–20850 is corrected to read September 15, 1990, by this document.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, (907–871–7229) or Mark R. Millikin, (301–427–2341).

SUPPLEMENTARY INFORMATION: In FR Doc. 90–20850, published on September 5, 1990, at 55 FR 36302, the date September 17, 1990, is corrected to read September 15, 1990 wherever it appears as follows:

On page 36302, in the summary, line 11 of the first paragraph, and lines 5 and 14 of the second paragraph.

On page 36303, in the second column of the supplementary information, line 5 of the second paragraph, and lines 5 and 14 of the third paragraph.

Dated: September 11, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–21727 Filed 9–11–90; 1:00 pm]

BILLING CODE 3510-22-M

Taking and Importing of Marine Mammals

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

ACTION: Notice of findings of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Governments of Mexico, Venezuela, and Vanuatu have submitted documentary evidence which establishes under the yellowfin tuna importation regulations that the average rate of incidental taking by vessels of the harvesting nations is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean, and that the other requirements for an affirmative finding allowing importation have been met. As a result of these affirmative findings, yellowfin tuna and yellowfin tuna products from Mexico, Venezuela, and Vanuatu can be imported into the United States through December 31, 1990.

DATES: This finding is effective September 7, 1990, and remains in effect until December 31, 1990 or until superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196.

SUPPLEMENTARY INFORMATION: On March 30, 1990, the NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act Amendments of 1988. This rule governs the importation of yellowfin tuna caught by purse seining in the eastern tropical Pacific Ocean (ETP). Additionally, on May 10, 1989 (54 FR 20171), the NMFS published a final determination to accept an alternative international observer coverage program for 1989, establishing observer coverage requirements for the non-U.S. tuna fleet in the ETP.

On August 28, 1990 the United States District Court for the Northern District of California ordered an embargo of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP by foreign nations until the Secretary of Commerce made affirmative findings based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidental taking by vessels of such foreign nation is no more than 2.0 times that of United States vessels during the same period.

The Assistant Administrator, after consultation with the Department of State, finds that the Governments of Mexico, Venezuela, and Vanuatu have submitted documentary evidence which establishes under the tuna importation provisions of 50 CFR 216.24(e), that the average rate of the incidental taking by vessels of the harvesting nation in no more than 2.0 times that of the U.S. vessels during the same period. As a result of these affirmative findings, yellowfin tuna and yellowfin tuna products from Mexico, Venezuela, and Vanuatu can be imported into the United States through December 31, 1990.

Dated: September 7, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–21594 Filed 9–12–90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Response Actions at FUSRAP Sites in Tonawanda, NY; Inclusion of the Seaway Site in the Remedial Investigation/Feasibility Study-Environmental Impact Statement for the Tonawanda Sites

AGENCY: Department of Energy (DOE).

ACTION: Notice regarding inclusion of the Seaway Site in the Remedial Investigation/Feasibility Study-Environmental Impact Statement for the Tonawanda Sites.

SUMMARY: Notice is hereby given that DOE, as part of its Formerly Utilized Sites Remedial Action Program (FUSRAP), is including the Seaway site in Tonawanda, New York, in the comprehensive environmental review and analysis process that is underway for the Linde and Ashland 1 and 2 sites in Tonawanda, New York.

FOR FURTHER INFORMATION CONTACT: General questions or comments concerning the FUSRAP program or the individual sites should be addressed to: Lester K. Price, Director, Technical Services Division, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8723, (615) 576–0948.

Questions specifically related to DOE's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process should be forwarded to: Kathleen I. Taimi, Acting Director, Office of Environmental Compliance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2113.

Questions specifically related to DOE's National Environmental Policy Act (NEPA) process should be forwarded to: Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background

DOE issued a Notice (54 FR 50800) on December 11, 1989, requesting comments regarding a proposal that DOE, as part of FUSRAP, include the Seaway site in Tonawanda, New York, in the comprehensive environmental review and analysis process under NEPA and CERCLA that is underway for the Linde and Ashland 1 and 2 sites in Tonawanda. This NEPA and CERCLA process began when DOE issued a Notice of Intent (NOI) 53 FR 11901, April 11, 1988) to Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement (RI/

FS–EIS). The process included studies to determine the nature, extent, and environmental impacts of existing radioactive contamination at the Tonawanda sites (excluding Seaway) and to evaluate alternative response action. Inclusion of the Seaway site into the total project has since been considered primarily because of supportive public comments received since the NOI was issued.

DOE solicited comments on the December 11, 1989, Notice from a wide range of elected public officials, local, state, and Federal regulators, the landowner, and other interested parties. Comments supporting the inclusion of the Seaway site in the RI/FS–EIS process for the three other Tonawanda sites were received from municipal and county governments, environemtnal councils, and planning boards in the Tonawanda/Erie County area (most in the form of resolutions), members of the Assembly and Senate of the State of New York and of the U.S. Congress, and a citizen environmental organization.

The reasons most often cited by those favoring inclusion of the Seaway site were: (1) Radioactive materials contained within the Seaway site are identical to and originate from the materials deposited on the Ashland sites and shouls receive the same level study; (2) materials at both the Seaway and Ashland sites, which are adjacent properties, have the potential (through seepage or leaching) to migrate from their present location to the Niagara River; and (3) because the radioactive materials at Seaway, Ashland 1 and 2, and Linde are nearly identical, the investigation, monitoring, risk assessment, analysis techniques, and cleanup will overlap. Therefore, cost savings from economies of scale can be expected from including Seaway.

Comments opposing inclusion of the Seaway site into the RI/FS–EIS process for the other Tonawanda sites were received from Browning-Ferris Industries, Inc. (BFI) (and its local subsidiary Niagara Landfill, Inc. (NLF)), which operates a solid waste disposal facility at the Seaway site. Opposition was based on the following points. (1) DOE's earlier decision to exclude Seaway from the full RI/FS–EIS process published in the April 1988 NOI was based on years of study and a pathways analysis that concluded that on-site stabilization of the radioactive residue beneath an apporpriate depth of solid waste was a suitable solution. (The pathways analysis was published in 1987 and is available from DOE's Oak Ridge Operations Office.) Therefore, BFI contends that continued independent treatment of the Seaway site as documented in an Engineering Evaluation/Cost Analysis report pursuant to CERCLA remains a valid approach. (2) Under DOE's timetable, the Tonawanda sites RI/FS–EIS process would not be completed until 1993 and NLF's solid waste disposal permit expires in July 1994. BFI and NLF contend that if Seaway is included in the RI/FS–EIS process it would be unlikely that they could dispose of solid waste in the radioactive areas prior to expiration of this permit. Continued denied access to substantial waste disposal space would result in significant contractual and economic consequences for NLF and BFI. In summary, BFI and NLF contend that delaying the remedy for Seaway for years of additional study serves neither the citizens of western New York nor the purposes of CERCLA or NEPA.

Conclusion

Inclusion of the Seaway site into the Tonawanda RI/FS–EIS process does not preclude action at that site, as an interim action under CERCLA and NEPA, before the Record of Decision that will conclude the RI/FS–EIS process. As the RI/FS–EIS studies proceed, they may indicate that consideration of an accelerated action at the Seaway site is justified. Inclusion of the Seaway site into the full RI/FS–EIS process ensures that the remedy selected for the Seaway site will be protective of human health and the environment because cumulative impacts of proposed actions at the adjacent Ashland 1 and 2 and related Linde properties will be considered.

On the basis of comments received since the NOI was issued on April 11, 1988, and comments received in response to the **Federal Register** Notice of December 11, 1989, regarding inclusion of the Seaway site, DOE has decided to include the Seaway site in its comprehensive environmental review and analysis process (RI/FS–EIS) for the Linde and Ashland 1 and 2 sites in Tonawanda, New York.

Dated at Washington, DC, this 7th day of September 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90–21604 Filed 9–12–90; 8:45 am]

BILLING CODE 6450–01–M

Intent To Award a Grant to Brigham Young University

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an application for a grant award.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to award a Grant based on an application submitted by Brigham Young University for "Three Dimensional Turbulent Particle Dispersion Submodel Development."

SCOPE: The objective of this grant is to develop, validate and implement in a 3–D code, a novel method for calculating particle dispersion in a high temperature, reacting, two-phase, gas/solid flow. An understanding of particle trajectories is important in pulverized coal flames because the particle path influences the rate of combustion, NO_x formation and ash deposition. Successful completion of the work under the Brigham Young proposal will constitute a significant advance in the state-of-the-art of modeling coal flames. For these reasons, the reasonableness of the proposed cost and other attributes, the proposal is deemed to have significant technical merit, and high value in terms of benefit to those involved in design and operation of coal-fired boilers, and ultimately to the public. In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), Brigham Young University has been selected as the grant recipient. DOE support of the activity would enhance the public benefits to be derived by enhancing the direct utilization of coals in combustion systems. This activity is an extension of previous grants funded by Department of Energy. The Department of Energy has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a twenty-four (24) month period, with an estimated value to DOE of $189,486.00.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Jeffrey C. Bogdan, Telephone: AC (412) 892–5715.

Dated: September 5, 1990.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90–21605 Filed 9–12–90; 8:45 am]

BILLING CODE 6450–01–M

Intent To Award Grant to National Association of State Energy Officials

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to National Association of State Energy Officials (NASEO) under Grant Number DE–FG01–90CE16039. The proposed grant will provide funding in the estimated amount of $195,500 to provide funding for training of State Energy officials in energy emergency preparedness.

The NASEO has proposed accomplishing the following goals:

a. Assist states in implementing public policy concerning energy emergency preparedness.

b. Provide on-going training for State Energy Office staffs and enhance readiness to mitigate energy emergencies.

c. Assist State Energy Offices in understanding the changes in energy markets as they affect the continuity and

d. Assist State Energy Offices by providing on-going analysis of state energy emergency preparedness and energy supply security issues.

e. Assist State Energy Offices with problem solving and planning activities in order to enhance energy emergency preparedness.

The goals of this project will be met by concentrating the instructional, analytical and problem solving activities on energy market and response. Mr. Frank Bishop, Executive Director, of the NASEO will be the principal association official. Mr. Bishop has a B.A. from the University of Mississippi, he has served as a clerk in the House of Representatives, served as a Special Project Officer supervising the administration of the community block grant program for the Mississippi Governor's office and he has served as manager of the Alternative Financing and Budget Branch in the Mississippi Energy Division. Dr. Donald E. Milsten is Vice Chairman of NASEO Security Committee and has been Director of the Maryland Energy Office since 1977. Dr. Milsten has extensive experience in managing energy emergencies; supervised assistance during the winter 1977 natural gas shortage; managed the petroleum fuel set-aside program from Maryland in 1979; and oversaw State relief measures during the propane shortage of 1989. He developed the Maryland Energy Emergency Plan and the Maryland Petroleum Emergency Set-Aside law and program. Dr. Milsten received his B.A. from Cornell University and a PhD in Political Science from the University of Michigan. The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by NASEO is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation, because the Energy Policy and Conservation Act, 42, U.S.C. 6324 et seq., authorizes States to develop plans for dealing with energy emergencies which are funded with DOE grant monies under the State Energy Conservation Program (SECP). This project, which meets high national energy priority, has a strong possibility of contributing to national and State goals.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rosemarie H. Marshall, PR–322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Placement and Administration.

[FR Doc. 90–21606 Filed 9–12–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–497–000, et al.]

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

September 6, 1990.

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

1. Kansas Power and Light Co.

[Docket No. ER90–497–000]

Take notice that on September 4, 1990, the Kansas Power and Light Company (KPL) tendered for filing an amendment to its filing of proposed changes to Rate Schedule FERC No. 247.

The amendment is necessary in order to include in the filing a copy of Article V, section 3 of the General Participation Agreement of the MOKAN Power Pool, referenced in section 1.13 of the KEPCo contract, as amended.

Copies of this amendment have been mailed to Kansas Electric Power Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: September 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corp.

[Docket Nos. ER90–314–001 and ER90–437–001]

Take notice that on August 10, 1990, Wisconsin Public Service Corporation (WPS) tendered for compliance filing in accordance with the Commission's order of July 13, 1990, in Docket No. ER90–314–000. As directed by the Commission, the submittal excludes construction work in progress from WPS's rate base for purposes of developing rates under the company's T–1 Transmission Tariff.

Currently, only one customer—Citizens Power & Light Corporation (Citizens)—has executed a service agreement and is taking transmission service under the T–1 Tariff. That agreement has been accepted for filing in Docket No. ER90–437, subject to outcome of Docket No. ER90–314. The present submittal also includes a refund report showing the refund made to Citizens (including interest) under the T–1 Tariff compliance rates.

Copies of this filing have been served upon all parties in Docket No. ER90–314 and ER90–437.

Comment date: September 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Co.

[Docket No. EL90–6–002]

Take notice that on September 4, 1990, Illinois Power Company tendered for filing its Refund Report in compliance with the Commission's order issued August 3, 1990 in this docket.

Comment date: September 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF90–5031–000]

Take notice that on August 29, 1990, the Deputy Secretary of The Department of Energy, by Rate Order No. WAPA–46, did confirm and approve on an interim basis, to be effective on the first day of the first full billing period beginning on or after October 1, 1990, Western Area Power Administration's (Western) power rate schedules P–SED–F4 and P–SED–FP4 for firm power service and firm peaking power service from the Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–Ed).

Rate Schedules P–SED–F4 and P–SED–FP4 will be in effect pending the

Federal Energy Regulatory Commission's (FERC) approval of them or of substitute rates on a final basis for a 5-year period.

The fiscal year (FY) 1989 power repayment study indicated that the exisiting rates do not yield sufficient revenue to satisfy the cost recovery criteria thorough the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

The following is a comparison of the existing rates to the proposed rates for the P–SMBP–ED):

EASTERN DIVISION

	Existing rate	Proposed rate	Change	Change percent
[FY 1991]				
Firm Power Service:				
Firm capacity, $/kW-month	1.85	2.25	+0.40	+21.6
Firm energy, mills/kWh	5.06	5.57	+0.51	+10.1
Composite mills/kWh	8.55	9.86	+1.31	+15.3
Additional charge for firm energy in excess of 60-percent monthly load factor, mills/kWh	3.38	3.38	0.00	0.0
Firm Peaking Power Service:				
Peaking capacity, $/kW-season	11.10	13.50	+2.40	+21.6
Peaking energy, mills/kWh	5.06	5.57	+0.51	+10.1
[FY 1992–95]				
Firm Power Service:				
Firm capacity, $/kW-month	1.85	2.35	+0.50	+27.0
Firm energy, mills/kWh	5.06	5.81	+0.75	+14.8
Composite mills/kWh	8.55	10.29	+1.74	+20.4
Additional charge for firm energy in excess of 60-percent monthly load factor, mills/kWh	3.38	3.38	0.00	0.0
Firm Peaking Power Service:				
Peaking capacity, $/kW-season	11.10	14.10	+3.00	+27.0
Peaking energy, mills/kWh	5.06	5.81	+0.75	+14.8

P–SMBP–Western Division

The rate schedules for the P–SMBP–Western Division are associated with the Loveland Area Projects (LAP) rate and are the subject of a separate rate adjustment, which is documented in Rate Order No. WAPA–47. The LAP rate adjustment is also scheduled to go into effect on the first day of the first full billing period beginning on or after October 1, 1990.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates to customers consistent with sound business principles. The Deputy Secretary of the Department of Energy states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period beginning October 1, 1990, and ending September 30, 1995, pursuant to authority vested in the FERC by Delegation Order No. 0204–108, as amended.

Comment date: September 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER90–566–000]

Take notice that on August 30, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to fourteen of its Rate Schedules:

Rate schedule No.	Supplement No.	Person receiving service
55	9	Philadelphia Electric Company (PECO).
56	9	Public Service Electric and Gas Company (Public Service).
57	9	Northeast Utilities (NU).
62	9	Orange and Rockland Utilities, Inc. (O&R).
69	6	NU.
70	4	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71	4	New England Power Co. (NEP).
74	7	PP&L.
75	8	GPU Service Corporation (GPU).
78	10	Power Authority of the State of New York (the Power Authority).
82	5	Baltimore Gas & Electric Company (BG&E).
83	5	Atlantic City Electric Company (Atlantic).
84	5	Connecticut Municipal Electric Energy Cooperative (CMEEC).
88	4	Boston Edison (BE).
95	2	Long Island Lighting Company (LILCO).

The Supplements provide for an increase in rate from 2.5 mills to 2.5 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus increasing annual revenues under the Rate Schedules by a total of $43,982.80. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1990.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE and LILCO.

Comment date: September 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Co., UNITIL Power Corp.

[Docket No. ER90–32–000]

Take notice that Bangor Hydro-Electric Company (Bangor) and UNITIL Power Corporation (UNITIL) on August 31, 1990 tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to UNITIL of 10,000 KW of electric generating capability during November 1, 1989 through October 31, 1990 and the total output associated therewith.

Comment date: September 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Western Area Power Administration

Docket No. EF90–5182–000

Take notice that on August 29, 1990,

the Deputy Secretary of the Department of Energy (DOE), by Rate Order No. WAPA–47, did confirm and approve on an interim basis, to be effective on the first day of the first full billing period on or after October 1, 1990, Western Area Power Administration's (Western) firm power rate Schedule L–F2, firm transmission service rate Schedule L–F2, firm transmission service rate schedule L–T1, and nonfirm transmission service rate Schedule L–T2 for the Loveland Area Projects (LAP). The power rates will be in effect pending the Commission's approval of them or substitute rates on a final basis for a 5-year period or until superseded.

The fiscal year 1090 power repayment studies indicated that the existing revenue returns were not sufficient to satisfy the cost-recovery criteria through the appropriate study periods. The rate Schedule L–F2 will yield adequate revenues to satisfy these criteria. To meet those requirements the firm power rates are proposed to be increased as follows:

Class of power	Existing rate (FY 1990)	Proposed rate (FY 1991)	Proposed rate (FY 1991–1995)
Firm Capacity (kW).	$1.84/kW-month.	$2.15/kW-month.	$2.21/kW-month.
Firm Energy (kWh.	7.15 mills/kWh.	8.39 mills/kWh.	8.60 mills/kWh.
Composite Rate (kWh).	14.29 mills/kWh.	16.77 mills/kWh.	17.19 mills/kWh.

The proposed transmission rate is based upon a cost-of-service concept for the transmission system. Previously, the rate was determined by increasing the transmission rate by the same percentage as the firm power rate was increased. The rates for the LAP transmission service were proposed to be increased as follows:

Class of service	Present rate	Proposed rate
Firm Capacity (kW).	$0.95/kW-month or $11.40/kW-year.	$1.52/kW-month or $18.24/kW-year.
Firm Energy (kWh).	2.3 mills/kWh	2.1 mills kWh.
Nonfirm Energy (kWh).	1.3 mills/kWh	2.1 mills/kWh.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates to customers consistent with sound business principles. The Deputy Secretary of the DOE states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period, effective the first day of the first full billing period beginning on or after October 1, 1990, pursuant to the authority vested in the Federal Energy Regulatory Commission (FERC) by Delegation Order NO. 0204–108, as amended.

Comment date: September 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Western Area Power Administration

Docket No. EF90–5171–000

Take notice that on August 31, 1990, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–45, did confirm and approve, on an interim basis, to be effective beginning on October 1, 1990, Rate Schedule SLIP–F2 for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects).

Rate Schedule SLIP–F2 will be in effect on an interim basis pending the Federal Energy Regulatory Commission's (FERC) approval of it or a substitute rate on a final basis.

The existing rate consists of an energy charge of 5.0 mills per kilowatthour (mill/kWh) and a capacity charge of $2.09 per kilowatt-month (kW-month), or a combined rate of 9.92 mills/kWh. The fiscal year (FY) 1989 Final Integrated Projects power repayment study dated May 1990 shows that an energy charge of 6.50 mills/kWh and a capacity charge of $2.76/kW-month, for a combined rate of 13.00 mills/kWh beginning October 1, 1990, will be adequate to repay project obligations in a timely manner. The 13.00 mills/kWh rate (31-percent rate increase) will recover additional annual operating expenses and the cost of new investment associated with the Central Utah Project and additional transmission system facilities.

However, due to a cash-flow problem in the Basin Fund, the combined firm power rate required for FY's 1991 and 1992 is 14.5 mills/kWh (46.0 percent increase). This increase is needed because the Integrated Projects are experiencing their fourth consecutive year of drought and because special water releases of Glen Canyon Dam for additional environmental research that was not previously budgeted will require more purchased power to meet contract commitments. The rate schedule allows for an adjustment to the 1.5 mills/kWh adder in the event that certain costs are determined to be nonreimbursable. This 14.5-mills/kWh rate will result in a $31.1-million increase in annual revenues in FY's 1991 and 1992. The 13.0-mills/kWh rate will result in a $21.2 million increase in annual revenues for the following 3 years.

The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

The Deputy Secretary of the Department of Energy states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period beginning October 1, 1990, and ending September 30, 1995, pursuant to the authority vested in FERC by Delegation Order No. 0204–108.

Comment date: September 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Co.

[Docket No. ER90–567–000]

Take notice that on August 31, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, an Interconnection Agreement (Agreement) covering rates, terms and conditions for services rendered by PG&E to the Sacramento Municipal Utility District (SMUD) under the Agreement and for the interconnection of the Parties' electrical systems.

Upon its effective date the Agreement will terminate and supersede Rate Schedule No. 124 (the Interconnection Rate Schedule, which was made effective by the Commission as of January 1, 1990, subject to refund) and all FERC-jurisdictional amendments, agreements, supplements and rate schedules filed thereunder, except Supplement Nos. 1 and 2, which are the Facility Connection Agreement between the Parties and was made effective under separate order by the Commission.

Pursuant to the Agreement, PG&E will provide the following services to SMUD:

Obligation Service	Section B.2
Obligation Power Service (Service Schedule A).	Section B.2.1
Reserved Transmission Service (Service Schedule B).	Section B.2.2
Control Area Services	Section B.3
Scheduling Service (Service Schedule C).	Section B.3.1
Regulation Service (Service Schedule D).	Section B.3.2
Other Charges	Section B.4
Customer Service (Schedule E)	Section B.4.1
Voltage Regulation (Schedule F).	Section B.4.2

Reactive Power Correction (Schedule G).	Section B.4.3
Standby Station Service (Schedule H).	Section B.4.4
Non-spinning Reserve Charge (Schedule I).	Section B.4.5
Coordination Services	Section B.5
Ceiling Price for Capacity Component of Coordination Power Service (Ceiling A-1).	Section B.5.1
Ceiling Price for Energy Component of Coordination Power Service (Ceiling A-2).	Section B.5.2
Ceiling Price for Combined Capacity and Energy Sales (Ceiling A-3).	Section B.5.3
Ceiling Price for Coordination Transmission Service (Ceiling B).	Section B.5.4
Emergency Power	Section A.1
Edison-Midway Curtailment Service.	Section A.2
Ten-Minute Emergency Power Service.	Section A.3
Support Power Service	Section A.4
Zero-Crossing Service	Section A.5
Emergency Zero-Crossing Service.	Section A.6

PG&E is requesting a waiver of the notice requirement in § 35.3 of the Commission's regulations (18 CFR 35.3) and various waivers of filing requirements.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Comment date: September 21, 1990, in accordance with Standard Paragraph E 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 385.211 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. 90-21517 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2062-000, et al.]

Texas Gas Transmission Corp. et al., Natural Gas Certification Filings

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

1. Texas Gas Transmission Corporation.

[Docket No. CP90-2062-000, Docket No. CP90-2063-000, and Docket No. CP90-2064-000]

August 31, 1990.

Take notice that on August 24, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket Nos. CP90-2062-000, CP90-2063-000, and CP90-2064-000, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide transportation service for Louisiana Municipal Natural Gas Purchasing and Distribution Authority (Louisiana Municipal), Southern Gas Company, Inc. (Southern Gas) and Tejas Power Corporation (Tejas) respectively, under its blanket certificate issued in Docket No. CP88-686-000, all as more fully set forth in the requests on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport estimated gas volumes on a peak day of up to 45,00 MMBtu, 25,000 MMBtu average daily and 16,000,000 MMBtu on an annual basis for Louisiana Municipal; Texas Gas also proposes to transport estimated peak day volumes of natural gas of 40,000 MMBtu, average daily quantity of 40,000 MMBtu and 14,600,000 MMBtu on an annual basis for Southern Gas. The volumes proposed to be transported for Tejas are estimated to be 100,000 MMBtu on a peak day, average daily quantity of 5,000 MMBtu and 1,825,000 MMBtu on an annual basis.

Texas Gas indicates that all service commenced August 1, 1990, under Section 284,223 as reported in the following dockets; ST90-4234 for Louisiana Municipal, ST90-4236 for Southern Gas and ST90-4235 for Tejas.

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

2. Stingray Pipelie Co. K N Energy, Inc.

[Docket No. CP90-2092-000 and Docket No. CP90-2093-000]

August 31, 1990.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

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

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

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

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper	Peak day [1] average annual	Points of receipt	Points of delivery	Start up date (rate schedule)	Related [2] dockets
CP90-2092-000 (8-29-90,	Stingray Pipeline Company, 701 E. 22nd Street, Lombard, Illinois 60148.	Sun Operating Limited Partnership.	50,000 25,000 125,000	LA, TX	LA	7-1-90, (ITS)	Order 509, ST90-4028-000.

Docket number (date filed)	Applicant	Shipper	Peak day [1] average annual	Points of receipt	Points of delivery	Start up date (rate schedule)	Related [2] dockets
CP90-2093-000-(8-29-90)	K N Energy, Inc., P.O. Box 150265, Lakewood, Colorado 80215.	Phibro Energy, Inc.	50,000Mcf 10,000Mcf 3,650,000Mcf	System	KS, CO	7-28-90, (IT)	CP89-1043-000. ST90-4376-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. National Fuel Gas Supply Corp.

[Docket No. CP90-2086-000]

September 4, 1990.

Take notice that on August 28, 1990, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP90-2086-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) The acquisition, construction, and operation of certain storage facilities and (2) the change of the delivery point to Empire Exploration, Inc. (Empire), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that on April 20, 1990, it acquired the Allegheny State Park Storage Field, an intrastate facility located within the Allegheny State Park, in Cattaraugus County, New York from Felmont Natural Gas Storage Company at a cost of $7,583,000. National proposes to operate this storage facility in its interstate operations for a limited term of three years to determine accurate top gas capacity and injection and withdrawal capabilities. Specifically, National proposes to acquire 1.1 miles of 4-inch pipeline, 5.4 miles of 6-inch pipeline, 3.2 miles of 16-inch pipeline and the 1,000 hp Limestone Compressor Station from Empire for $520,000. National states that these facilities would allow National to use natural gas from its Line K for injection and withdrawal purposes. In addition, National proposes to install minor metering, regulating and processing equipment at the Limestone Compressor Station at a cost of $230,500. National states that no rates or services are proposed at this time.

Finally, with respect to an interruptible transportation service which National was authorized to provide to Empire by order issued August 13, 1990, in Docket No. CP 90-1380-000, National proposes to change the delivery point to the Limestone Compressor Station to reflect the transfer of facilities.

National states that during the limited three-year term, the additional storage capacity would provide National with flexibility to enhance storage services currently being provided on its system, and might aid in system management during periods of peak demand. National further states that the ultimate goal would be permanent certification of the storage field and firm storage services.

Comment date: September 25, 1990, in accordance with Standard paragraph F at the end of this notice.

4. Southern Natural Gas Co.

[Docket No. CP90-2107-000; Docket No. CP90-2108-000]

September 4, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

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

Comment date: October 19, 1990, in accordance with Standard paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-2107-000 (8-30-90)	Enron Gas Marketing, Inc. (Marketer).	200,000 25,000 9,125,000	OTX, OLA, TX, LA, MS, AL.	GA, SC, TN	6-25-90, IT, Interruptible.	ST90-3886-000, 7-1-90.
CP90-2108-000 (8-30-90)	Shell Gas Trading Company (Marketer).	20,000 54 20,000	OTX, OLA, TX, LA, MS, AL.	SC	6-22-90, IT, Interruptible.	ST90-3888-000, 7-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. El Paso Natural Gas Co.

[Docket No. CP90–2089–000]

September 4, 1990.

Take notice that on August 29, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–2089–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain gas facilities and the services rendered through those facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it received authorization in Docket Nos. CP68–224–000 and CP69–23–000 to construct and operate an American 250B positive meter (Plymouth Meter Station) located in Collingsworth County, Texas and a single one-inch tap (Albert Stable Tap) located in Beaver County, Oklahoma, respectively, to permit El Paso to render gas service to Rimrock Gas Company (Rimrock) for distribution to various consumers for residential service.

It is indicated that Rimrock and the Town of Texola (Texola) entered into an agreement in which Rimrock agreed, among other things, to transfer and Texola agreed to acquire certain assets and properties owned and operated by Rimrock, including all of the natural gas distribution system serving Texola. El Paso states that the arrangement was subject to El Paso's consent and receipt by El Paso of the appropriate Commission authorization. El Paso indicates that it tendered to the Commission on June 11, 1990, a service agreement with Rimrock and a new service agreement with Texola pursuant to Part 154 of the Commission's Regulations. El Paso states that the new service agreement between El Paso and Rimrock omitted the Plymouth Meter Station and the Albert Stable Tap delivery point. El Paso indicates that although it ceased using the two points on November 26, 1986, and May 1, 1987, respectively, it acknowledges that it must obtain authorization pursuant to section 7(b) of the Natural Gas Act prior to being authorized to abandon the two facilities and the service therefrom.

El Paso proposes to abandon such facilities in place, with no material change in its average cost-of-service. It is indicated that the proposed abandonment of minor facilities would not result in or cause any interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers. El Paso states that it has examined the proposed abandonment and believes that it would not impact the environment. El Paso also states that it would follow its reclamation procedures where appropriate.

Comment date: October 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corp.; Northwest Pipeline Corp.; Natural Gas Pipeline Co. of America

Docket No. CP90–2087–000, Docket No. CP90–2088–000, Docket Nos. CP90–2090–000, and CP90–2091–000

September 4, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket Number (Date Filed)	Applicant	Shipper name	Peak day avg, annual [1]	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90–2087–000 (8–28–90)	Mississippi River Transmission Corporation.	Mega Natural Gas Company	19,000 9,000 3,285,000	LA, AR, OK, TX, IL	LA	7–4–90 FTS	ST90–4182–000
CP90–2088–000 (8–28–90)	Northwest Pipeline Corporation.	Petro-Canada Hydrocarbons Inc.	160,000 100 36,500	all mainline	all mainline	7–4–90 TI–1	ST90–4343–000
CP90–2090–000 (8–28–90)	Natural Gas Pipeline Company of America.	MidCon Marketing Corporation.	50,000 25,000 9,125,000	AR, CO, IA, IL, KA, MO, NE, NM, OK, On TX, Off TX, On LA, Off LA	On LA, Off LA, On TX, IA, CO, NM, IL, Off TX, OK	7–1–90 ITS	ST90–4122–000

Docket Number (Date Filed)	Applicant	Shipper name	Peak day avg. annual [1]	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-2091-000 (8-29-90)	Natural Gas Pipeline Company of America.	Continental Natural Gas, Inc.	100,000 40,000 14,600,000	NM, CO, On TX, Off TX, OK On LA, Off LA, IL, KS, AR, IA, NE	On LA, Off LA, On TX, Off TX, OK, IL, MO, NM, KS, IA, AR, NE	7-4-90 ITS	ST90-4458-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. High Island Offshore System

[Docket No. CP90-2105-000]

September 4, 1990.

Take notice that on August 30, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-2105-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for PSI, Inc. (PSI), a marketer of natural gas, under HIOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

HIOS proposes to transport on an interruptible basis up to 1,435,000 Mcf of natural gas on a peak day, 1,435,000 Mcf on an average day and 523,775,000 Mcf on an annual basis for PSI. HIOS indicates that it would receive the gas at existing points in the High Island and West Cameron Areas, offshore Texas and Louisiana, respectively, and deliver the gas for the account of PSI at points located offshore Texas and Louisiana. HIOS indicates that it would transport the gas for PSI pursuant to HIOS' Rate Schedule IT for a primary term of ten years and on an yearly basis thereafter.

It is explained that the service commenced June 22, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-3822. HIOS indicates that no new facilities would be necessary to provide the subject service.

Comment date: October 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Co.

[Docket No. CP90-2095-000]

September 4, 1990.

Take notice that on August 29, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-2095-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sale of natural gas to Conoco, Inc. (Conoco), in Kay County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon the sale at the Ponca City refinery in Kay County, in response to a request dated July 6, 1990, from Conoco that the gas sales agreement be terminated. It is stated that the sale was authorized in Docket No. G-298 in the name of Cities Service Oil Company, WNG's predecessor. It is explained that the proposed abandonment would not involve any abandonment of facilities and that Conoco would continue to use the facilities for transportation. It is stated that the proposed abandonment would have no effect on any rate schedules or tariffs on file with the Commission.

Comment date: October 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-2112-000]

September 5, 1990.

Take notice that on August 31, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-2112-000 a prior notice request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to install and operate a new delivery point and appurtenant facilities as jurisdictional sales facilities, under its blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.

Northern proposes to install and operate a new small volume measuring station and appurtenant facilities, the Ames Town Border Station No. 1b—Squaw Valley, for use as a sales delivery point to accommodate natural gas deliveries to Iowa Electric Light and Power Company (Iowa Electric) under Northern's Rate Schedules CD-1, SS-1, and PS-1. Northern states that this authorization is requested so that Iowa Electric may serve new or increased requirements in and around the community of Ames, Iowa.

Northern estimates that the peak day and annual volumes that would be delivered to Iowa Electric at the proposed delivery point for redelivery to Ames, Iowa, would be 112 Mcf and 24,000 Mcf, respectively. Northern states that the proposed volumes to be delivered at the new delivery point would be served from the total firm entitlements currently designated by Iowa Electric for delivery to the communmity of Ames, Iowa. Northern further states that there would not be any firm entitlements assigned to the proposed new delivery point.

Comment date: October 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corp.

[Docket No. CP90-2106-000]

September 5, 1990.

Take notice that on August 30, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-2106-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for North Atlantic Utilities, Inc. (North Atlantic), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with

the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 40,000 MMBtu of natural gas on a peak day, 20,000 MMBtu on an average day, and 7,200,000 MMBtu on an annual basis for North Atlantic. Texas Gas states that it would perform the transportation service for North Atlantic under Texas Gas' Rate Schedule IT. Texas Gas indicates that North Atlantic has identified Alfred University, Consolidated Laundries and Southern Container as the ultimate recipients of the gas. It is indicated that Texas Gas would receive the gas at numerous points for delivery to two points in Warren County, Ohio.

It is explained that the service commenced August 11, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–4349. Texas Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: October 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–21543 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–173–000, TM90–13–20–000 TF90–3–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 7, 1990

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 31, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective August 1, 1990

25 Rev Sheet No. 211
Sub 21 Rev Sheet No. 214

Proposed to be effective September 1, 1990

44 Rev Sheet No. 201
6 Rev Sheet No. 201A
45 Rev Sheet No. 203
41 Rev Sheet No. 204
38 Rev Sheet No. 205
26 Rev Sheet No. 211
22 Rev Sheet No. 214
3 Rev Sheet No. 220
1 Rev Sheet No. 478

Algonquin states that pursuant to sections 10, 9 and 4 of Rate Schedules STB, SS–III and ATAP, respectively, it is filing Sheet Nos. 211, 214 and 220 to track changes in the rates for the services underlying its Rate Schedules STB, SS–III and ATAP made by its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern") in both of its August 10, 1990 filings in Docket Nos. RP88–67–038 and TM90–13–17–000.

Algonquin also states that pursuant to section 17 of the General Terms and Conditions of its FERC Gas Tariff Second Revised Volume No. 1, it is making an Interim Purchased Gas Adjustment filing (Sheet Nos. 201 through 205) to update its latest estimate of purchased gas and standby service costs based upon changes by its pipeline supplier, Texas Eastern, in the rates of the services underlying Algonquin's Rate Schedules F–1, F–2, F–3, F–4, WS–1, I–1, and E–1.

Algonquin further states that the effect, at August 1, 1990, for Rate Schedules STB and SS–III is to increase the Injection rate by $0.0013 to $0.0561 per MMBtu. The effect, at September 1, 1990, for the change in rates under Rate Schedule STB is to decrease the Firm Demand by $1.1220 to $7.2450 per MMBtu and to increase the Withdrawal rate by $0.0028 to $0.0912 per MMBtu. Under Rate Schedule SS–III the effect is to decrease the Firm Demand rate by $1.5620 to $6.6470 per MMBtu, increase the FDDQ Withdrawal rate by $0.0029 to $0.0914 per MMBtu and to decrease the Non-FDDQ Withdrawal rate by $0.0334 to $0.2146 per MMBtu. Under Rate Schedule ATAP the effect is to institute a two part Capacity Reservation charge resulting in a decrease of the Capacity Reservation charge, Demand-1 of $4.1040 to $5.249 while instituting a Capacity Reservation charge, Demand-2 of $0.1637 per MMBtu. Further changes decrease the Commodity Maximum rate by $0.0611 to $0.2186, decrease the Commodity Minimum rate by $0.0100 to $0.0617 per MMBtu and decrease the Interruptible Commodity rate by $0.0323 to $0.5549 per MMBtu.

Algonquin states that the effect of the change in rates at September 1, 1990, for Rate Schedules F–1, F–2, F–3, F–4 and WS–1 is to decrease the demand charges by 14.3¢ to $13.923 per MMBtu and decrease the commodity charges by 14.76¢ to $2.8638 per MMBtu from those rates contained in Algonquin's Quarterly PGA filing of August 1, 1990 in Docket No. TQ90–4–20–000. Furthermore the rate under Rate Schedule I–1 has decreased by 14.76¢ to $2.8688 per MMBtu, while the Rate Schedule WS–1 excess commodity rate has decreased by 17.62¢ to $5.6484 per MMBtu and the Rate Schedule E–1 commodity rate has decreased by 15.23¢ to $3.3216 per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21547 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

September 6, 1990.

Take notice that on August 31, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective October 1, 1990:

Original Volume No. 3
9th Revised Sheet No. 195.1
First Revised Volume No. 1
56th Revised Sheet No. 4
First Revised Volume No. 1
9th Revised Sheet No. 7A

These tariff sheets reflect AER's second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1990 under the Commission's Order Nos. 483 and 483-A.

The proposed changes would increase AER's system cost by $1,841,503 and its revenue from jurisdictional sales and service by $32,127 for the PGA period of October, November, and December 1990 as adjusted.

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, NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21527 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on August 31, 1990, pursuant to § 154.38(d)(6) of the Federal Energy Regulatory Commission's Regulations that provide for the Annual Charge Adjustment and section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets:

First Revised Volume No. 1:

Fourth Revised Sheet No. 31
Third Revised Sheet No. 32
First Revised Sheet No. 222

Original Volume No. 2:

Third Revised Sheet Nos. 250 and 290

Original Volume No. 2A:

Third Revised Sheet Nos. 18, 28, 35, 48, and 87.

CNG states that the proposed tariff sheets reflect a new ACA unit rate of 0.21 cents per Dt. First Revised Sheet No. 222 revises § 14.2 of CNG's tariff to clarify that the calculation of the ACA shall include the debit or credit applied to CNG's bill by the Commission to correct prior bills.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 and 385.211. All motions or protests should be filed on or before September 12, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21544 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-32-000]

Colorado Interstate Gas Co.; Filing

September 6, 1990.

Take note that on August 31, 1990, Colorado Interstate Gas Company ("CIG") submitted for filing tariff sheets reflecting an increase of 0.02¢ per Mcf in the ACA adjustment charge, resulting in a new ACA rate of .19¢ per Mcf based on CIG's 1990 ACA billing.

Pursuant to section 25 of CIG's FERC Gas Tariff, Original Volume No. 1, and Article No. 20 of CIG's FERC Gas Tariff, Original Volume No. 3, CIG will file at least thirty days prior to the proposed effective date to change its ACA billing charge. CIG has received its 1990 ACA billing, and is making this filing to reflect the 0.02¢ increase in the ACA charge to be effective October 1, 1990.

CIG submits for filing six copies of the following tariff sheets incorporating the increase in the ACA billing charge rate:

Original Volume No. 1 Tariff:

Substitute Third Revised Second Substitute First Revised Sheet No. 7.1
Substitute Third Revised Second Substitute First Revised Sheet No. 7.2
Substitute Third Revised Second Substitute First Revised Sheet No. 8.1
Substitute Third Revised Second Substitute First Revised Sheet No. 8.2

Original Volume No. 2 Tariff:

First Revised Second Substitute Ninth Revised Sheet No. 187
First Revised Second Substitute Eighth Revised Sheet No. 463
First Revised Second Substitute Sixth Revised Sheet No. 517A
First Revised Second Substitute Eighth Revised Sheet No. 544
First Revised Second Substitute Sixth Revised Sheet No. 593A
First Revised Second Substitute Seventh Revised Sheet No. 625
First Revised Second Substitute Seventh Revised Sheet No. 662
First Revised Second Substitute Seventh Revised Sheet No. 674
First Revised Second Substitute Sixth Revised Sheet No. 697
First Revised Second Substitute Sixth Revised Sheet No. 774
First Revised Second Substitute Sixth Revised Sheet No. 801A

First Revised Second Substitute Sixth Revised Sheet No. 862
First Revised Second Substitute Fifth Revised Sheet No. 885
First Revised Substitute Sixth Revised Sheet No. 911
First Revised Substitute Sixth Revised Sheet No. 964
First Revised Substitute Sixth Revised Sheet No. 1021
First Revised Substitute Sixth Revised Sheet No. 1101
First Revised Second Substitute Fifth Revised Sheet No. 1182
First Revised Second Substitute Fifth Revised Sheet No. 1248
First Revised Second Substitute Fifth Revised Sheet No. 1264
First Revised Second Substitute Fifth Revised Sheet No. 1335
First Revised Substitute Sixth Revised Sheet No. 1347
First Revised Substitute Sixth Revised Sheet No. 1370

Original Volue No. 3 Tariff:

First Revised Sheet No. 4

CIG states that copies of CIG's filing are being served on all CIG's jurisdictional customers and interested state commissions.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21548 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-13-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1990:

Third Revised Sheet Nos. 30A1 through 30A5
Fourth Revised Sheet Nos. 30B1 through 30B5
Fourth Revised Sheet Nos. 30C1 through 30C5
Fourth Revised Sheet Nos. 30G1 through 30G5

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement and modify its earlier filings in Docket Nos. RP88-187, *et al.*, to permit it to flow through revised take-or-pay and contract reformation costs from:

(1) Texas Eastern Transmission Corporation (Texas Eastern) pursuant to a filing made on June 29, 1990, which was accepted by Commission order issued on July 27, 1990 in Docket No. TM90-11-17.

(2) Texas Gas Transmission Corporation (Texas Gas) pursuant to a filing made on July 6, 1990, which was accepted by Commission order dated August 3, 1990 in Docket No. TM90-5-18; and

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187; RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26, TM90-2-21, TM90-5-21, TM90-6-21, TM90-7-21, TM90-8-21, TM90-10-21 and TM90-12-21.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21533 Filed 9-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-21-000 and RP90-177-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1990:

Third Revised Substitute Second Revised Sheet No. 26
Alternate Third Revised Substitute Second Revised Sheet No. 26
Third Revised Substitute Second Revised Sheet No. 26A
Alternate Third Revised Substitute Second Revised Sheet No. 26A
Second Revised Substitute Second Revised Sheet No. 26C
Alternate Second Revised Substitute Second Revised Sheet No. 26C
First Revised Sheet No. 171

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia requests that the alternate designated tariff sheets and First Revised Sheet No. 171 be accepted in order to provide for a more accurate and equitable method for Columbia's recovery of its share of total costs under Order No. 472, including adjustments billed by the Commission for the prior fiscal year. However, if the committee does not deem it appropriate to allow for the proper recovery (either debit or credit) by Columbia of the total charges billed to it, then Columbia respectfully requests the Commission to accept Third Revised Substitute Second Revised Sheet Nos. 26, 26A, and Second Revised Substitute Second Revised Sheet No. 26C.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

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. All such motions or protests should be filed on or before September 14, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 90–21534 Filed 9–12–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-2-000, Docket No. TQ91-1-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 6, 1990.

Take notice that on August 31, 1990, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies of 58th Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1990.

The purpose of the revisions to 58th Revised Sheet No. 4 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of October 1990—December 1990 pursuant to § 22.2 of the General Terms and Conditions of East Tennessee's Tariff. East Tennessee is also reflecting on 58th Revised Sheet No. 4 the current Annual Charge Rate Adjustment of $0.0018 per dekatherm to be effective October 1, 1990 pursuant to section 28 of General Terms and Conditions.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21545 Filed 9–12–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-33-000]

El Paso Natural Gas Co.; Tariff Filing

September 7, 1990.

Take notice that on August 31, 1990, pursuant to part 154 of the Federal Energy Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that reflect a revision to the Monthly Direct Charge and Throughput Surcharge.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized, as set forth in El Paso's filing made February 16, 1990 at Docket No. RP90–81–000. The only adjustments proposed by the filing are being made pursuant to §§ 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payments, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $.2684 per dth to $.2630 per dth.

El Paso requested that the tendered tariff sheets be accepted and permitted to become effective on October 1, 1990, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 with the Commission and copies are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21549 Filed 9–12–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-33-000, RP86-157-003 and TM91-1-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates

September 7, 1990.

Take notice that on August 31, 1990, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, Second Revised Volume No. 1;

(ii) A Special Liquids Surcharge applicable to El Paso's one-part rate sales customers, except Gas Company of New Mexico, to collect the undercollection of net liquid revenue deficiencies as of June 30, 1990, as authorized by the Commission's order approving settlement at Docket No. RP86–157–000; and

(iii) A revision in the Annual Charge Adjustment ("ACA") for jurisdictional sales and transportation customers in accordance with section 23, Annual Charge Adjustment Provision, contained in the General Terms and Conditions in El Paso's FERC Gas Tariff, Second Revised Volume No. 1.

Such notice of proposed change in rates is requested to become effective October 1, 1990.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net increase of $0.1666 per dth above those rates reflected in El Paso's last Annual Adjustment in Rates at Docket No. TA90–1–33–000 effective July 1, 1990.

In addition, El Paso states that it has included in the tendered sales tariff sheets a Special Liquids Surcharge of $0.5832 per dth applicable to El Paso's one-part rate customers, except Gas Company of New Mexico, to be collected over the six (6) month period ending March 31, 1991. El Paso states

that upon the expiration of the 36-month recovery period authorized by the Commission's order approving settlement issued September 29, 1987 at Docket No. RP86–157–000, it was directed to include a Special Liquids Surcharge in its next scheduled quarterly PGA to collect any over-or undercollections of net liquids revenue deficiencies as of June 30, 1990.

El Paso states also that the proposed tariff sheets reflect an ACA charge of $0.0018 per dth to be collected for the fiscal year beginning October 1, 1990. This represents an increase of $0.0002 per dth in the ACA charge currently being charged.

El Paso states that copies of the filing were served upon each person on the official service list as compiled by the Secretary in Docket No. RP86–157–000, all of El Paso's interstate pipeline system sales and transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21539 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–71–000]

Michigan Consolidated Gas Company—Interstate Storage Division; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1990.

Take notice that on August 31, 1990, Michigan Consolidated Gas Company—Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

Original Volume No. 1

Fourth Revised Sheet No. 1B

Original Volume No. 2

Fourth Revised Sheet No. 1A

Original Volume No. 3

Sixth Revised Sheet No. 2

The proposed changes reflect the revised Annual Charge Adjustment (ACA) unit charge of $.0019 in ISD's FERC Gas Tariffs. The proposed changes are pursuant to the Commission's regulations promulgated in Order No. 472.

ISD requests that these proposed tariff sheets become effective on October 1, 1990. ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Commission.

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, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21529 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–103–000]

Moraine Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that on August 31, 1990, Moraine Pipeline Company (Moraine) tendered for filing First Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1990.

Moraine states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charges necessary for Moraine to recover from its customers annual charges assesed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1990 is .19¢ per Mcf. Under Moraine's billing basis of 14.73 psia at 1000 Btu, this rate converts to .18¢ per Mcf.

Moraine requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1990.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21536 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–59–000; TM91–1–59–000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

September 6, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on August 31, 1990, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483–A. The instant filing reflects a Base Average Gas Purchase Cost of $2.3454 per MMBtu to be effective October 1, 1990, through December 31, 1990. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period. Northern is also establishing the revised Annual Charge Adjustment (ACA) of $0.0021 per MCF as required by Commission Order No. 472.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required

Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new DI rate component of $2.531 per MMBtu. This rate will be effective October 1, 1990 through December 31, 1990.

Northern states that copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21528 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–64–000]

Pacific Interstate Offshore Company; Notice of Change in Rate

September 6, 1990.

Take notice that on August 31, 1990, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Original Volume No. 1

Eleventh Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .19 cents per MCF in its Rate Schedule G–10 as provided for by Order No. 472. PIOC requests an effective date of October 1, 1990.

PIOC states that a copy of this filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21530 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–2–41–000]

Paiute Pipeline Co.; Notice Granting Late Intervention

September 6, 1990.

Motions to intervene in the above-captioned proceeding were due on July 24, 1990. A motion to intervene out of time was filed on August 6, 1990 by The Public Service Commission of Nevada. No answers in opposition to the motion were filed.

The movant appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the movant to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to § 375.302 of the Commission's Regulations (18 CFR 375.302 (1989)), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717–717(w). Participation of the later intervenor shall be limited to matters set forth in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21550 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–178–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 31, 1990 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 3–C.25
Original Sheet No. 3–C.26
Original Sheet No. 3–C.27
Fourth Revised Sheet No. 43–12

Panhandle proposes an effective date of October 1, 1990.

Panhandle states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to recover additional take-or-pay settlement and contract reformation costs. Panhandle further states that these costs sought to be recovered are distinct from those costs being recovered in the filings in Docket Nos. RP88–241–000, RP89–9–000, and RP89–134–000 and reflect a portion of those contracts which were in litigation at March 31, 1989, as Panhandle previously informed the Commission in its supplemental filing in Docket No. RP89–134–000 dated May 30, 1989.

Panhandle further states that no change in the allocation methodology proposed in Docket Nos. RP88–241–000, RP89–9–000, and RP89–134–000 is contained in this filing.

Panhandle states that copies of the filing were served upon Panhandle's jurisdictional customers, interested state commissions, and the parties in Docket No. RP88–262–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before September 14, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21537 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–79–000]

Sabine Pipe Line Co., Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Sabine Pipe Line Company (Sabine) on August 31, 1990, tendered for filing the proposed change to its FERC Gas Tariff,

First Revised Volume No. 1, to be effective October 1, 1990.

Seventh Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charges Adjustment (ACA) unit charge of $.0019/MCF to be applied to rates in 1991 for recovery of 1990 annual charges. The ACA unit rate of $.0019/MCF converts to $.0019/MMBTU under Sabine's basis for billing. Sabine further states that the listed tariff sheet sets forth the applicable provisions required to effect recovery of 1990 annual charges.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

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 §§ 315.214 and 385.111 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21538 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–14–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that the purpose of this filing is (1) To track modifications to fixed take-or-pay surcharges proposed by Southern Natural Gas Company (Southern) in a filing on March 30, 1990 in Docket No. TM90–4–7–000 and accepted by the Commission on April 23, 1990, (2) to track modifications to fixed take-or-pay surcharges proposed by Texas Gas Transmission Corporation (Texas Gas) on July 6, 1990 in Docket No. TM90–5–18 and accepted by the Commission on August 3, 1990, (3) to track modifications to fixed take-or-pay surcharges proposed by United Gas Pipe Line Company (United) on August 13, 1990 in Docket No. RP90–132–002 attributable to Sea Robin Pipeline Company's (Sea Robin) Docket No. RP90–129, (4) to establish the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern proposed by Texas Gas on July 25, 1990 in Docket No. TM90–6–18 attributable to United's Docket No. RP90–132 and Sea Robin's Docket No. RP90–129 and (5) to establish procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern proposed by Southern on July 30, 1990 in Docket No. TM90–5–7 attributable to United's Docket No. RP90–132 and Sea Robin's Docket No. RP90–129.

The proposed effective dates of the tariff sheets listed on Appendix A of the filing are as stated therein.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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. All such motions or protests should be filed on or before September 14, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21540 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–184–000]

Texas Eastern Transmission Corp.; Algonquin Gas Transmission Co.; Request for Waiver of Tariff Provisions

September 7, 1990.

Take notice that on August 31, 1990, Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin Gas Transmission Company (Algonquin), collectively referred to herein as "Petitioners", filed with the Federal Energy Regulatory Commission a request for an interim limited waiver of certain provisions of their tariffs to permit Algonquin's customers to inject third-party gas into storage under specified rate schedules. The Algonquin Customer Group (ACG) specifically joins in this request.

Petitioners request that the Commission grant an interim limited waiver of provisions of Algonquin's Rate Schedules STB and SS–III which impose source of gas restrictions, an interim limited waiver of the requirements of Texas Eastern's Rate Schedules SS–2 and SS–3 that the gas be transported under Algonquin's IT–1 service agreement and waiver of any Commission regulations necessary to grant the relief.

Petitioners state that the waivers requested would permit Algonquin's customers to inject into storage gas other than gas purchased from Algonquin thereby enhancing the competitive options available to such customers. Petitioners also state that the waivers would also enhance the ability of customers of Algonquin and Texas Eastern to move gas on Texas Eastern to storage under Rate Schedules SS–2 and SS–3 by permitting transportation of such third party gas under Texas Eastern IT–1 service agreements other than their own.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21551 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90-179-000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 6, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 31, 1990 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached hereto. Transco has included primary and alternate tariff sheets in the instant filing because each respective set of tariff sheets reflects the primary or alternate proposal, as appropriate, which Transco submitted in its filing on this date regarding the Annual Charge Adjustment (ACA) charge to become effective October 1, 1990. The proposed effective date of the tendered tariff sheets is October 1, 1990.

Transco states that the purpose of the instant tariff filing is to implement the partial recovery of approximately $22.0 million of Litigant Producer Settlement Payments (LPSP), pursuant to Sections 33, 35 and 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1. The LPSP costs are proposed to be recovered over a one-year amortization period beginning October 1, 1990 through September 30, 1991.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-21531 Filed 9-12-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-2-29-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 31, 1990 certain revised tariff sheets and alternate revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in appendix A attached thereto. Such tariff sheets are proposed to be effective October 1, 1990.

The purpose of the filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Transco's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed Transco its ACA unit rate of $0.0019/Mcf ($0.0018/dt on Transco's system) for the annual period commencing October 1, 1990.

On August 30, 1990 Transco, the Interstate Natural Gas Association of America and several other interstate pipeline companies (Movants) filed a Motion For Clarification or Modification (Clarification or Modification) related to the method utilized by the Commission to compute its ACA unit rate. As more fully explained in the Clarification or Modification, Movants request the authority to recompute the ACA unit rate in order that it may be consistent with the intent of Order No. 472.

In accordance with section 27 of the General Terms and Conditions of Transco's Volume No. 1 Tariff, submitted therewith for filing are two sets of revised tariff sheets. The primary tariff sheets include a revised ACA unit rate of $0.0022 per dt which is a rate of $0.0018 per dt increased by $0.0004 per dt to give effect to Movants requested adjustment. In the alternative, Transco requests that the Commission accept the alternate tariff sheets tendered therewith to be effective October 1, 1990 without prejudice to Transco's right to make the primary sheets effective on such date should the Commission rule in favor of Movants Motion For Clarification or Modification.

Transco states that copies of the filing are being mailed to each of its customers and State Commissions.

In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-21532 Filed 9-12-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-1-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 31, 1990 tendered for filing, as part of it FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective October 1, 1990

77th Revised Sheet No. 5
42nd Revised Sheet No. 6
9th Revised Sheet No. 37

The above referenced tariff sheets are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of General Terms and Conditions of Transwestern FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0019/dth[1] as

[1] In the event the Motion of the Interstate Natural Gas Association of America and Indicated Pipelines for Clarification or Modification of Rule Concerning the Commission's Annual Charge Billings For Fiscal Year 1990 And The Related Pipeline Annual Charge Adjustment is granted (of which Transwestern is party thereto), Transwestern reserves the right to refile the above-referenced tariff sheets in order to appropriately reflect its ACA Surcharge.

determined by the Commission on July 18, 1990, reflects an increase of $0.003/dth from the currently effective ACA Surcharge of $0.0016/dth. Transwestern herein respectfully requests that the revised ACA Surcharge become effective October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21541 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–174–000]

Transwestern Pipeline Co., Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Transwestern Pipeline Company (Transwestern) on August 31, 1990, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

To Be Effective October 1, 1990

78th Revised Sheet No. 5
1st Revised Sheet No. 5E(i)
43rd Revised Sheet No. 6
10th Revised Sheet No. 37
3rd Revised Sheet No. 87
Original Sheet No. 87A
4th Revised Sheet No. 88
4th Revised Sheet No. 89

The above referenced tariff sheets are being filed by Transwestern to recover through a new Order No. 500 "equitable sharing" filing take-or-pay, buy-out, buy-down and contract reformation costs (Transition Costs) for which recovery has not yet been permitted in any previous filings and under settlement agreements not covered by the Order No. 500 "litigation exception". Transwestern has already received Commission approval to recover—by direct billing and commodity surcharges—approximately $165 million of Order No. 500 Transition Costs, and has "equitably absorbed" over $52 million of such costs.

Transwestern has paid an additional $265,000 in Transition Costs and is revising certain tariff sheets and requesting authority to begin recovery of a portion of that amount. Unlike its prior Order No. 500 TCR filings, Transwestern seeks to absorb 25% of these costs and collect the remaining 75% solely through a volumetric surcharge applicable to all natural gas sold or transported under any of Transwestern's rate schedules in its FERC Gas Tariff. Transwestern is also revising certain tariff sheets to permit the recovery of future Transition Costs it expects to incur under settlement agreements not covered by the Order No. 500 "litigation exception".

Transwestern requests that the Federal Energy Regulatory Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically the Commission's May 11 and July 29, 1988 orders in Docket Nos. CP88–99–000, *et al.*, and Section 154.63 of its Regulations, so at to permit the above listed tariff sheets to become effective October 1, 1990.

Transwestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

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. All such motions or protests should be filed on or before September 14, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–21552 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–43–000]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that Williams Natural Gas Company (WNG) on August 31, 1990, tendered for filing Twenty First Revised Sheet No. 6, Seventh Revised Sheet No. 6A and Twentieth Revised Sheet No. 7 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to Article 24 of the General Terms and Conditions of such Tariff, it proposes to increase its rates effective October 1, 1990, to reflect an increase in the FERC Annual Charge Adjustment from $.0017 to $.0019 for the fiscal year beginning October 1, 1990, per the Commission's Annual Charges Billing issued July 18, 1990.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 14, 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 proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21535 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–49–003]

Williston Basin Interstate Pipeline Co., Compliance Filing

September 7, 1990

Take notice that on August 30, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing the following revised tariff sheet and additional information in compliance with the Commissions Order dated July 31, 1990 in Williston Basin's Annual Purchased Gas Cost Adjustment Filing, Docket No. TA90–1–49–000:

First Revised Volume No. 1

Substitute Twenty-fourth Revised Sheet No. 10

The effective date of the tariff sheet is August 1, 1990.

Williston Basin states that Substitute Twenty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) reflects a revised Surcharge Adjustment of a

negative .118 cents per dkt applicable to Rate Schedules G–1 and SGS–1. This change results in a overall 0.583 cents per dkt increase to Rate Schedules G–1 and SGS–1, as compared to the tariff sheet contained in the Company's original June 1, 1990 PGA filing in this docket.

Williston Basin's also states that on August 22, 1990 (as modified by a filing of August 28, 1990) Williston Basin made a compliance filing in Docket No. RP90–137–001 relative to Williston Basin's implementation of a take-or-pay recovery mechanism effective July 1, 1990. Therefore, the following revised tariff sheets being submitted herewith incorporate tariff revisions accepted by the Commission's July 31, 1990 Order in this proceeding into the Company's August 22, 1990 compliance filing:

Original Volume No. 1–A

Substitute Eighteenth Revised Sheet No. 11
Substitute Twenty-third Revised Sheet No. 12

Original Volume No. 1–B

Substitute Twelfth Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 11

Original Volume No. 2

Substitute Twenty-sixth Revised Sheet No. 10
Substitute Eighteenth Revised Sheet No. 11B

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 (1990)). All such protests should be filed on or before September 14, 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.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 90–21542 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–76–000]

Wyoming Interstate Co., Ltd; Filing

September 6, 1990.

Take note that on August 31, 1990, Wyoming Interstate Company, Ltd. ("WIC") submitted for filing Tenth Revised Sheet No. 5 reflecting an increase of 0.02¢ per Mcf in the ACA adjustment charge, resulting in a new ACA rate of 0.19¢ per Mcf based on WIC's 1990 ACA billing.

WIC has received its 1990 ACA billing, and is making this filing to reflect the 0.02¢ increase to be effective October 1, 1990.

WIC states that copies of WIC's filing are being served on all jurisdictional customers.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21546 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ91–1–1–000, TM91–1–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

September 7, 1990.

Take notice that on August 31, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Twenty Second Revised Sheet No. 4
Substituted First Revised Sheet No. 4B

The tariff sheets are proposed to become effective October 1, 1990. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers. Alabama-Tennessee further states that it is adjusting its rates to reflect the Commission's Annual Charge Adjustment (ACA) effective on October 1, 1990. Alabama-Tennessee requests that the 1990 ACA unit charge be increased to permit it to recover additional amounts billed by the Commission which reflect an underrecovery by the Commission of its 1989 costs and requests a waiver of the regulations to permit such recovery.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected State Regulatory Commissions.

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 Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21524 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–70–000, RP90–176–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 6, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 31, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1990:

First Revised First Revised Sheet No. 021
Alternate First Revised First Revised Sheet No. 021
First Revised First Revised Sheet No. 022
Alternate First Revised First Revised Sheet No. 022
First Revised Sheet No. 046
Alternate First Revised Sheet No. 046

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia Gulf requests that the alternate designated tariff sheets be

accepted in order to provide for a more accurate and equitable method for Columbia Gulf's recovery of its share of total costs under Order No. 472, including adjustments billed by the Commission for the prior fiscal year. However, if the Commission does not deem it appropriate to allow for the proper recovery (either debit or credit) by Columbia Gulf of the total charges billed to it, then Columbia Gulf respectfully requests the Commission to accept First Revised First Revised Sheet Nos. 021, 022 and First Revised Sheet No. 046.

Columbia Gulf states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

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. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21518 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff, Purchased Gas Adjustment Clause Provisions

September 7, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 4, 1990, tendered for filing Thirty-First Revised Sheet Nos. 57(i) and 57(ii), and Seventeenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Thirty-First Revised Sheet Nos. 57(i) and 57(ii) reflected a purchased gas cost surcharge resulting from maintinaing unrecovered purchased gas cost accounts for the period commencing July 1, 1989 and ending June 30, 1990. These surcharge rates are to be effective for the twelve month period commencing November 1, 1990. Also reflected on these tariff sheets, as well as on Seventeenth Revised Sheet No. 57(v), were revised current PGA rates for the months of November and December, 1990 and January, 1991 which reflected the latest estimated gas costs as provided by Great Lakes' sole supplier of natural gas, TransCanada PipeLines Limited.

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. All such petitions or protests should be filed on or before September 27, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21525 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–78–000]

Overthrust Pipeline Co., Tariff Filing

September 6, 1990.

Take notice that on August 31, 1990 Overthrust Pipeline Company, pursuant to 154.38(d)(6) and part 382, of the Commission's Regulations tendered for filing and acceptance Ninth Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that this filing implements the annual charge unit rate of $0.0019 per Mcf in each of its transportation rate schedules. Overthrust requests an effective date of October 1, 1990, for the tendered tariff sheet.

Overthrust states that copies of the filing were served upon Overthrust's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.111 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21521 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–2–26–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 7, 1990.

Take notice that on August 31, 1990, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 3–C.4
Second Revised Sheet No. 3–C.5
Second Revised Sheet No. 3–C.6

The proposed effective date of these revised tariff sheets is October 1, 1990.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988 and December 5, 1988 in Docket No. RP88–241–000, and also by Commission Letter Order dated November 9, 1989 in Docket No. RP89–232–001, Docket No. TM90–4–28–001 and Docket No. TM90–5–28–000.

Panhandle further states that the revised tariff sheets referenced above reflect the second annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with sections 23.4 (c) and (d) and section 23.5 of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 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 proceedings. Any person wishing to become a party must file a motion to

intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21526 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–55–000]

Questar Pipeline Co.; Tariff Filing

September 6, 1990.

Take notice that on August 31, 1990, Questar Pipeline Company, pursuant to §§ 2.104 and 154.38(d)(6) and part 382 of the Commission's Regulations, tendered for filing and acceptance the following tariff sheets of its FERC Gas Tariff:

Original Volume No. 1
Eighth Revised Sheet No. 12
First Revised Sheet No. 12–A
Original Volume No. 1–A
First Revised Sheet No. 5
Original Volume No. 3
First Revised Sheet No. 8

Questar Pipeline states that this filing incorporates into its sales and transportation rates the annual charge unit rate of $0.0019 per Mcf and the $0.00039 per Dth volumetric surcharge applicable to the recovery of carrying costs associated with take-or-pay buyout and buydown amounts approved in the Docket No. RP89–120 settlement. Questar Pipeline requests an effective date of October 1, 1990, for the tendered tariff sheets.

Questar states that copies of this filing were served upon Questar Pipeline's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21522 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–9–000, Docket No. TM91–1–9–000]

Tennessee Gas Pipeline Co.; Tariff Change

September 6, 1990.

Take notice that on August 31, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to its FERC Gas Tariff to be effective October 1, 1990:

Item A:

Second Revised Volume No. 1

Twentieth Revised Sheet No. 20
Seventeenth Revised Sheet No. 20A
Twenty-Sixth Revised Sheet No. 21
Eleventh Revised Sheet No. 22
Sixth Revised Sheet No. 22A
Tenth Revised Sheet No. 23
Tenth Revised Sheet No. 24

Item B:

Original Volume No. 2

Twentieth Revised Sheet No. 5
Nineteenth Revised Sheet No. 6
Tenth Revised Sheet No. 10

The purpose of the filing is to implement a quarterly Purchased Gas Adjustment to Tennessee's Gas Rates (Item A) and certain transportation rate schedules whose fuel rates track the Gas Rate (Item B).

The proposed rates also include an adjustment to the ACA charge of $.0008 to $.0025 per dth. The Commission established a uniform industry-wide ACA unit rate of $.0019 per Mcf (.0018 per dth on Tennessee) for its fiscal year beginning October 1, 1990. Order 472 requires the Commission to *estimate* its program costs less amount collected through filing fees to develop its annual ACA unit charge. Since the Commission's charges are based on estimate costs, the subsequent year's charges to each pipeline are adjusted by a debit or credit amount in order for the Commission to collect from each pipeline its pro rata share of the difference between estimated and actual fiscal year program costs. The Commission's annual charges to pipelines, therefore, include a current charge based on estimated costs and a debit or credit adjustment related to the previous year. Included in the Commission's assessment of ACA charges to Tennessee for 1990 was a debit adjustment of $1,168,465 for fiscal year 1989. The previous year's debit adjustments have been relatively minor; however, the difference between the costs the Commission estimated and the actual cost for fiscal year 1989 represents nearly a 20% increase over the original estimate. On August 30, 1990, Tennessee jointly filed a Motion for Clarification or Modification of Rule with Interstate Natural Gas Association of America and other pipelines to request that the Commission clarify that the pipelines may recover the adjustments included in the ACA charges by surcharging (or crediting where applicable) such additional charges (or future credits) to ACA unit rates. Tennessee is proposing herein an additional surcharge of $.0007 to recover its debit adjustment of $1,168,465 as detailed on Schedule D1, Text ID 00, Workpaper 4 attached. Tennessee requests that the Commission grant a waiver of Article XXVIII of the General Terms and Conditions of the Tennessee tariff pending Commission action on the Motion for Clarification.

The current adjustment to the Gas Rate is $.1196 per dth. The current adjustment to the Demand Rate (D_1) is $.15 per dth. These adjustments are calculated based upon a comparison with the rates included in Tennessee's previous quarterly PGA filing in Docket No. TQ90–4–9.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21519 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–30–000]

Trunkline Gas Co.; Change in Tariff

September 6, 1990.

Take notice that on August 31, 1990, Trunkline Gas Company (Trunkline) tendered for filing revised sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in appendix No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in appendix No. 2.

The proposed effective date of these revised tariff sheets is October 1, 1990.

Trunkline states that the Commission, by Order No. 472 issued May 29, 1987, implemented procedures providing for the assessment and collection from interstate pipelines, inter alia, of annual charges as required by the Omnibus Budget Reconciliation Act of 1986. Pursuant to Order No. 472, the Commission authorized the tracking for automatic pass through to pipeline customers of the annual charges. Section 20, Annual Charge Adjustment Provision, contained in the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1 provides for the tracking of such annual charges to Trunkline's customers.

Trunkline states that the instant filing has two purposes: (i) To permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1990; and (ii) to revise section 20 of the General Terms and Conditions of Trunkline's tariff to permit the crediting of Commission refunds of ACA charges from the prior fiscal year in instances in which the Commission's estimated fiscal year charge exceeds actual program costs for the same fiscal year and to permit the recovery of amounts which Trunkline is charged by the Commission in instances in which the Commission's fiscal year estimates fall short of actual program costs. The ACA Unit Surcharge authorized by the Commission for fiscal year 1990 is $0.0019 per Mcf, $0.0018 per dth converted to Trunkline's mesurement basis. The ACA Unit Surcharge as adjusted to give effect to the 1989 adjustment is $0.0022 per Mcf, $0.0021 per dth converted to Trunkline's measurement basis. This additional increment added to the Commission-approved increment for fiscal year 1990 is based upon the 20% shortfall in the Commission's estimate for 1989 charges below the actual costs incurred by FERC during fiscal year 1989. Trunkline must pay FERC and 1989 adjustment amount concurrently with its payment for fiscal year 1990 and, absent Commission approval of its proposal herein, Trunkline would not have an opportunity for recovery of such adjustment amount from its customers.

Trunkline further states that its proposes to include in its rates by this filing, both the $0.0018 per dth ACA Unit Surcharge approved by the Commission for fiscal year 1990 and the additional increment of $0.0003 per dth necessary to give effect to the fiscal year 1989 adjustment, in total $0.0021 per dth in accordance with section 20 of the General Terms and Conditions of its FERC Gas Tariff, revised as proposed herein.

finally Trunkline states that it proposes to modify section 20.4 of the General Terms and Conditions to conform to § 154.38(d)(6)(i)(C) of the Commission's Regulations.

Trunkline respectfully requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective October 1, 1990, as previously described; including, but not limited to, waiver of § 154.38(d)(6) of the Commission's Regulations Under the Natural Gas Act and section 20.4 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline states that copies of this letter and enclosures are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21523 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–74–000]

U–T Offshore System; Proposed Changes in FERC Gas Tariff

September 6, 1990.

Take notice that U–T Offshore System (U–TOS) tendered for filing on August 31, 1990 First Revised Sheet No. 5 and Alternate First Revised Sheet No. 5 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is October 1, 1990.

U–TOS states that the purpose of the instant filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of U–TOS' transportation rates. Pursuant to Order No. 472, the Commission has assessed U–TOS its annual ACA charges based on 0.19¢/Mcf for the annual period commencing October 1, 1990.

On August 30, 1990 U–TOS, the Interstate Natural Gas Association of America and several other interstate pipeline companies (Movants) filed a Motion For Clarification or Modification (Clarification or Modification) related to the method utilized by the Commission to compute its ACA unit rate. As more fully explained in the Clarification or Modification, Movants request the authority to recompute the ACA unit rate in order that it may be consistent with the intent of Order No. 472.

In accordance with sections 4.8 and 4.7 of Rate Schedules FT and IT, respectively, contained in Second Revised Volume No. 1 and Article 8 of Rate Schedules T–1 through T–11 contained in Original Volume No. 2 of U–TOS' FERC Gas Tariff, submitted therewith for filing are two revised tariff sheets. The primary tariff sheet includes a revised ACA unit rate of $0.0022 which is a rate of $0.0019 per Mcf increased by $0.0003 per Mcf to give effect to Movants requested adjustment. In the alternative, U–TOS requests that the Commission accept the alternate tariff sheet tendered therewith to be effective October 1, 1990 without prejudice to U–TOS' right to make the primary sheet effective on such date should the Commission rule in favor of Movants Motion For Clarification or Modification.

U–TOS states that copies of the filing are being mailed to each of its Shippers for whom transportation service is being provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21519 Filed 9–12–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During Week of July 9 through July 13, 1990

During the week of July 9 through July 13, 1990 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Joshua Handler, 7/13/90, KFA–0060

Joshua Handler of the Institute for Policy Studies filed an Appeal from a denial by the Office of Classification of a Request for Information which he had submitted under the Freedom of Information Act. The DOE found that the information withheld was properly classified as Formerly Restricted Data and therefore the Office of Classification had correctly withheld the information pursuant to Exemption 3 of the FOIA. The DOE also found that classification guidelines contained in the documents were properly withheld under Exemption 2. Accordingly, the DOE denied the Appeal in its entirely.

Implementation of Special Refund Procedures

Lantern Petroleum Corp., John Mills, 7/10/90, LEF–0016

The DOE issued a Decision and Order implementing procedures for the distribution of $580,475.11, plus interest, in alleged crude oil overcharge funds obtained from Lantern Petroleum Corp. and John Mills. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds will be divided equally between the States and the federal government and 20 percent of the funds will be reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR Part 205, subpart V. Applications for refund must be submitted by March 31, 1991. Applications should not be filed by applicants who have previously filed refund claims in the Crude Oil Subpart V Refund Proceeding.

Refund Applications

Consumers Power Company, 7/9/90, RF171–38

The Office of Hearings and Appeals issued an order directing the DOE to pay $55,000 to Consumers Power Company. The payment was in settlement of court proceedings in which the company sought additional moneys in satisfaction of claims concerning its position under the Old Oil Entitlements Program codified at 10 CFR 211.67. OHA directed that the $55,000 payment be made from funds available to the federal government under the Stripper Well Settlement Agreement.

Eureka Equity Exchange, 7/11/90, RF272–6452, RD272–6452

The DOE issued a Decision and Order concerning an Application for Refund filed by Eureka Equity Exchange (Eureka) from the crude oil funds being disbursed by the DOE under 10 CFR part 205, subpart V. The DOE determined that Eureka had waived its right to participate in the subpart V crude oil proceeding, and consequently denied Eureka's refund claim. In evaluating Eureka's refund application, the DOE noted that Eureka had elected to take a refund from one of the Stripper Well escrow funds. The DOE note further that all refund applicants seeking refunds from the Stripper Well monies are required to waive their right to apply for refunds in the subpart V crude oil refund proceeding.

Exxon Corporation/German Rivera Colon et al., 7/13/90, RF307–9249 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was a reseller whose allocable share is less than $5,000. Each of the applicants initially based its volume claim on gallonage information that it submitted in the DOE Stripper Well Exemption Litigation. The DOE determined that this gallonage information was insufficient for this proceeding and used the purchase volume sheet provided by Exxon for each applicant. The Exxon volume sheets contained no purchase information for the years 1973 through 1975. Each of the applicants certified that it was in business during this time period. Therefore, the DOE adjusted the Exxon figures to reflect purchases during 1973 through 1975. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $3,088 ($2,347 principal plus $741 interest).

Exxon Corporation/Sinclair Marketing, Inc., Crown Central Petroleum Corp., 7/11/90, RF307–8723, RF307–8821

The DOE issued a Decision and Order concerning Applications for Refund filed by Sinclair Marketing Inc. (Sinclair) and Crown Central Petroleum Corp. (Crown) in the Exxon Corporation special refund proceeding. The DOE determined that Crown was not eligible to receive a refund from the Exxon consent order funds because it was a spot purchaser and did not attempt to rebut the spot purchaser presumption of non-injury. Sinclair purchased directly from Exxon and its allocable share is less than $5,000. The DOE determined that Sinclair was eligible for a refund equal to its full allocable share based on a portion of its purchases from Exxon. However, the DOE determined that certain purchases made by Sinclair during the Exxon consent order period were spot purchases. Accordingly, Sinclair did not receive a refund for those spot purchases. The sum of the refund granted to Sinclair in this Decision is $358 ($274 principal plus $84 interest).

Exxon Corp./Suburan Propane Gas Corp., Vangas, Inc. Pargas, Inc. 7/10/90, RR307–5, RR307–6, RR307–7

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Quantum Chemical Corp. on behalf of Suburban Propane Gas Corp. (Suburban), Vangas, Inc. (Vangas) and Pargas, Inc. (Pargas). In this Motion, Quantum requested that the DOE reconsider its Decision of March 2, 1990, in which the DOE combined Quantum's applications filed on behalf of Suburban, Vangas and Pargas and granted Quantum a presumption-level refund of $50,000. *See Exxon Corp./Suburban Propane Gas Corp.*, 20 DOE ¶ 85,134. Quantum asserted that the DOE erroneously considered the three above-mentioned applicants as a single firm when the Pargas claim should have been considered separately since Pargas was not acquired until after the consent order period. The DOE determined that Quantum's Motion did not present a valid basis for analyizng the Pargas refund applications separately from the claims of Suburban and Vangas. Accordingly, Quantum's Motion for Reconsideration was denied.

Gulf Oil Corporation/Art's Gulf, 7/9/90, RR300–10

This Motion for Reconsideration was filed by Federal Refunds, Inc., (FRI), a filing service, on behalf of Art's Gulf and Arthur Salyer. On April 13, 1990, the Office of Hearings and Appeals (OHA) issued a Decision and Order, *Gulf Oil Corporation/Art's Gulf*, 20 DOE ¶ 85,230 (1990). In that Decision, the OHA denied Art's Application for Refund because

Salyer was not able to provide any reasonable evidence to document his gallonage claim and establish a relationship between himself and Gulf during the consent order period. In this Motion for Reconsideration; FRI submitted additional information on behalf of Art's Gulf and Arthur Salyer. The OHA found that this additional information sufficiently demonstrated that Salyer was the owner/operator of Art's during the consent order period and that Art's purchased Gulf product during the consent order period. Therefore, the DOE granted Art's Gulf a refund of $554 under the small claims presumption of injury.

Gulf Oil Corporation/Carl Jarrell Gulf, et al., 7/10/90, RF300–8163, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. None of the applicants substantiated its claim as a purchaser of Gulf products during the consent order period. Accordingly, all five Applications were denied.

Gulf Oil Corporation/Edgemont Gulf, Deltona Gulf, Haft's Gulf Service, 7/12/90, RF300–8618, RF300–8642, RF300–8724

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. None of the three applicants substantiated its claim as a purchaser of Gulf products during the consent order period. Accordingly, all three Applications were denied.

Gulf Oil Corp./Sneed's Gulf Service, Williams Gulf Service, Trivette's Gulf, 7/11/90, RF300–10107, RF300–10158, RF300–10161

The Office of Hearings and Appeals (OHA) denied three Applications for Refund submitted on behalf of Sneed's Gulf Service, Williams Gulf Service and Trivette's Gulf by Energy Watch, Inc. (EW), a private filing service. The OHA found that EWI had not submitted any information demonstrating that the applicants were in business during the consent order period and had not substantiated their gallonage claims.

Gulf Oil Corporation/Ted E. Warlick, 7/10/90, RF300–11167

The DOE issued a Supplemental Order concerning two Applications for Refund submitted in the Gulf Oil refund proceeding on behalf of Ted E. Warlick. The OHA had granted Mr. Warlick two refunds: one for Case No. RF300–1058 in *Gulf Oil Corporation/Butane Propane Gas Co., et al.*, 18 DOE ¶85,014; the other for Case No. RF300–10526 in *Gulf Oil Corporation/Stone Container Corp., et al.*, 19 DOE ¶85,384. Accordingly, the OHA rescinded the latter refund granted to Ted E. Warlick (Case No. RF300–10526) in *Gulf Oil Corporation/Stone Container Corp., et al.*

Gulf Oil Corporation/Wingert Oil Company, Wingert Oil Company, 7/11/90, RF300–11013, RR300–3

The DOE issued a Decision and Order in the Gulf Oil Corporation special refund proceeding concerning an Application for Refund on behalf of Wingert Oil Company/George Wingert and a Motion for Reconsideration on behalf of Wingert Oil Company/Wayne Baylor. Each claimant requested a refund based on purchases made by Wingert Oil Company during the consent order period. The claimants entered into an agreement under which George Wingert would receive 25 percent of Wingert Oil Company's refund, and Wingert Oil Company/Wayne Baylor would receive the remaining 75 percent. Under the presumptions of injury, George Wingert received $14,236 and Wingert Oil Company/Wayne Baylor received $42,709. The total refund granted in this Decision is $56,945 ($40,049 principal plus $16,896 in interest).

Gulf Oil Corporation/Zarda Brothers Dairy, Inc., 7/13/90, RF300–9401, et al.

The Department of Energy issued a Decision and Order regarding 14 Applications for Refund filed in the Gulf Oil Corporation special refund proceeding by Zarda Brothers Dairy, Inc., a reseller of Gulf petroleum products. Zarda's refund was granted using a presumption of injury. The total amount of the refund granted to Zarda, including interest, is $41,161.

Parker Drilling Co. et al., 7/11/90, RF272–12163 et al., RD272–12163 et al.

The DOE issued a Decision and Order granting refunds from cruide oil overcharge funds to five applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of States and Territories (the States) objected to each application on the grounds that the drilling industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period, and stated that this evidence was sufficient to rebut the end-user presumption of injury relied upon by each of the applicants. The DOE held that industry-wide data, with no particular reference to the applicants, was insufficient to rebut the presumption of injury for these end-users. The DOE determined that the end-user presumption of injury was applicable to these applicants despite the fact that their businesses are related to the petroleum industry since none of the applicants was invovled in the refining or reselling of crude oil. The DOE granted the refund applications, determining that the States had failed to show that the applicants had actually passed through their increased fuel costs. The DOE also denied the States' Motion for Discovery, because the States had not presented relevant evidence to rebut the presumption of injury. The sum of the refunds granted in this Decision is $113,961.

Shell Oil Company/Great Plains Gas et al., 7/11/90, RF315–1741 et al.

The DOE issued a Decision and Order granting 13 Applications for Refund submitted by Great Plains Gas (Great Plains) and three Applications for Refund submitted by Etna Oil Company (Etna) in the Shell Oil Company special refund proceeding. Great Plains and Etna were each granted a single refund udner the medium-sized reseller injury presumption, based upon the total purchase volume claimed by each applicant. The total volume approved in this Decision was 122,635,598 gallons, and the total of the refunds granted was $14,427 (comprised of $11,287 in principal and $3,140 in interest).

Shell Oil Company/Randall E. Patzer, East Side Shell, 7/11/90, RF315–123, RF315–4167

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company special refund proceeding. The two applicants had each filed an application for refund for Shell purchases made from 1973–1981 for a business called East Side Shell, located in Chicago, Illinois. The DOE determined that the two applicants had been 50/50 partners in the business for the entire refund period. Accordingly, the refund was split between them. The sum of the refunds granted in the Decision was $1,478 ($1,164 principal plus $314 interest).

Texaco Inc./Westgate Texaco, 7/10/90, RF321–1502, RF321–7196

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by Westgate Texaco. In the latter application, the applicant certified that it had filed only one refund application in the Texaco refund proceeding. However, the applicant had filed another application two months earlier. In view of this false certification, the

DOE determined that both refund applications should be denied.

Waste Management of New York-Rochester 7/12/90, RF272–32801

The DOE issued a Decision and Order concerning an Application for Refund filed by Waste Management of New York-Rochester (WMNY) from the crude oil funds being disbursed by the DOE under 10 CFR part 205, subpart V. In its evaluation of WMNY's refund claim, the DOE noted that Waste Management of North America, the parent firm of WMNY, applied for and received a refund from one of the Stripper Well escrow funds. In order to apply for a Stripper Well refund, applicants are required to waive their right to participate in the subpart V refund proceeding. The waiver agreed to by Waste Management of North America applied to the firm and to all of its subsidiaries. OHA therefore determined that WMNY was ineligible to participate in the Subpart V crude oil refund proceeding because its parent firm relinquished all claims against the Subpart V monies in order to receive a refund from the Stripper Well escrow funds. Accordingly, WMNY's refund claim was denied.

Weitzel & Sons Exacavating, Inc., 7/13/90, RC272–91

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the crude oil refund proceeding on behalf of Weitzel & Sons Excavating, Inc. The OHA granted Weitzel & Sons Excavating, Inc., Case No. RF272–68573, a refund of $1,071 in *Buffalo Fuel Corp., Inc., et al.*, Case Nos. RF272–68512, *et al.* (June 29, 1990). It came to OHA's attention that Weitzel & Sons Excavating, Inc. received the incorrect refund amount and is only eligible for a refund of $77 based on its purchases of 96,720 gallons of petroleum products. Therefore, OHA rescinded the $1,071 granted to Weitzel & Sons Excavating, Inc. and granted the applicant the correct refund amount of $77.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.
Atlantic Richfield Co./Bruce Blair's Arco *et al.*	RF304–8060
Atlantic Richfield Co./D. Sabatelli, Inc. *et al.*	RF304–788
Atlantic Richfield Co./Raymond Therrien *et al.*	RF304–8038
Billie L. Stout *et al*	RF272–62526
Dean Word Co. et al	RF272–24969
Exxon Corp./Scandinavian airlines system.	RF307–6916
Exxon Corp./Slocomb Oil Company et al.	RF307–1153
Exxon Corp./Sober Exxon et al	RF307–5367
Exxon Corp./Speedee-Mart	RF307–1813
Exxon Corp./Tucker's Exxon Service et al.	RF307–1802
Gabel Farms et al	RF272–62001
Gulf Oil Corp./Seaco, Inc. et al	RF300–5701
North Carolina Products Corp. et al.	RF272–4530
Pickrell Drilling Co., et al	RF272–64009
State of Vermont Department of Corrections et al.	RF272–67507
U.C. Milk Co., Inc. et al	RF272–65002
Waste Management of Colorado Spring et al.	RF272–67001

Dismissals

The following submissions were dismissed:

Name	Case No.
Binswanger Glass Co	RF307–9514
Broad & Tulane Exxon	RF307–9970
Cliffside Exxon	RF307–194
DeWitt's Exxon	RF–307–264
Dickman Enterprises, Inc	RF307–8913
Gas-N-Save	RF307–8912
Jim's Gulf Service Stations, Inc	RF304–7368
	RF304–7369
	RF304–7370
	RF315–5863
	RF315–5864
	RF315–5865
	RF321–2559
	RF315–2560
	RF315–2561
Lizzi Brothers Texaco	RF321–7489
Morris Exxon	RF307–1010
North Hills Texaco	RF321–3977
Sandy Lane Texaco	RF321–3209
Seehuus Associates	LFA–0051
Turner's E–Z Go Service	RF304–7403
	RF307–6951
	RF315–5861
	RF321–2427
Western Stations Co	RF304–9967
Weyerhaueser Company	RF272–42011
	RF272–70814
Willie's E–Z Go	RF304–7599
	RF307–7369
	RF315–6261
	RF315–6262
Wyckoff Company	RF321–7116

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in "Energy Management: Federal Energy Guidelines," a commercially published loose leaf reporter system.

Dated: September 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–21607 Filed 9–12–90; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Proposed Rate Adjustment, Public Comment Forum, and Opportunities for Public Review and Comment; Jim Woodruff Project

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of public comment forum and opportunity for review and comment.

SUMMARY: Southeastern published a proposal to revise existing schedules of rates and charges applicable to the sale of power from the Jim Woodruff Project effective for the period, February 20, 1990, thourgh September 19, 1995, in 55 FR 32968 (August 13, 1990).

Pursuant to the request of several customers, Southeastern decided to have an additional public comment forum. Opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit oral or written comments. Southeastern will evaluate all comments received in this process.

DATES: A public comment forum will be held at 10 a.m., on October 30, 1990, in Tallahassee, Flroida. Persons desiring to speak at the forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If Southeastern has not been notified by close of business on October 23, 1990, that at least one person intends to be present at the forum, the forum will be automatically canceled with nor further notice.

ADDRESSES: The public comment forum for the Jim Woodruff Project will begin at 10 a.m., on October 30, 1990, in the Florida East Room of the Tallahassee Hilton, 101 South Adams Street, Tallahassee, Florida 32101.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283–9911.

Issued in Elberton, Georgia, September 5, 1990.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 90–21608 Filed 9–12–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3829.6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected cost and burden; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Metal Furniture Surface Coating (Subpart EE)—Information Requirements. (ICR #0649.04; OMB #2060–0106). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60, and section 111 and 114 of the Clean Air Act, owners or operators of the affected facilities must notify EPA of construction, modification, and anticipated and actual start-up of a facility. They must also report to EPA the results of their facility initial performance tests. Owners or operators must either install temperature measurement devices and record the temperature measurements, or record the daily volume of organic solvent recovered. They must also maintain records of monthly performance tests for two years. EPA uses the initial test reports and the recorded data to determine the facilities' compliance with the standards.

Burden statement: The annual public burden for this collection of information is estimated to average 252 hours per response for reporting, and 75 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of metal furniture surface coating plants.

Estimated number of respondents: For each year of this clearance, 60 new respondents will be required to report the results of their initial performance test. 690 respondents are subject to the recordkeeping requirements.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 66,870 hours.

Frequency of collection: Initial performance test only.

Title: NSPS for Pressure Sensitive Tape and Label Surface Coating (subpart RR)—Information Requirements (ICR #0658.04; OMB #2060–0004). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60 and sections 111, 114, and 301 of the Clean Air Act, owners or operators of affected facilities must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions and dates and results of performance tests. They must continually monitor and record temperature in specified pollution control devices, and submit semiannual reports of VOC excess emissions, and semiannual reports of temperature drop in the specified pollution control devices. EPA uses these data to target inspections and, if necessary, to use as evidence in court.

Burden statement: The annual public burden for this collection of information is estimated to average 13 hours per response for reporting and 75 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed, and review the collection of information.

Respondents: Owners or operators of pressure tape and label surface coating facilities.

Estimated number of respondents: 414.

Estimated number of responses per respondent: 2.

Estimated total annual burden on respondents: 6,768 hours.

Frequency of collection: Semiannually.

Title: NSPS for Surface Coating of Large Appliances (subpart SS)—Information Requirements. (ICR #0659.05; OMB #2060–0108). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60 and section 111 and 114 of the Clean Air Act, owners or operators of the affected facilities, must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions, and report the results of their initial performance tests. They must record all data and calculations of monthly performance tests used to determine VOCs' emissions. These records must be maintained for two years. EPA uses the initial test reports and the recorded data to determine the facilities' compliance with the standards.

Burden statement: The annual public burden for this collection of information is estimated to average 81 hours per response for reporting, and 75 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of surface coating for large appliances facilities.

Estimated number of respondents: For each year of this clearance, 26 new respondents will be required to report the results of their initial performance test. 216 respondents are subject to the recordkeeping requirements.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 18,306 hours.

Frequency of collection: Initial performance test only.

Title: NSPS for Metal Coil Surface Coating (Subpart TT)—Information Requirements. (ICR # 0660.04; OMB # 2060–0107). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60 and section 111 and 114 of the Clean Air Act, owners or operators of the affected facilities must notify EPA of construction, modifications, startups, shutdowns, malfunctions, and report the results of their initial performance tests. They must record all data and calculations from monthly performance tests used to determine the average VOC content of coatings, VOC emissions, and emission limits where applicable. EPA uses the initial test reports and the record data to determine the facilities' compliance with the standards.

Burden statement: The annual public burden for this collection of information is estimated to average 79 hours per response for reporting, and 75 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of metal coil surface coating facilities.

Estimated No. of respondents: For each year of this clearance, 6 new respondents will be required to report the results of their initial performance test. 98 respondents are subject to the recordkeeping requirements.

Estimated No. of responses per respondent: 1.

Estimated total annual burden on respondents: 7,824 hours.

Frequency of collection: Initial performance test only.

Title: NSPS for Beverage Can Surface Coating (subpart WW)—Information Requirements. (ICR # 0663.04; OMB # 2060–0001). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60 and Section 111 and 114 of the Clean Air Act, owners or operators of beverage can surface coating facilities must notify EPA of construction, modifications, start-ups, shutdowns, malfunctions, and report the results of their initial performance tests. They must maintain records of data and calculations used to determine VOC emissions from monthly performance tests, and records of daily incineration temperatures or amounts of organic solvent recovered. Quarterly reporting of excess emissions is required, semiannually if in compliance.

Burden statement: The annual public burden for this collection of information is estimated to average 13 hours per response for reporting, and 103 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of beverage can surface coating facilities.

Estimated no. of respondents: 15.

Estimated no. of responses per respondent: 2.

Estimated total annual burden on respondents: 1,935 hours.

Frequency of collection: semiannually if in compliance; quarterly if in violation.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations (Subpart MM)—Information Requirements (ICR # 1064.05; OMB # 2060–0034). This is a renewal of a previously approved collection.

Abstract: To comply with 40 CFR part 60 and Section 111 and 114 of the Clean Air Act, owners or operators of the affected facilities must notify EPA of construction, modifications, or reconstruction of their facilities. They must monitor temperature measurements when an incinerator is used and they must also install, calibrate and maintain temperature measurement devices. Owners or operators must record and maintain records of VOC's excess emissions. The frequency or reporting varies according to emissions' compliance status. Results of initial performance tests must also reported to EPA. The Agency uses these data to target inspections, and if necessary, to use as evidence in court.

Burden statement: The annual burden for this collection of information is estimated to average 12 hours per response for reporting, and 20 hours per recordkeeper. This estimate includes the time needed to review instructions search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of facilities that apply surface coating on automobiles and light duty trucks.

Estimated no. of respondents: 29.

Estimated no. of responses per respondent: 2.

Estimated total annual burden on respondents: 1,276 hours.

Frequency of collection: semiannually if in compliance; quarterly if in violation.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regualtory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: September 6, 1990.

Paul Lapsley,

Director Regulatory Management Division.

[FR Doc. 90–21599 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3830–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Investigation of Soil Ingestion in Children Exhibiting Pica Behavior (Follow-up) (EPA ICR #1356.03; OMB #2080–0029). This ICR requests reinstatement of a previously approved collection for which approval has expired.

Abstract: This EPA sponsored study, to be conducted by Fred Hutchinson Cancer Research Center (FHCRC) and Battelle Labs, is a further examination of soil ingestion in WA State population. The study is designed to control for variables which past research in this area has not accounted for: (1) Soil ingestion values in persons who ingest higher than normal amounts of soil, and (2) seasonal effects (winter ingestion is more likely to be household dust while summer ingestion is more apt to be soils outside the home). This effort will involve 500 children between age 9 months and 4 years who will be randomly selected using state birth records. Parents will be questioned about mouthing and pica behavior in these childern and asked to conduct 3 five-minute observations of their children at play. The responses will be scored and fifty children with highest pica and mouthing scores and fifty controls will participate in a week long study of soil ingestion during the winter months 1990–1991 and again in summer 1991. Parents of these 100 children will prepare duplicate meals for the entire week of the study, collect all excretory samples and complete a daily diary of the child's activities. Results will be used in regulating levels of toxic contaminants in soil.

Burden statement: The public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, preparing meals, collecting excretory samples, training and assisting child, and completing daily diary and consent forms.

Respondents: Households in Richmond, Pasco or Kennewick WA.

Estimated number of respondents: 500.

Estimated total annual burden on respondents: 4.

Frequency of collection: 1 week in winter 1991 and 1 week in summer 1991.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW. Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs Washington, DC 20503.

OMB Response to Agency PRA Clearance Requests

EPA ICR #0998.03; NSPS of SOCMI Air Oxidation Processes and Distillation Operations—Reporting and Recordkeeping; was approved 08/17/90; OMB #2060–0197; expires 08/31/93.

EPA ICR #1459.01; 1990 National Census of the Pulp, Paper, and Paperboard Manufacturing Facilities; was approved 08/13/90; OMB #2040–0144; expires 08/31/92.

Dated: September 7, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–21600 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3829–7]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection by Hoechst Celanese Engineering Resins, Inc., Bishop, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Hoechst Celanese Engineering Resins, Inc., for the Class I injection wells located at Bishop, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for a long as the waste remains hazardous. This final decision allows the underground injection by Hoechst Celanese Engineering Resins, Inc., of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Bishop, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued July 4, 1990. A public hearing was held August 9, 1990, and a public comment period ended on August 20, 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 contingent on modification of Underground Injection Control permits WDW–210, WDW–211, and WDW–212 to authorize disposal only in the lower three injection intervals identified in the petition, and will not become effective until and unless said permit modification becomes effective.

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. 90–21601 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3829–9]

Intention To Grant an Exclusive Patent License; Bellefonte Lime Co., Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 37 CFR part 404, EPA hereby gives notice of intent to grant Bellefonte Lime Company, Inc./Genlime Group L.P. of Wayne, Pennsylvania an exclusive, royalty-bearing, revocable license to practice the inventions as described and claimed in: U.S. Patents 4,786,485 and 4,882,309, both entitled "Lignosulfonate-Modified Calcium Hydroxide for SO_2 Control During Furnace Injection." The exclusive license will include patents 4,786,485 and 4,882,309 and all reexamination and reissued patents granted thereon or in connection therewith and all divisions, continuations, continuations-in-part, renewals, or extensions thereof. The announcement of said patents as available for licensing was made at 55 FR 10489 (1990).

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government Patent Licensing Regulation at 37 CFR part 404. EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the Date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The Patent Counsel and other EPA officials will review all written responses and then recommend to the Director, Air and Energy Engineering Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license.

DATES: Comments to this notice must be received November 13, 1990.

ADDRESSES: Benjamin Bochenek, Patent Counsel, Office of General Counsel (LE–132G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Bochenek, [202] 382–5460.

Dated: September 6, 1990.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 90–21602 Filed 9–12–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request to extend, for a three-year period, its approval of the information collection identified below.

Type of review: Revision of a currently approved collection.

Title: Community Reinvestment Act Statement and Recordkeeping.

Form number: None.

OMB number: 3064–0092.

Expiration date of OMB clearance: October 31, 1990.
Frequency of response: On occasion.
Respondents: Insured state nonmember banks.
Number of recordkeepers: 7,919.
Annual hours per recordkeeper: 2.
Total annual burden hours: 15,838.
OMB reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0092), Washington, DC 20503.
FDIC contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before November 13, 1990.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Under the Community Reinvestment Act (12 U.S.C. 1209) and the FDIC's implementing regulation (12 CFR part 345), insured State nonmember banks must adopt a Community Reinvestment Act (CRA) statement, post a CRA notice and maintain a CRA public file. They must also disclose their CRA ratings and written Performance Evaluations.

Dated: September 6, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–21516 Filed 9–12–90; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Bancs of Chicago Bancorp, 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 October 6, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bancs of Chicago Bancorp,* Winnetka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of GEMA Financial Corporation, and Ershter Financial Corporation (in formation), both of Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago, Little Village, Chicago, Illinois; Dritter Financial Corporation, Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago, Lakeshore, Chicago, Illinois; and Tsvaiter Financial Corporation, Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago—Garfield Ridge, Chicago, Illinois.

2. *Ershter Financial Corporation,* Winnetka, Illinois; to become a bank holding company by acquiring 95.25 percent of the voting shares of Bank of Chicago, Little Village, Chicago, Illinois.

3. *GEMA Financial Corporation,* Winnetka, Illinois; to acquire 100 percent of the voting shares of Ershter Financial Corporation (in formation), Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago, Little Village, Chicago, Illinois; Dritter Financial Corporation, Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago—Lakeshore, Chicago, Illinois; and Tsvaiter Financial Corporation, Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago—Garfield Ridge, Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Blackhawk Bancorporation, Waterloo, Iowa, and thereby indirectly acquire Peoples Bank and Trust Company, Waterloo, Iowa.

Board of Governors of the Federal Reserve System, September 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–21494 Filed 9–12–90; 8:45 am]

BILLING CODE 6210–01–M

Mr. Fred Abdula; et al, Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.14) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 27, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mr. Fred Abdula,* to acquire up to 25.06 percent of the voting shares of Northern States Financial Corporation, Waukegan, Illinois, and thereby indirectly acquire Bank of Waukegan, Waukegan, Illinois.

2. *Gary R. Edidin* as trustee of the Edidin Stock Trust and *Gary R. Edidin* and *Stanley H. Meadows* as trustee, to acquire 37.52 percent of the voting shares of Dritter Financial Corporation, Winnetka, Illinois, and thereby indirectly acquire Bank of Chicago-Lakeshore, Chicago, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *G. Thomas Wrenholdt,* Leadville, Colorado to acquire an additional 28.44 percent of the voting shares of Ore Bancorporation, Inc., Leadville, Colorado, for a total of 50.65 percent, and thereby indirectly acquire First National Bank of Leadville, Leadville, Colorado.

Board of Governors of the Federal Reserve System, September 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21495 Filed 9-12-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 901-0010]

Atlantic Richfield Co., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, ARCO Chemical Company, a subsidiary of Atlantic Richfield Company and a producer of urethane polyether polyols and propylene glycol, to divest: the propylene glycol assets and businesses of Union Carbide; and the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texas Chemical Company in 1987.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Atlantic Richfield Company, a corporation; ARCO Chemical Company, a corporation; Union Carbide Corporation, a corporation; and Union Carbide Chemicals and Plastics Company Inc., a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by ARCO Chemical Company, a partially-owned subsidiary of Altantic Richfield Company, (hereinafter collectively "ARCO"), of certain of the assets and businesses of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation, (hereinafter collectively "Union Carbide"), which acquisition is more fully described at paragraph I.(A) below, and ARCO and Union Carbide having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge ARCO and Union Carbide with violations of the Clayton Act and Federal Trade Commission Act, and it is now appearing that ARCO and Union Carbide are willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between ARCO, by its duly authorized officers, and counsel for the Commission and by and between Union Carbide, by its duly authorized officers, and counsel for the Commission that:

1. Proposed respondent Atlantic Richfield Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 515 South Flower Street, Los Angeles, California 90071.

2. Proposed respondent ARCO Chemical Company is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newton Square, Pennsylvania 19073.

3. Proposed respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187.

4. Proposed respondent Union Carbide Chemicals and Plastics Company Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York, with its principal office and place of business at 39 Old Ridgebury Road, Danbury, Connecticut 06187.

5. ARCO and Union Carbide admit all the jurisdictional facts set forth in the attached draft of complaint.

6. ARCO and Union Carbide each waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify ARCO and Union Carbide, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by ARCO or Union Carbide that the law has been violated as alleged in the draft of complaint here attached or otherwise.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to ARCO and Union Carbide, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to ARCO's and to Union Carbide's respective addresses as stated in this agreement shall constitute service. ARCO and Union Carbide each waive any right they may have to any other manner of service. The complaint

may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order. This agreement additionally contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, thereafter, file with a United States district court the stipulation and proposed Final Judgment that are made a part hereof as Appendix II.[1]

10. ARCO and Union Carbide have each read the draft of complaint and Order contemplated hereby. ARCO and Union Carbide each understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. ARCO and Union Carbide each further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

(A) "Acquisition" means the Asset Purchase Agreement entered into on September 27, 1989, by which ARCO agreed to acquire and Union Carbide agreed to convey certain rights and interests in, and title to, certain of the assets and businesses of Union Carbide.

(B) "ARCO" means Atlantic Richfield Company and ARCO Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates (including the Properties To Be Divested as hereinafter defined) controlled (the definition of "control," as used in this Order, is the definition currently appearing at 16 CFR 801.1(b)) by Atlantic Richfield Company or ARCO Chemical Company, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) "ARCO Group" means individually and collectively ARCO; any joint venture in which ARCO is a participant relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each participant in any joint venture with ARCO relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the ARCO Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the ARCO Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(D) "Properties To Be Divested" means:

1. All of the propylene glycol Assets and Businesses of Union Carbide that ARCO agreed to acquire or acquired pursuant to the Acquistion (hereinafter "Paragraph I.(D) 1 Properties"); and

2. All of the urethane polyether polyol Assets and Businesses in the United States and Canada, including their territories and possessions, that ARCO acquired from Texaco, together with all improvements or modifications made to those Assets and Businesses by ARCO (hereinafter "Paragraph I.(D)2 Properties").

(E) "Assets and Businesses" include but are not limited to all assets, properties, business and goodwill, tangible and intangible, utilized in the transportation, production, distribution or sale of propylene glycol or urethane polyether polyols, including, without limitation, the following:

1. All machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, trademarks, patents, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and qualify control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

5. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (to the extent assignable) (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and gurantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained books, records and files; and

8. All items of prepaid expense.

(F) "Commission" means the Federal Trade Commission.

(G) "Dow" means The Dow Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Dow and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(H) "Texaco" means Texaco Inc. and Texaco Chemical Company, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Texaco and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(I) "Texaco Group" means individually and collectively Texaco; any joint venture in which Texaco is a participant relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each participant in any joint venture with Texaco relating to the manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO; each customer of the Texaco Group that manufactures, purchases, or uses PO, any PO coproduct, or any derivative of PO; and each supplier of products or services to the Texaco Group relating to the development, manufacture, sale, or use of PO, any PO coproduct, or any derivative of PO.

(J) "Union Carbide" means Union Carbide Corporation and Union Carbide Chemicals and Plastics Company Inc., their predecessors, subsidiaries, divisions, groups and affiliates controlled by Union Carbide and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(K) "PO" means propylene oxide.

(L) "PO Entrant" means any person other than ARCO or Dow who has obtained the permits from federal, state, provincial, county or municipal regulatory authorities necessary to commence construction, or who has commenced construction, or a commercial PO plant in the United States or Canada, including their territories and possessions.

(M) "Polyols" means polyether polyols, except that as used in definitions (N), (O), (P), (Q), and (R) and in Paragraph III below, Polyols means polyether polyols used as feedstock for Performance Polyols or used in conjunction with Performance Polyols.

(N) "Urethane polyether polyol" means Polyols useful as a reactant with isocyanates or polyisocyanates in producing polyurethanes. Urethane polyether polyol includes Performance Polyols.

[1] Appendix II not published as a part of this document.

(O) "Polymer/Polyols" means any composition comprising a polymer dispersed in, or mixed or otherwise combined with, a Polyol, said composition being useful in producing a polyurethane by reaction with an isocyanate or a polyisocyanate.

(P) "Performance Polyols" means Polymer/Polyols and/or any two-phase compositon containing a Polyol that is an end-use performance substitute for a Polymer/Polyol as a reactant with isocyanates or polyisocyanates in producing polyurethanes.

(Q) "UCC Patent Rights" shall mean any patent or patent application in the United States or Canada, including their territories and possessions, assigned to or under which rights were granted to, ARCO pursuant to the Acquisition, claiming: (1) Performance Polyols; (2) a process for producing Performance Polyols; (3) Polyols; (4) a process for producing Polyols; (5) a process for producing polyurethanes using Polyols or Performance Polyols as starting materials; (6) or polyurethanes so produced and each patent identified in Appendix III [2] of this Order.

(R) "UCC Technology" shall means general and specific information, assigned or under which rights were granted to ARCO pursuant to the Acquisition, relating to (1) Polyols; (2) Performance Polyols; (3) feedstocks for Performance Polyols and for use in conjunctin with Performance Polyols (including the manufacture, use, and constitution of Polyols and further including process design information regarding Polyols); (4) the production of Performance Polyols; (5) the composition of Performance Polyols; (6) the use of Performance Polyols in making polyurethanes; and (7) the economic factors relating to the production of Performance Polyols and polyurethanes made therefrom; all such information being sufficiently detailed for the commercial production, sale, and use of Performance Polyols and the commercial production of polyurethane therefrom. UCC Technology shall include (but shall not be limited to) all technical information, data, specification, drawings, design and equipment specifications, manuals, engineering reports, manufacturing designs and reports, operating manuals, and polyurethane-forming formulations. UCC Technology shall exclude information to the extent disclosure of such information by Union Carbide is prohibited by a contract between Union Carbide and any polyurethane producer, unless said polyurethane producer consents to such disclosure.

(S) "Viability and Competitiveness" of the Propeties to Be Divested means each such property is capable of operating independently at the same output as currently (at competitive prices) and is capable of functioning independently and competitively in the Urethane polyether polyol business or the propylene glycol business.

II

It is order That:

(A) Within twelve (12) months of the date this Order becomes final, ARCO shall divest, absolutely and in good faith, the Properties to Be Divested and shall also divest such additional ancillary Assets and Businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Properties to Be Divested. Provided, however, ARCO may retain free rights to practice under all patents and use all unpatented technology included within the Paragraph I. (D)2 Properties to Be Divested.

(B) ARCO shall divest the Properties to Be Divested pursuant to paragraph I. (D)1 only with the prior consent of Union Carbide, which consent shall not unreasonably be withheld. The acquirer shall have the right to enforce all rights and privileges of ARCO set out in the Acquisition with respect to the Properties to Be Divested pursuant to paragraph I. (D)1. Union Carbide shall provide the acquirer substantially the same services as it agreed to provide ARCO pursuant to the Acquisition for the Properties to Be Divested under paragraph I.(D)1. In addition, Union Carbide shall provide to the acquirer upon the request of the acquirer, such additional services as may be necessary for the continued operation of such Properties to Be Divested at Union Carbide's South Charleston, West Virginia plant that cannot otherwise economically be obtained and that Union Carbide can economically provide. Union Carbide shall provide services to the acquirer for a period that Union Carbide has agreed to provide ARCO similar services pursuant to the Acquisition or is actually providing such services to ARCO at such facility. Union Carbide shall charge the acquirer the lesser of Union Carbide's costs consistent with Union Carbide's current practices or the charge at which ARCO contracted to purchase such services for such Properties to Be Divested.

(C) ARCO shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as ARCO has divested all the Properties to Be Divested or until such other time as the Agreement to Hold Separate provides.

(D) ARCO shall divest the Properties to Be Divested only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. ARCO shall demonstrate the Viability and Competitiveness of the Properties to Be Divested in its application for approval of a proposed divestiture. The purpose of the divestiture of the Properties to Be Divested is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of urethane polyether polyols and propylene glycol, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(E) ARCO shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Properties to Be Divested and shall not cause or permit the destruction, removal or impairment of the Properties to Be Divested except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered That, at the time of the divestiture of the paragraph I. (D)2 properties required by this Order. ARCO shall include with the paragraph I. (D)2 Properties a paid-up, non-royalty bearing, perpetual, and non-exclusive license (a) under the UCC Patent Rights to make use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions and (b) to use UCC Technology to make, use and sell Polyols and Performance Polyols in the United States and Canada, including their territories and possessions; and for a period of three (3) years following the divestiture required by this Order, ARCO shall provide to the acquirer of the paragraph I. (D)2 Properties, if the acquirer so requests, such additional know-how as may be necessary to manufacture and sell Performance Polyols. ARCO's grant shall be subject to, and the licensee shall take the license subject to, any preexisting rights granted by Union Carbide to other licensees other than ARCO as of the date the Agreement Containing Consent Order was signed.

IV

It is further ordered That, for a period of three (3) years following the

[2] Appendix III not published as a part of this document.

divestiture of the paragraph I. (D)2 properties required by this Order, Union Carbide shall provide to ARCO, for transmittal by ARCO to the acquirer of the paragraph I. (D)2 Properties pursuant to Paragraph III of this Order, such know-how (not otherwise obtainable from ARCO) regarding UCC Patent Rights and UCC Technology in the possession of Union Carbide as may be necessary for the acquirer of the paragraph I. (D)2 Properties to manufacture and sell Performance Polyols.

It is further ordered That, at the time of the divestiture of the Paragraph I.(D)2 properties required by this Order, ARCO shall assign to the acquirer of the Paragraph I.(D)2 Properties, all of ARCO's rights and interests under all tolling agreements between ARCO and Texaco relating to the manufacture of Polyols at Texaco's Conroe, Texas, facility.

VI

It is further ordered That, for a period of five (5) years from the date of each divestiture required by this Order, ARCO shall, at the acquirer(s)'s request, contract with the acquirer(s) to supply to the acquirer(s) PO, in such quantities as the acquirer(s) may request for use in the Properties to Be Divested, or for use in the manufacturer of Performance Polyols under the license provided by ARCO pursuant to Paragraph III of this Order subject only to the capacity constraints of ARCO's PO production facilities in the United States and preexisting contractual obligations. The price, terms, and conditions at which ARCO shall supply PO to the acquirer(s) of the Properties to Be Divested shall be no less favorable to the acquirer(s) than the price, terms, and conditions at which ARCO supplies PO to any other person in the United States or Canada, including their territories and possessions, that competes with the acquirer(s).

VII

It is further ordered That ARCO shall rescind all existing non-compete provisions contained in any agreements between ARCO and Texaco purporting to restrict Texaco's right to engage in the manufacture of urethane polyether polyol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol manufacturerd in the United States or Canada, including their territories and possessions; and ARCO and Union Carbide shall rescind the provisions of any existing agreements between ARCO and Union Carbide purporting to restrict Union Carbide's right to engage in the manufacture of urethane polyether polyol or propylene glycol in the United States or Canada, including their territories and possessions, or the sale in any country of urethane polyether polyol or propylene glycol manufacturerd in the United States or Canada, including their territories and possessions. ARCO shall take no action to enforce any such non-compete provision against Texaco or against Union Carbide.

VIII

It is further ordered That, one Texaco consents to take no action and assert no claim against the ARCO Group based on any conduct of ARCO or other persons working on PO technology with ARCO, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the ARCO Group of any technology relating to the manufacture, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology ARCO shall take no action and shall assert no claim against the Texaco Group based on any conduct of Texaco or other persons working on PO technology with Texaco, and relating to such work, prior to the date the Agreement Containing Consent Order was signed, relating to any use, development, misappropriation, disclosure or license to others by the Texaco Group of any technology relating to the manufacturer, sale, or use of PO or any coproducts of PO/TBA or PO/MBTE technology. Provided, however, if, in the judgment of the Commission, Texaco unreasonably fails to consent to the assignment under Paragraph V of this Order, ARCO's obligations under this Paragraph VII of this Order shall be suspended until Texaco consents to said assignment.

IX

It is further ordered That, notwithstanding any provision to the contrary, in any contract between ARCO and Texaco, between ARCO and Union Carbide, or between ARCO and the acquirer(s) of the Properties to Be Divested, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ARCO shall permit upon ninety (90) days notice, Texaco, Union Carbide, and the acquirer(s), without penalty or forfeiture of any kind, to purchase or otherwise receive any or all of their PO requirements in the United States or Canada, including their territories and possessions, from any PO Entrant, including but not limited to PO supplied by such PO Entrant via manufacture outside the United States or Canada, including their territories and possessions; and, to the extent of any such purchases or receipts of PO by Texaco, Union Carbide, or the acquirer(s), ARCO shall relieve Texaco, Union Carbide, and the acquirer(s) of any contractual obligation to purchase such quantities of PO from ARCO.

X

It Is Further Ordered That:

(A) If ARCO has not divested, absolutely and in good faith and with the Commission's approval, the Properties to Be Divested within twelve (12) months of the date this Order becomes final, ARCO shall consent to the appointment by the Commission of a trustee to effectuate the obligations set out in paragraph II.(A) and II.(B) of this Order. In the event the Commission or the Attorney General brings an action pursuant to section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. 45(*1*), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph X.(A) of this Order, ARCO shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities.

1. The Commission shall select the trustee, subject to the consent of ARCO, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Properties to Be Divested and to divest such additional ancillary Assets and Businesses of ARCO and to effect the additional obligations set out in Paragraph II.(A) and II.(B) of this Order.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of

divesture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, Provided, however, the Commission may only extent the divestiture period two (2) times.

4. Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records and facilities related to the Properties to Be Divested, or any other relevant information, as the trustee may reasonably request. ARCO shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. ARCO shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by ARCO shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to ARCO's absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph II.(D) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Properties to Be Divested. The divestiture shall be made in the manner set out in Paragraph II, provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by ARCO, to which (as to the Paragraph I.(D)1 Properties to Be Divested only) Union Carbide has no reasonable objection, from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of ARCO, on such reasonable and customary terms and conditions as the Commission or a court may set. Subject to the consent of ARCO, which consent shall not be unreasonably withheld, the trustee shall have authority to employ, at the cost and expense of ARCO, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of ARCO and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Properties to Be Divested.

7. Except in the case of reckless disregard of his or her duties or intentional wrong doing, ARCO shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, ARCO shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph X.(A) of this Order.

10. The Commission and, in the case of a court-appointed trustee, the court may on its own intitiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Properties to Be Divested.

12. The trustee shall report orally to ARCO every two weeks, and in writing to ARCO and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

XI

It is further ordered That, within sixty (60) days after the date this Order becomes final and every (60) days thereafter until ARCO has fully complied with the provisions of Paragraphs II and III of this Order, ARCO shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with those provisions, including the Hold Separate Agreement. ARCO shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contracts or negotiations for the divestiture of assets or businesses specified in Paragraph II of this Order, including the identity of all parties contacted. ARCO also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

XII

It is further ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, ARCO shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the United States or Canada, including their territories and possessions, used for or previously used for (and still suitable for use for) the production of PO, urethane polyether polyol, or propylene glycol. ARCO shall also not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, more than one percent of the total outstanding stock or share capital of, or any other interest in, any entity (other than an entity included within ARCO under Paragraph I.(B) of this Order as of the date the Agreement Containing Consent Order was signed) that owns or operates assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol or propylene glycol. Provided, however, these prohibitions shall not relate to the construction of new facilities. Provided, further, that such prior approval shall not be required if ARCO satisfies the conditions set forth in Paragraph XIII of this Order.

XIII

It is Further Ordered That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States or Canada, including their territories and possessions, engaged in the production of urethane polyether polyol, propylene glycol, or PO (hereinafter "Acquired entity"), ARCO announces its intention to acquire or commences an acquisition of, any interest in the Acquired entity and, before ARCO obtains sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires more than one percent of the total outstanding stock or share capital of, or any other interest in assets that produce urethane polyether polyol or propylene glycol in

the United States or Canada, including their territories and possessions, (hereinafter "Third entity"), or said Acquired entity acquires any assets used in the production of urethane polyether polyol, propylene glycol or PO in the United States or Canada, including their territories and possessions, ARCO may, in lieu of obtaining prior approval of such acquisition under Paragraph XII of this Order, comply with each of the requirements of this Paragraph XIII of this Order. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to Paragraph XII, Arco shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of ARCO learning of the acquisiton by the Acquired entity of any interest in a Third entity, as described in Paragraph XIII of this Order. Such notification shall follow the format for filings set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under Section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803.

(B) In the case where the Acquired entity assets used in the production of urethane polyether polyol, propylene glycol or PO, ARCO shall comply with all terms of the Agreement to Hold Separate, made a part hereof as Appendix IV.[3] Said Agreement shall take effect as soon as ARCO has sufficient control over the Acquired entity to satisfy the terms of the Agreement to Hold Separate and shall continue in effect until such time as ARCO has divested all the stock or share capital of the Third entity or all the Assets and Businesses acquired by the Acquired entity or until such other time as the Agreement to Hold Separate provides. In the case where the Acquired entity acquired stock or share capital of the Third entity, as soon as ARCO has sufficient control over the Acquired entity to do so, ARCO shall place all stock and share capital of the Third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when ARCO has sufficient control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall:

1. In the case where the Acquired entity acquired stock or share capital of the Third entity, divest, absolutely and in good faith, the stock or share capital of the Third entity,

or

2. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol, propylene glycol or PO, divest, absolutely and in good faith, all the Assets and Businesses of the Acquired entity and also divest such additional ancillary assets and businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(D) ARCO shall divest the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall demonstrate the Viability and Competitiveness of the Assets and Businesses of the Acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of urethane polyether polyols and propylene glycol, and to remedy and lessening of competition resulting from the acquisition.

(E) In the case where the Acquired entity acquired assets used in the production of urethane polyether polyol or propylene glycol, ARCO shall take such action as is necessary to maintain the viability, competitiveness and marektability of the Assets and Businesses of the Acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of businesses and except for ordinary wear and tear.

(F) If ARCO has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the Third entity or the Assets and Businesses of the Acquired entity within three (3) months of the date when ARCO has sufficient control over the Acquired entity to divest assets, stock or share capital of the Acquired entity, ARCO shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the Third entity

or

2. The Assets and Businesses of the Acquired entity and to divest such additional ancillary assets and businesses of the Acquired entity and effect such arrangements that may be necessary to assure the Viability and Competitiveness of the Assets and Businesses of the Acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, ARCO shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by ARCO to comply with this Order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph XIII.(F) of this Order, ARCO shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph X.(B) of this Order. Provided, however, that each reference to "Properties to be Divested" in paragraph X.(B) of this Order shall, for the purposes of this paragraph XIII, mean either the "stock or share capital of the Third entity"or the "Assets and Businesses of the Acquired entity."

XIV

It is further ordered That, one year from the date this Order becomes final and annually for nine years thereafter, ARCO shall file with the Commission a verified written report of its compliance with this Order.

XV

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to ARCO or to Union Carbide, as applicable, made to its principal office, ARCO and Union Carbide shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda

[3] Appendix IV not published as a part of this document.

and other records and documents in the possession or under the control of ARCO or of Union Carbide, as applicable, relating to any matters contained in this Order; and

(B) Upon five days notice to ARCO or to Union Carbide, as applicable, and without restraint or interference from ARCO or Union Carbide, to interview officers or employees of ARCO and Union Carbide, who may have counsel present, regarding such matters.

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It is further ordered That, ARCO and Union Carbide shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries that may affect compliance obligations arising out of the Order or any other change that may affect compliance obligations arising out of the Order.

Appendix I

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Atlantic Richfield Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 515 South Flower Street, Los Angeles, California 90071; ARCO Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 3801 West Chester Pike, Newtown Square, Pennsylvania 19073 (collectively referred to as "ARCO"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on September 27, 1989, ARCO entered into an Asset Purchase Agreement providing for the acquisition of certain of the assets and businesses (hereinafter "the Acquired Assets") of Union Carbide Chemicals and Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation (collectively referred to as "Union Carbide"); (hereinafter the "Acquisition"); and

Whereas, Union Carbide manufactures and sells Polyols and propylene glycol; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Acquired Assets during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to Be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek to restore Union Carbides's Polyols and propylene glycol assets and businesses as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) preserve the Acquired Assets as a viable independent business pending the divestiture of the Properties to Be Diverted as viable and ongoing enterprises,

(ii) remedy any anticompetitive effects of the Acquisition, and

(iii) preserve the Acquired Assets as ongoing, viable entities engaged in the manufacture and sale of Polyols and propylene glycol in the event that divestiture is not achieved; and

Whereas, ARCO entering this Agreement shall in no way be construed as an admission by ARCO that the Acquisition is illegal; and

Whereas, ARCO understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has determined that it has reason to believe the acquisition may substantially lessen competition, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from ARCO or Union Carbide with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and, in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, and other relief, as follows:

1. ARCO agrees to execute and be bound by the attached Consent Order.

2. ARCO agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the Consent Order, unless by that date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. ARCO will hold the Acquired Assets as they are presently constituted separate and apart on the following terms and conditions:

a. The Acquired Assets shall be held separate and apart and shall be operated independently of ARCO (meaning here and hereinafter, ARCO excluding the Acquired Assets and excluding all personnel connected with the Acquired Assets on behalf of Union Carbide as of the date this Agreement was signed) except to the extent that ARCO must exercise direction and control over the Acquired Assets to assure compliance with this Agreement or the Consent Order.

b. ARCO shall not exercise direction or control over, or influence directly or indirectly, the Acquired Assets; provided, however, that ARCO may exercise only such direction and control over the Acquired Assets as is necessary to assure compliance with this Agreement or the Consent Order.

c. ARCO shall maintain the viability and marketability of the Acquired Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Except for the single ARCO director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined

in subparagraph 3.i), ARCO shall not permit any director, officer, employee, or agent of ARCO to also be a director, officer or employee of the Acquired Assets.

e. Except as required by law or as reported by the auditor (provided for in subparagraph 3.f) and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Agreement or the Consent Order (including accomplishing the divestitures), or negotiating agreements to dispose of assets, ARCO shall not receive or have access to, or the use of, any of the Acquired Assets' "material confidential information" not in the public domain, except as such information would be available to ARCO in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to ARCO from sources other than Union Carbide or the Acquired Assets, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. ARCO may retain an independent auditor to monitor the operation of the acquired assets. Said auditor may report to ARCO on all aspects of the operation of the acquired assets other than information on customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

g. ARCO shall not change the composition of the management of the Acquired Assets except that the non-ARCO (as ARCO is defined in subparagraph 3.a hereof) directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.i hereof) shall have the power to remove employees for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a—3.g hereof, shall be subject to a majority vote of the New Board or Management Committee (as defined in subparagraph 3.i hereof).

i. ARCO shall either separately incorporate the Acquired Assets and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or shall establish a separate business venture with articles of agreement covering the conduct of the Acquired Assets in accordance with this Agreement. ARCO shall also elect a new three-person board of directors of the Acquired Assets ("New Board") or Management Committee of the Acquired Assets ("Management Committee") once it obtains title to the Acquired Assets. ARCO may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall consist of at least two non-ARCO directors, officers, or employees and no more than one ARCO director, officer, employee, or agent. Except as permitted by this Agreement, the director of the Acquired Assets or member of the Acquired Assets Management Committee who is also an ARCO director, officer, employee or agent shall not receive, in his or her capacity as a director or Management Committee member of the Acquired Assets, material confidential information and shall not disclose any such information received under this Agreement to ARCO or use it to obtain any advantage for ARCO. Such director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $1,000,000 and carrying out ARCO's and the Acquired Assets' responsibilities under this Agreement or the Consent Order. Except as permitted by this Agreement, such Director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if ARCO and the Acquired Assets were separate and independent entitles. Meetings of the New Board or Management Committee during the term of this Agreement shall be strenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

j. Any ARCO employee who obtains or may obtain confidential information under this Agreement shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestitures required by the Consent Order have been completed.

k. All earnings and profits of the Acquired Assets shall be retained separately in the Acquired Assets. If necessary, ARCO shall provide the Acquired Assets with sufficient working capital to operate at the current rate of operation.

1. Should the Federal Trade Commission seek in any proceeding to compel ARCO (meaning here and hereinafter ARCO including the Acquired Assets) to divest itself of the Acquired Assets or to compel ARCO to divest any assets or businesses of the Acquired Assets that it may hold, or to seek any other injunctive or equitable relief, ARCO shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. ARCO also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to ARCO made to its principal office, ARCO shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ARCO and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of ARCO relating to compliance with this Agreement;

b. Upon five (5) days notice to ARCO, and without restraint or interference from it, to interview officers or employees of ARCO, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Appendices II—Stipulation and Final Judgment, III—Patent Rights, and IV—Agreement to Hold Separate (not published as part of this document). Copies are available from the Commission's Public Reference Branch, Room H–130, 6th and Pa. Ave., NW., Washington, DC 20580. Phone (202) 326–2222.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted, for public comment, from Atlantic Richfield, ARCO Chemical Company, Union Carbide Corporation, and Union Carbide Chemicals & Plastics Company Inc. an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record.

After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by ARCO Chemical Company, a majority owned subsidiary of Atlantic Richfield Company (collectively "ARCO"), of certain urethane polyether polyol and propylene glycol assets from Union Carbide Chemicals & Plastics Company Inc., a wholly-owned subsidiary of Union Carbide Corporation ("Union Carbide"). ARCO and Union Carbide are producers of urethane polyether polyols and propylene glycol. Both of these products are chemical products used in a large variety of end-products. Urethane polyether polyols are used in urethane products, such as flexible and rigid foam. Propylene glycol is used in products such as unsaturated polyester resins, antifreeze, tobacco, pet food and pharmaceuticals.

ARCO and Union Carbide manufacture and sell urethane polyether polyols and propylene glycol in the United States, and in various countries outside the United States. ARCO is also a producer of propylene oxide, a major raw material for both urethane polyether polyols and propylene glycol.

The agreement containing consent order would, if finally accepted by the Commission, settle the complaint that alleges an anticompetitive effect in the urethane polyether polyols, propylene glycol and propylene oxide markets in the United States.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the United States markets for urethane polyether polyols, propylene glycol and propylene oxide and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of: (1) The propylene glycol assets and businesses of Union Carbide; and (2) the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texaco Chemical Company in 1987. The purpose of these divestitures is to prevent undue increase in market concentration among either propylene glycol producers or urethane polyether polyol producers. Another purpose of these divestitures is to reduce the loss of merchant demand for propylene oxide that might deter new entry into the propylene oxide market.

For both of these divestitures, assets and businesses include plant equipment, customer lists, patents and trademarks, trade secrets, and other technology and know-how. For divestiture of the urethane polyether polyols assets, the order also would require that ARCO assign to the acquirer its rights under all existing tolling agreements between ARCO and Texaco Chemical Company ("Texaco") relating to the manufacture of polyols at Texaco's Conroe, Texas facility. In addition, the order would require ARCO to provide a license to the acquirer of the polyether polyol assets and businesses, a license to use the performance polyol (including polymer polyol) patent rights and technology that ARCO proposes to acquire from Union Carbide. The purpose of the licensing agreement is to provide the acquirer with significant technology to expand in urethane polyether polyols beyond the assets and businesses it would obtain in the divestitures.

The order would also require ARCO, for a period of five years, to supply the acquirer of both the urethane polyether polyol assets and the propylene glycol assets with propylene oxide at a price no higher than the lowest price any similarly situated purchaser in the United States pays. For divestiture of the propylene gylcol assets, the order would require Union Carbide to provide certain services as requested by the acquirer which are necessary to facilitate operation of the propylene glycol assets within the Union Carbide plant complex.

The order would also remove any prohibitions restricting the rights of either Union Carbide or Texaco to compete with ARCO in the United States or Canada in the manufacture or sale of either urethane polyether polyols or propylene glycol. Both companies, by their agreements with ARCO, had been prohibited from competing with ARCO in the businesses they sold to ARCO.

The agreement contains additional provisions intended to increase the likelihood that a new producer will enter into the propylene oxide market. There are currently only two producers of propylene oxide in the United States: ARCO and Dow.

The order would require ARCO to take no action and assert no claim against Texaco or other persons working with Texaco on development and commercialization of propylene oxide technology. The purpose of this provision is to remove certain potential obstacles to entry by Texaco into propylene oxide production.

The order also provides a new entrant into propylene oxide production with an opportunity to make sales to Union Carbide, Texaco or the acquirer of the divested assets, if it so chooses. All of these purchasers would be free, under the order, to purchase propylene oxide from a new producer, notwithstanding existing purchase obligations to ARCO. The purpose of this provision is to offset, to some degree, the effect of the acquisition in removing the Union Carbide businesses as an outlet for a new propylene oxide entrant.

Under the terms of the order, ARCO must complete the required divestitures within 12 months of the date the order becomes final. If ARCO fails to complete the required divestitures within the twelve-month period, ARCO shall consent to the appointment of a trustee, who would have eighteen additional months to divest the assets and businesses. Any proposed divestiture pursuant to the order must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The hold separate agreement executed as part of the consent requires ARCO to hold separate and preserve all of the assets and businesses acquired by ARCO from Union Carbide until all of the required divestitures have been effected either by ARCO or by the trustee.

For a period of ten years from its effective date, the order would also prohibit ARCO from acquiring, without prior Commission approval, assets or substantial interest in any company engaged in the manufacture, distribution or sale of urethane polyether polyols, propylene glycol or propylene oxide. The order contains a mechanism that prevents the order from being abused by a takeover target. If such target attempts to thwart an acquisition by making certain acquisitions, the order permits ARCO to proceed with the acquisition subject to later divestiture and hold separate requirements.

Both ARCO and Union Carbide have stipulated to the entry of a final judgment in the United States District Court, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), which would require ARCO and Union Carbide each to pay civil penalties in the amount of one million dollars. These penalties are in settlement of the Commission's complaint that ARCO and Union Carbide transferred beneficial ownership of Union Carbide's urethane polyether polyol and propylene glycol assets and business prior to making necessary filings under the Hart-Scott-

Rodino Antitrust Improvements Act and without waiting for expiration of the applicable waiting periods.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 90-21582 Filed 9-12-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0121, Contractor's Report of Orders Received. This information is used by GSA to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on contracts based on volume, and for special reports.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 5,982; *annual responses:* 20.0; *average hours per response:* 0.2640; *burden hours:* 31,585.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: September 4, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90-21578 Filed 9-12-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS-010-N]

Quarterly Listing of Program Issuances

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

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, regulations and other **Federal Register** notices, and statements of policy that were published during April, May and June 1990 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** at least every three months.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (301) 966-5265; (For Instruction Information Only).

Karen Mayer (301) 966-4675; (For All Other Information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 34 million Medicare beneficiaries. Administration of the program involves (1) providing information to beneficiaries, health care providers, and the public; and (2) effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). As in prior notices, although both substantive and interpretative regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements, we are including regulations (proposed and final) published.

II. Coverage Issues

Beginning with our listing of publications issued during the period July through September 1989 (55 FR 10290), we included the text of changes to the Coverage Issues Manual. In this manner, we implement the policy announced in the **Federal Register** on August 21, 1989 (54 FR 34555) that we will issue quarterly or more often the revisions to that manual. Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, or in response to inquiries we receive seeking clarification, or in resolution of a coverage issue under Medicare. Sometimes no Coverage Issues Manual revisions were published during a particular quarter, as during the quarter covered by this listing. Our listing notes that fact. For a complete listing of coverage determinations issued in Coverage Issues Manual, interested parties should review our publications dated August 21, 1989 (54 FR 34555) and March 20, 1990 (55 FR 10290).

III. How To Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review table I of our first three notices; those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 (54 FR 34555) publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into three tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a

transmittal in conjunction with information currently in the manuals.

Table III lists all Medicare and Medicaid regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the parts of the code of Federal Regulations (CFR) which have changes.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC. 20402. Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell.

B. Regulation and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA regional office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers of each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual Part 3—Claims Process (HCFA–Pub. 13–3) transmittal containing "Medicare Catastrophic Coverage Repeal Act of 1989" use the Superintendent of Documents No. HE: 22.8/6 and the HCFA transmittal number IM–90–1.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Individuals are expected to procure copies or arrange to review them as noted above.

Questions concerning items in Tables I or II may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966–5265.

Questions concerning all other information may be addressed to Karen Mayer, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4675.

Table I—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731 and supplemented at 53 FR 36892 and 53 FR 50579. Also, for a complete description of the Medicare Coverage Issues Manual please review 54 FR 34555.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1990

Trans. no.	Manual/Subject/Publication number
	Intermediary Manual Part 1—Fiscal Administration (HCFA-Pub. 13–1) (Superintendent of Documents No. HE 22.8/6–3)
118	● Instructions for Completion of Form HCFA–1522; Establishment of Accounting Records.
	Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
376	● The Contractor Performance Evaluation Program.
377	● Assessment of Benefit Savings Attributable to Medical Review Activities; Types of Savings to Report—Denials; Completion of the Report of Benefit Savings.
	Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1463	● Improper Coverage Decisions; Explanation of Part B Trailer Codes.
1464	● Reporting Outpatient Surgery and Other Services.
1465	● Assuring Proper Utilization in Short Stay Cases; Relationship of PROs to the Assurance of Proper Utilzation in Short Stay Cases; Dialysis for ESRD; Review of ESRD Bills.
1466	● Frequency of Billings; File Format for Furnishing Fee Schedules, Prevailing Charges and Conversion Factor Data.
1467	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services; Diagnostic Radiology (Diagnostic Imaging) HCPCS Codes.
1468	● Responsibility in the Medicare Secondary Payer Outreach Program.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1990—Continued

Trans. no.	Manual/Subject/Publication number
1469	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; DME, Prosthetics and Orthotics HCPCS Codes and Definitions.
1470	● Reporting Outpatient Surgery and Other Services.
1471	● Updated List of Covered Surgical Procedures.
1472	● Form HCFA–1450 Consistency Edits; Pneumococcal Vaccinations.
1473	● Review of Form HCFA–1450 for Inpatient and Outpatient Bills; Review of ESRD Bills Under Method I.
1474	● Reduction in Reimbursement Due to P.L. 99–177.
1475	● Calculation of Denial Rate to Determine HHA's Qualification for Favorable Presumption for Section 1879 Limitation of Liability Purposes.
1476	● SNF Denial Letters; Special Notification Letters—Reversals of Noncoverage; MR of Hospital-Based and Nonhospital-Based SNF Claims.
1477	● Air Ambulance Service.
1478	● Medical Update and Patient Information on Form HCFA–486; Treatment Codes for Home Health Services; Medical Review of Skilled Nursing and Home Health Aide Hours for determining Part-time or Intermittent; Home Health Coverage Compliance Review.
1479	● Intermediary Part B Appeals Report.
1480	● PRO Reporting on Medical Review; Edits for PRO Adjustment Request Records; Noncovered Admission With a Covered Level of Care Rendered During the Stay; PROBILL Codes for PRO Adjustments.
1481	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices.
1482	● Services not provided within United States; Services Rendered in Nonparticipating Providers.
	Carriers Manual Part 1—Fiscal Administration (HCFA-Pub. 14–1) (Superintendent of Documents No. HE 22.8/7–2)
112	● Instructions for Completion of Form HCFA–1522; Establishment of Accounting Records.
	Carriers Manual Part 3—Claims Process (HCFA-Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
IM 90–1	● Coverage of Nurse Practitioner Services in Skilled Nursing Facilities and Nursing Facilities.
1342	● Payment for Immunosuppressive Drugs Furnished to Transplant Patients; FDA Approved Drugs.
1343	● Beneficiary Overpayment Activity Report (HCFA–2174).
1344	● Customary Charge Screens for New Physicians and Suppliers; Economic Index Data for Physicians' Services and Maximum Allowances for Renal Transplantations; Floors for Primary Care Services; Limits on actual and Prevailing Charges to designated Speciality.
1345	● X-Ray, Radium, and Radioactive Isotope Therapy; Reasonable Charges for Portable X-Ray Services; Determining Reasonable Charges for Physicians' Services in Providers; Conditions for Payment of Reasonable Charge—Radiology Services; Determining Reasonable Charges for Radiology Services; Payments Under the Fee Schedules for Radiologist Services; Reasonable Charges for Portable X-Ray Services.
1346	● Routing Claims for Immunosuppressive Drugs.
1347	● Calculation; Travel Allowance; National Limitation Amount; Payment for Diagnostic Tests; Payment for Outpatient Clinical Diagnostic Laboratory Tests Using Fee Schedules and for Specimen Collection; Review of Laboratory Test Results by Physician; Anticoagulant Adjustment as a Result of Prothrombin Time Tests.
1348	● Ambulatory Surgical Center; Processing Indicator; Specialities.
1349	● General Billing and Claims Processing Requirements; Oxygen HCPCS Codes.
1350	● Air Ambulance Service.
1351	● Carrier Appeals Report (HCFA–2590).
1352	● Bills Involving Medical Assistance Recipients.
1353	● Payment for Ambulatory Surgery; Payment to Ambulatory Surgical Centers; Carrier Adjustment of Payment Rates; Payment for Intraocular Lens; Payment for Physicians' Services; Payment for Terminated Procedures; Payment for Multiple Procedures; Wage Index.
1354	● Durable Medical Equipment, Orthotic and Prosthetic Devices; Home Use of Durable Medical Equipment; Evidence of Medical Necessity (Whether Equipment is Rented or Purchased).
1355	● Services Received by Medicare Beneficiaries Outside United States.
	Carriers Manual Part 4—Professional Relations (HCFA-Pub. 14–4) (Superintendent of Documents No. HE 22.8/7–4)
3	● Responsibilities in the Medicare Secondary Payer Outreach Program.
4	● Adding a Practice Setting; Update Records; Automatic Notifications.
	Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–90–7	● Implementation of Outpatient Code Editor Version 5.1 and ASC Pricer Revision 3.0.
A–90–8	● Implementation of the Omnibus Budget Reconciliation Act of 1989, Impact on PPS and Payment for Capital.
A–90–9	● Moratorium on Recoupment of Overpayments Associated with Nursing and Allied Health Science Education Costs.
A–90–10	● Hospital Reporting of 10 Diagnoses and 10 Procedures in FY '91.
	Program Memorandum Carrier (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–90–4	● Instructions for Modifying the Carriers A/B Data Exchange Report.
B–90–5	● Counting Physicians, Limited License Practitioners, and Suppliers Who Have Elected to Participate in the Medicare Program Effective April 1, 1990.
B–90–6	● Medicare Certification (Commonly Referred to as Part B Provider) Numbers for Clinical Laboratories, Ambulatory Surgical Centers, Portable X-ray Suppliers and Physical Therapist in Independent Practices.
	Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–90–3	● Current Status of Medicare Program Memorandums and Intermediary Letters Issued before 1989.
AB–90–4	● Medicare Secondary Payer Regional Data Exchange System Conversion into Common Working File.
AB–90–5	● Suspension of the 14 Day Payment Floor Requirement.
	Program Memorandum Regional Offices Medicare (HCFA-Pub. 52) (Superintendent of Documents No. HE 22.28/5:90–1)
90–1	● Current Status of Medicare Program Memorandums and intermediary Letters Issued Before 1989.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1990—Continued

Trans. no.	Manual/Subject/Publication number
	State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)
237	● State Agency Evaluation Program; Scheduling and Conduct of State Agency Evaluation Program Visits; Presentation of State Agency Evaluation Program Findings; State Agency Corrective Action Plans; The Comprehensive Evaluative Report; State Agency Action Following State Agency Evaluation Program Visits; State Agency Action Following Comprehensive Evaluation Report; State Agency Evaluation Program Criteria and Standards.
238	● Interpretive guidelines and Survey Procedures for Ambulatory Surgical Services.
239	● Completing the Survey Report; List of Documents in Certification Packet.
240	● Denial of Payments in Lieu of Termination of Long-Term Care Facility (Medicare and Medicaid); Termination Procedures—Immediate and Serious Threat to Patient Health and Safety; Provider/Supplier Gives No Notification of Going Out of Business (Medicare)
	Regional Office Manual Part 4—Standards and Certification (HCFA-Pub. 23–4) (Superintendent of Documents No. HE 22.8/8–3)
46	● Monitoring and Evaluation of State Agency Certification Activity; The State Agency Evaluation Program; Review Methodology; Scoring Methodology; Scoring Methodology; Documentation of State Agency Evaluation Program Reviews; Notifying State Agencies of State Agency Evaluation Program Scores; Review Methodology When There Is More Than One Component; Recording and Reporting State Agency Evaluation Program Results in the Comprehensive Evaluative Report; Disclosure of the Comprehensive Evaluative Report to the Public.
47	● Denial of Payments for New Long-Term Care Admissions; Effect of Sanction on Status of Residents Admitted, Discharged or on Temporary Leave, and Readmitted Before or After the Effective Date of the Denial of Payment.
48	● Terminating Medicaid ICF/MR Eligiblity Based on "Look Behind" Determination; Notice of Termination to an ICF/MR Facility's Eligibility Based on "Look Behind" Determination.
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
IM–90–1	● Posting of Signs.
584	● Heart Transplants.
585	● Reporting Outpatient Surgery and Other Services; Elimination of Combined Billing and HCFA–1554.
586	● Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing.
587	● Frequency of Billing; EPO in Hospital Outpatient Departments; Special Instructions of Completion of the HCFA–1450 Billed by Hospital-Based Renal Dialysis Facilities Under Method I.
588	● HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services; Diagnostic Radiology (Diagnostic Imaging) HCPCS Codes.
589	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; DME Prosthetic and Orthotic HCPCS Codes and Definitions.
590	● Reporting Outpatient Surgery and Other Services.
591	● Form HCFA–1450 Consistency Edits.
592	● General Requirements, Reduction in Reimbursement Due to P.L. 99–177.
	Christian Science Sanatorium Hospital Manual Supplement (HCFA-Pub. 32) (Superintendent of Document No. HE 22.8/2–2)
27	● Reduction in Reimbursement Due to P.L. 99–177.
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5
232	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; DME, Prosthetic and Orthotic HCPCS Codes and Definitions.
233	● Completion of Form HCFA–1450 for Home Health Agency Billing; Coding Structures (Occurrence and Value Codes).
234	● Reduction in Reimbursement Due to P.L. 99–177.
235	● HCFA–486 Medical Update and Patient Information; Treatment Codes for Home Health Services; Coverage Compliance Review.
	Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
289	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; DME Prosthetic and Orthotic HCPCS Codes and Definitions.
290	● Completion of Form HCFA–1450 for Inpatient and/or Outpatient Billing; Coding Structures (Occurrence and Value Codes).
291	● Reduction in Reimbursement Due to P.L. 99–177.
	Health Maintenance Organization/Competitive Medical Plan Manual (HCFA-Pub. 75) (Superintendent of Documents No. HE 22.8/21:989/Trans. 5)
5	● Implementation of the Medicare Catastrophic Coverage Repeal Act of 1989 (P.L. 101–234).
	Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Document No. HE 22.8/19:985)
39	● Reduction in Reimbursement Due to P.L. 99–177.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
45	● Coverage and Payment of Epoetin; Completion of Form HCFA–1450 by Independent Facilities for Home Dialysis Items and Services Billed Under the Composite Rate (Method I).
46	● Reduction in Reimbursement Due to P.L. 99–177
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9
94	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices; DME, Prosthetic and Orthotic HCPCS Codes and Definitions.
95	● Completion of Form HCFA–1450 for Billing CORF, Outpatient Physical Theapy, Occupational Therapy, or Speech Pathology Services; Coding Structures (Occurrence and Value Codes).
96	● Reduction in Reimbursement Due to P.L. 99–177.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, APRIL–JUNE 1990—Continued

Trans. no.	Manual/Subject/Publication number
Provider Reimbursement Manual Part I—Chapter 27 Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15-1-27) Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15-1-27) (Superintendent of Document No. HE 22.8/4	
14	● Payment for Hepatitis B Vaccine Furnished to ESRD Patients; Payment for Immunosuppressive Drugs Furnished to Transplant Patients; FDA Approved Drugs; One Hundred Percent Cost Reimbursement for Home Dialysis Equipment, Installation, Maintenance and Repair; Payment for Renal Transplantation; Kidney Placement Efforts—Documentation Requirements; Payment for Kidneys Sent to Foreign Countries or Transplanted in Non-Medicare Beneficiaries.
Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (General) (HCFA-Pub. 15-II V) (Superintendent of Documents No. HE 22.8/4)	
11	● Sequestration Percentage to Compute the Reduction in Program Payment.
12	● Method for Establishing Protested Amounts.
13	● Electronic Submission of Cost Reports.
Carrier Quality Assurance Handbook (HCFA-Pub. 25) (Superintendent of Documents No. HE 22.8:C 23/982)	
41	● Claim Material; Claims Review Procedure; Split Claims; Medical Review.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED APRIL–JUNE, 1990

Publication date/ cite	42 CFR part	Title
		Final Rules
04/17/90 (55 FR 14378)	405	Medicare, Medicaid, and CLIA Programs; Revision of the Laboratory Regulatons for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs (Correction Notice).
04/17/90 (55 FR 14282)	412	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and FY 90 Rates; Correction and Technical Amendment.
04/20/90 (55 FR 15150)	412 and 413	Medicare Program; Fiscal Year 1990; Mid-Year Changes to the Inpatient Hospital Prospective Payment System.
05/02/90 (55 FR 18331)	405	Medicare Program; Protocol for the Reuse of Dialysis Bloodlines.
06/04/90 (55 FR 22785)	405 and 410	Medicare Program; Medicare Coverage of Hepatitis B Vaccine for high and Intermediate Risk Individual's, Hemophilia Clotting Factors and Certain X-Ray Services.
06/08/90 (55 FR 23435)	405, 413, and 414	Medicare Program; Payment for Physician Outpatient Maintenance Dialysis Services and Other Physician Services for ESRD Patients.
06/18/90 (55 FR 24561)	400 and 411	Medicare Program; Physician Liability on Non Assigned Claims.
		Proposed Rules
05/09/90 (55 FR 19426)	412	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates.
05/21/90 (55 FR 20896)	405, 416, 440, 482, 483, 488, and 493.	Medicare, Medicaid and CLIA Programs; Regulatons Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988).
		Notices
04/05/90 (55 FR 12737)		Quarterly Listing of Program Issuances.
04/10/90 (55 FR 13321)		Medicare Program; Withdrawal of Coverage of Extracranial-Intracranial Arterial Bypass Surgery for the Treatment or Prevention of Stroke.
04/10/90 (55 FR 13224)		Medicare Program; Monthly Suplementary Medical Insurance Premium Beginning January 1, 1990.
05/02/90 (55 FR 18391)		Criteria and Standards for Evaluating Intermediary and Carrier Performance (Corrections Published 05/16/90 at 55 FR 20391).
05/03/90 (55 FR 18668)		Medicare Program; Definition of Surgical Services.
05/22/90 (55 FR 21109)		Medicare and Medicaid Program; Meeting of the Advisory Council on Social Security.
05/23/90 (55 FR 21250)		Medicare Program; Withdrawal of Coverage for Certain Investigational Intraocular Lenses.
06/14/90 (55 FR 24159)		Medicare Program; Inpatient Hospital Deductible and Coinsurance and Skilled Nursing Facility Coinsurance for 1990.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: August 20, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–21597 Filed 9–12–90; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: September 25, 1990—9 a.m.–4 p.m..

ADDRESSES: The National Institute for Fitness and Sport, Classroom–2nd Floor, 250 N. University Blvd., Indianapolis, IN 46202–5192.

FOR FURTHER INFORMATION CONTACT: Wilmer D. Mizell, Executive Director, President's Council on Physical Fitness and Sports, 450 5th Street NW., suite 7103, Washington, DC, 202/272–3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: September 10, 1990.

Wilmer D. Mizell,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 90–21589 Filed 9–12–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–050–4410–04]

Availability for Draft Environmental Impact Statement, South Fork Eel River Management Plan

AGENCY: Ukaih District Office, Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability for South Fork Eel River Management Plan Draft Environmental Impact Statement.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508, the Bureau has completed a draft environmental impact statement (EIS) on the South Fork Eel River Management Plan. The plan addressed activities associated with the South Fork Eel Wild and Scenic River in Mendocino County, California.

The draft document assesses impacts associated with development of recreational facilities, trails, designation of the wild and scenic river corridor, and timber sales within the South Fork Eel River area. It also addresses effects to spotted owl, visual resources and wildlife within the watershed. A total of four alternatives were analyzed, including an alternative weighted towards preservation, one weighted towards development and timber harvest and a No Action alternative, along with the Proposed Action.

DATES: A public comment period for the draft EIS will begin with the release of the draft document and end on November 20, 1990.

ADDRESSES: Written comments should be addressed to the District Manager, Bureau of Land Management, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Linda Hansen, EIS Team Leader at the above address or by phone at (707) 462–3873.

Dated: September 5, 1990.

Al Wright,

District Manager.

[FR Doc. 90–21571 Filed 9–12–90; 8:45 am]

BILLING CODE 4340–10–M

[MT–070–00–4050–91–ADVB]

Montana; District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Thursday, October 4 in the conference room of the Garnet Resource Area office 3255 Fort Missoula Road, Missoula, Montana. The meeting will begin at 8 a.m. On the agenda will be a discussion of range improvement projects for FY91 and other program priorities. At about 9 a.m., the board will depart on a field tour in conjunction with the Butte District Advisory Council of points of interest in the Garnet Resource Area.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: September 5, 1990.

James R. Owings,

District Manager.

[FR Doc. 90–21565 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–DN–M

[MT–070–00–4050–91–ADVB]

Montana; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Thursday and Friday, October 4 and 5.

On October 4 the council will go on a field tour in conjunction with the Butte District Grazing Advisory Board of various points of interest in the Garnet Resource Area. The field tour will depart at 9 a.m. from the Garnet Resource Area office, 3255 Fort Missoula Road in Missoula.

A business meeting will begin at 9 a.m. on October 5 in the conference room of the Garnet Resource Area office. The agenda will include: (1) Feedback and discussion on fee structures being established in the Butte district for recreation sites and road use; (2) discussion, recommendations resulting from field tour (wilderness and timber programs); (3) follow ups on previous council initiatives (weeds and wildlife program); and (4) a discussion of the possibility of statewide, multi-agency cooperation in producing recreation oriented maps.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: September 5, 1990.

James R. Owings,

District Manager.

[FR Doc. 90–21566 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–DN–M

[WY–920–41–5700; WYW115724]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW115724 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW115724 effective May 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 90–21569 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–00–4212–02]

Redelegation of Authority; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This is a supplement to the Redelegation of Authority published in the **Federal Register** on July 29, 1983, of land actions from the State Director to the District Managers. The following land actions have been redelegated from the respective District Managers to the Powder River, Big Dry, Billings, and South Dakota Resource Area Managers within the Miles City District, the Judith, Great Falls, Havre, Phillips, and Valley Resource Area Managers within the Lewistown District, and the Dillon, Garnet, and Headwaters Resource Areas within the Butte District. The same actions have been redelegated to the Division of Lands and Renewable Resources within the Dickinson District:

1. Grant, reject, modify, assign, renew or revoke rights-of-way under title V of the Federal Land Policy and Management Act of 1976, title 1, section 28 of the Mineral Leasing Act of 1920, as amended and issue letters of concurrence to the Federal Highway Administration regarding highway grants under title 23, U.S.C. (Interstate and Defense Highway System).

2. Issue, modify, renew or revoke leases, but not to transfer title under the Recreation and Public Purposes Act as amended.

3. Authorize use, occupancy and development of the public lands through leases, permits and easements under section 302 of the Federal Land Policy and Management Act of 1976.

DATES: August 16, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

Dated: August 31, 1990.

Robert W. Faithful,

Acting State Director.

[FR Doc. 90–21575 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–DN–M

[NV–930–00–4212–11; N–52821]

Realty Action; Elko County, Nevada; Correction

The Notice of Realty Action published in the **Federal Register** on August 2, 1990 (55 FR 31449), is hereby corrected with respect to the legal description for application N–52821. The proper legal description is as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 32, W½SW¼NE¼NE¼, SE¼NW¼NE¼.
Aggregating 15 acres.

All other terms and conditions of the Notice continue to apply.

Dated: September 5, 1990.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 90–21574 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–90–4730–12]

Colorado; Filing of Plats of Survey

September 4, 1990.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., September 4, 1990.

The plat representing the corrective dependent resurvey of a portion of the subdivision of section 22, T. 35 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted August 8, 1990.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of portions of the south, east, and north boundaries and the subdivisional lines and the subdivision of certain sections, T. 12 S., R. 77 W., Sixth Principal Meridian, Colorado, Group No. 859, was accepted August 8, 1990.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of portions of the First Standard Parallel South (south boundary), the east, west, and north boundaries, and the subdivisional lines and the subdivision of certain sections, T. 5 S., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 833, was accepted August 8, 1990.

The plat representing the dependent resurvey of a portion of the south boundary, identical with a portion of the north boundary of the Southern Ute Indian Reservation and a portion of the subdivisional lines, and the subdivision of sections 3, 10, and 11, T. 34 N., R. 9 W. (North of the Ute Line), New Mexico Principal Meridian, Colorado, Group No. 887, was accepted July 30, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90-21577 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-4730-12]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., September 4, 1990.

The plat representing the dependent resurvey of portions of the First Guide Meridian East (east boundary) and subdivisional lines, the subdivision of sections 13 and 29, and the survey of certain lots in section 13, T. 10 N., R. 4 E., Boise Meridian, Idaho, Group No. 638, was accepted September 29, 1983.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 4, 1990.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 90-21568 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-GG-M

[WY-940-00-4730-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., August 22, 1990.

Sixth Principal Meridian

T. 48 N., R. 75 W.

The plate, representing the dependent resurvey of the Twelfth Standard Parallel North, through Range 75 West, the south and east boundaries and subdivisional lines, T. 48 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 504, as accepted August 22, 1990.

T. 48 N., R. 76 W.

The plat, representing the dependent resurvey of the Twelfth Standard Parallel North, through Range 76 West, the south, east and west boundaries, and the subdivisional lines, T. 48 N., R. 76 W., Sixth Principal Meridian, Wyoming, Group No. 504, was accepted August 22, 1990.

T. 48 N., 77 W.

The plat, representing the dependent resurvey of a portion of the Twelfth Standard Parallel North, through Range 77 West, and portions of the south boundary and subdivisional lines, T. 48 N., R. 77 W., Sixth Principal Meridian, Wyoming, Group No. 504, was accepted August 22, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

T. 48 N., R. 77 W.

The plat showing a subdivision of certain sections, T. 48 N., R. 77 W., Sixth Principal Meridian, Wyoming, was accepted August 22, 1990.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

ADDRESSES: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 92003.

Dated: August 22, 1990.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 90-21573 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-22-M

[NM-920-00-4120-14; NM NM 78371]

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application NM NM 78371

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the maximum economic recovery and the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The lands included in Coal Lease Application NM NM 78371 are located in Catron and Cibola Counties, New Mexico, approximately 14 miles northwest of the town of Quemado and are described as follows:

	Acres
T. 3 N., R. 16 W., NMPM	
Sec. 5 Lots 3; 4; S½ NW¼;	160.06
Sec. 6 Lots 1-6; S½ NE¼; SE¼ NW¼ NE¼ SW¼; N½ SE¼;	463.34
T. 3 N., R. 17 W., NMPM	
Sec. 1 Lots 1-4; S½ N½; SW¼;	480.70
Sec. 3 Lots 1; 2; S½ NE¼; S½;	480.96
Sec. 12 All;	640.00
Sec. 14 N½;	320.00
T. 4 N., R. 16 W., NMPM	
Sec. 19 SE¼ NW¼;	40.00
Sec. 31 Lot 1-4; E½ W½; E½;	617.22
T. 4 N., R. 17 W., NMPM	
Sec. 10 SE¼ SW¼; N½ SE¼; SE¼ SE¼;	160.00
Sec. 11 S½;	320.00
Sec. 14 All;	640.00
Sec. 15 All;	640.00
Sec. 22 All;	640.00
Sec. 23 All;	640.00
Sec. 24 W½ NW¼;	80.00
Sec. 28 E½;	320.00
Sec. 33 NE¼;	160.00
Total	6,802.28

Two coal beds which are economically surface minable, the ABC and Tejana, are found in this tract. The ABC seam averages 7.2 feet in thickness and the Tejana seam averages 4.1 feet in thickness. This tract contains an estimated 32.1 million tons of surface minable coal reserves. The ABC and Tejana seams are high volatile C bituminous and average (as received) 9,050 BTU/lb. with 14 percent moisture, 0.7 percent sulfur, 18 percent ash, 39 percent fixed carbon, and 30 percent volatile matter.

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract. Comments must be received on or before October 17, 1990.

PUBLIC HEARING: In addition, notice is given that oral comments will be received at a public hearing to be held at 9 a.m. on Wednesday, October 17, 1990, on the fair market value and maximum economic recovery of the proposed lease tract.

LOCATION: The public hearing will be held at the Bureau of Land Management, Rodeo Road Office, 1474 Rodeo Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: For more complete data on this tract, please contact Russell Jentgen, Bureau of Land Management, New Mexico State Office, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504, telephone (505) 988-6109.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 3422 and 3425, not less than 30 days prior to the publication of a Notice of Sale, the Secretary shall solict public comments

on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair marked value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the above address during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management at the above address and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource;
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specification of seams to be mined and the most desirable timing and rate of production;
3. The quantity of coal;
4. Whether this tract is likely to be mined as part of an existing mine and therefore to be evaluated, on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;
5. Whether this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit);
6. The configuration of any larger logical mining unit of which the tract may be a part;
7. Restrictions to mining which may affect coal recovery;
8. The price that the mined coal would bring when sold;
9. Costs, including mining and reclamation, of producing the coal and the times of production;
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;
11. Depreciation and other tax accounting factors;
12. The value of any surface estate where held privately;
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
14. Any comparable sales data of similar coal lands. The values given above may or may not change as a result of comments received from the public, changes in tract configuration, and changes in market conditions between now and time when final economic evaluations are completed.

Dated: September 7, 1990.

Leland G. Keesling,

Acting State Director.

[FR Doc. 90-21611 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-00-4212-11; AZA-23566]

Reality Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

The following public land in Maricopa County, Arizona has been examined and found suitable for lease or conveyance to the city of Mesa under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.). The city of Mesa proposes to develop a golf course on the subject parcel.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,

Sec. 8, lots 1, 2 and 8, SW¼NE¼.

Comprising 117.51 acres.

The subject land is not needed for federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. Those rights for electrical distribution line purposes granted to Salt River Project under permits AZA-5991 and AZA-23372.
5. Those rights for electrical transmission for purposes granted to Salt River Project under permit AZA-22765.
6. Those rights for roadway purposes granted to Maricopa County under permit AZA-4284.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 or at the city of Mesa, Real Estate Services Department, 55 North Center Street, Mesa, Arizona 85211-1466.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: September 7, 1990.

William T. Childress,

Acting District Manager.

[FR Doc. 90-21570 Filed 9-12-90; 8:45 am]

BILLING CODE 4310-32-M

[UT-020-5101-08]

Availability; Pony Express Resource Management Plan Proposed Planning Amendment

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of availability of the Proposed Planning Amendment for the Pony Express Resource Management Plan (RMP) for the granting of rights-of-way for interstate natural gas transmission pipelines.

SUMMARY: This notice of availability is to advise the public that the Proposed Planning Amendment is available for public review. The "Transportation and Utility Corridors" decision in the Pony Express RMP identifies approved routes in which major pipeline rights-of-way must locate. Otherwise, a planning amendment will be required.

This amendment will allow for proposed rights-of-way across public land in the Kimball Creek drainage in Southern Utah County, Townships 11 and 12 South, Ranges 1 and 2 west, Salt

Lake Meridian, outside of the established corridors.

A 30-day protest period for the planning amendment will commence with publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 977–4300.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610. The Proposed Planning Amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protest must be received by the Director (WO–760) of the BLM, 18th and C Streets NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the Proposed Planning Amendment.

Dated: September 7, 1990.

James M. Parker,

State Director.

[FR Doc. 90–21596 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–940–00–4224; CARI 1250, CARI 585, CARI 1390, CARI 1390–A, CARI 1396, CARI 1954, CARI 236, CARI 2821, CARI 702, CARI 1217]

California; Partial Terminations of Classifications for Multiple Use Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates 10 classifications of public land for multiple use management as they affect approximately 10,468,867 acres in the Barstow, El Centro, Needles, Ridgecrest, and Palm Springs-South Coast Resource Areas of the California Desert District, Bureau of Land Management.

ADDRESSES: Comments should be sent to: Chief, Lands Section, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2845), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: California Desert District, 1695 Spruce Street, Riverside, California 92507 (714) 276–6386.

SUPPLEMENTARY INFORMATION: The Classifications being terminated were made pursuant to the Classification and Multiple Use Act of 1964, an act which first allowed BLM to implement land use planning of the public lands and to temporarily classify lands until such time as land use plans are completed. In 1980, the California Desert Conservation Area (CDCA) Plan was completed, providing management guidance for public lands in the California Desert. Consistent with the intent of the 1964 Act, these classifications are no longer needed as the lands have been and will continue to be managed according to the CDCA Plan, as amended.

Pursuant to the authority vested in the Secretary of the Interior by section 202 of the Federal Land Policy and Management Act of 1976; 90 Stat. 2747; 43 U.S.C. 1712, the following classifications for multiple use management, the descriptions of which are contained in the following listed **Federal Register** notices, are hereby terminated as they classify and segregate the lands from the public land laws. Those parts of the classifications which segregate lands from the mining laws remain in force and will be addressed later as land use planning is fully implemented. The classifications did not affect availability of the lands for mineral leasing.

CARI 1250 dated August 14, 1968, 33 FR 11934 (August 22, 1968) FR Doc. 68–10089

The lands therein are located in Inyo County.

CARI 585 dated December 28, 1967, 33 FR 386 (January 10, 1968) FR Doc. 68–321

The lands therein are located in San Bernardino County.

CARI 1390 dated August 4, 1970, 35 FR 1285 (August 13, 1970) FR Doc. 70–10551, as amended by 50 FR 895 (January 7, 1985) FR Doc. 85–408

The lands therein are located in Imperial and Riverside Counties.

CARI 1390–A dated November 20, 1970, 35 FR 18128 (November 26, 1970) FR Doc. 70–15889

The lands therein are located in Imperial and Riverside Counties.

CARI 1396, CARI 1954 dated April 7, 1970, 35 FR 6193 (April 16, 1970) FR Doc. 70–4615

The lands therein are located in San Bernardino and Riverside Counties.

CARI 236, CARI 32 FR 8251 (June 8, 1967) FR Doc. 67–6372

The lands therein are located in San Bernardino County.

CARI 2821, dated November 9, 1970 35 FR 17961 (November 21, 1970) FR Doc. 70–15741, as amended by 50 FR 895 (January 7, 1985) FR Doc. 85–408

The lands therein are located in Riverside, San Bernardino and Imperial Counties.

CARI 702, dated December 6, 1967, 32 FR 17863 (December 13, 1967) FR Doc. 67–14451

The lands therein are located in Riverside and Imperial Counties.

CARI 1217 dated July 22, 1968, 33 FR 10885 (July 31, 1968) FR Doc. 68–9110

The lands therein are located in San Bernardino County.

The land description of the terminated portions of the classifications is available for inspection at the California State Office in Sacramento and the respective District and Resource Area Offices.

Except for the lands that remain classified and segregated from the mining laws, as described above, at 10 a.m., on October 15, 1990, the segregative effect imposed by the above-referenced classification orders will terminate, and the lands will be available for uses consistent with the CDCA Plan, subject to valid existing rights, the provisions of existing withdrawals, any segregations of records, and the requirements of applicable law.

Ed Hastey,

State Director.

[FR Doc. 90–21567 Filed 9–12–90; 8:45 am]

BILLING CODE 4310–40–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31733]

Missouri Pacific Railroad Co., Trackage Rights Exemption, Dallas Area Rapid Transit

Dallas Area Rapid Transit (DART) has agreed to grant trackage rights to Missouri Pacific Railroad Company (MP) over the following lines of railroad in Dallas and Denton Counties, TX; (1) The Garland Line (local and overhead trackage rights), between milepost D–763.0 (McKinney Avenue/Hillcrest Avenue) and milepost P–750.749 (The Atchison, Topeka and Santa Fe Railway Company crossing in Garland), approximately 12.251 miles; (2) the Carrollton Line (local), between milepost K–758.04 (Deny Junction) and milepost K–741.3 (Frankford Road) approximately 16.74 miles; and (3) the East Dallas Line (local), between (a) milepost 213.024 (Oakland Avenue) and milepost 211.439 (the western limit of East Dallas Yard at Fair Park), approximately 1.585 miles, and (b) milepost 210.704 (the eastern limit of

East Dallas Yard) and milepost 210.078 (the Southern Pacific Transportation Company crossing at MP Junction), approximately 0.626 miles.[1] The trackage rights were to become effective on or after August 31, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to "Norfolk and Western Ry. Co.—Trackage Rights—BN", 354 I.C.C. 605 (1978), as modified in "Mendocino Coast Ry., Inc.—Lease and Operate", 360 I.C.C. 653 (1980).[2]

Dated: August 29, 1990.

By the Commission, Richard B. Felder, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–21164 Filed 9–12–90; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES ADVISORY COMMITTEE ON ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in room 3000, Ariel Rios Federal Bulding, located at 12th Stret, NW., between Constitution and Pennsylvania Avenues in Washington, DC on October 11, 1990, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committeee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 7, 1990.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 90–21609 Filed 9–12–90; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Berridge Manufacturing Co. Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 29, 1990, a proposed Consent Decree in *United States* v. *Berridge Manufacturing Company, Inc.*, Civil Action No. H–90–2757, was lodged with the United States District Court for the Southern District of Texas, Houston Division. The proposed Consent Decree requires the Defendant to pay a civil penalty of $35,000 for violation of section 301 of the Clean Water Act, 33 U.S.C. 1311, and to not discharge process wastewater: (1) Into the City of Houston's publicly owned treatment works except in compliance with any industrial user permit; and (2) in any manner into waters of the United States without complying fully with the Clear Water Act.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to United States v. *Berridge Manufacturing Company, Inc.*, D.J. Ref. No. 90–5–1–1–3200.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, 515 Rusk Avenue, Room 3000, Houston, Texas, 77022, Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed Consent Decree can be obtained in person or my mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Richard B. Stewart,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21561 Filed 9–12–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Huntington, WV, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 24, 1990 a proposed Consent Decree in *United States* v. *City of Huntington and Huntington Sanitary Board* was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree arises out of a case alleging violations of the Clean Water Act (the "Act") by discharging certain pollutants in excess of applicable effluent limitations under a National Pollutant Discharge Elimination System ("NPDES") permit and an Environmental Protection Agency Administrative Order ("Administrative Order"). The proposed decree requires (1) That the City of Huntington and the Huntington Sanitary Board maintain compliance with its NPDES permit; and (2) that the City and Board pay a $130,000 civil penalty in consequence of past violations of the Act and Administrative Order.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Huntington and Huntington Sanitary Board* 90–5–1–1–3277.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page) for

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[1] In Finance Docket No. 31690, "Dallas Area Rapid Transit—Acquisition and Operation Exemption—Rail Lines of Missouri Pacific Railroad Company" (not printed), served July 17, 1990, DART's acquisition and operation of these lines from MP was exempted from the prior approval requirements of 49 U.S.C. 11343–11344.

[2] MP contends that labor protection should not be imposed here. As noted, the notice here has been filed under 49 CFR 1180.2(d)(7). Accordingly, the proposal must be considered as one governed by 49 U.S.C. 11343 and imposition of labor protective conditions is mandatory. *Cf.* Finance Docket No. 31270, "Southern Pacific Transportation Company—Trackage Rights Exemption—Dallas Area Rapid Transit" (not printed), served and published May 20, 1988 (53 FR 18177).

reproduction costs, payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21562 Filed 9–12–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Final Judgment by Consent; Western Sugar Co.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on September 4, 1990, a Consent Decree in *United Staes* v. *The Western Sugar Company*, Civil Action No. *90–F–1560*, was lodged with the United States District Court for the District of Colorado.

The complaint filed by the United States simultaneously with the consent decree, sought a permanent injunction and the assessment of civil penalties of up to $25,000 per day, per violation against The Western Sugar Company ("Western") under section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or the "Act"), for Western's discharges of pollutants into the Yellowstone River via the Yegen Drain from its sugar beet processing facility in Billings, Montana, in violation of Section 301 of the Act, 33 U.S.C. 1311, and the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit Number MT–0000281. The complaint alleges that the violations have occurred since 1985.

The consent decree requires Western to pay a civil penalty of $185,000 for its past violations of the Clean Water Act, and to install, before the end of September 1990, specific pollution control equipment designed to prevent future violations of the Act. The consent decree also requires Western to conduct a study of the Yegen Drain in Billings, Montana, to determine the source of a filamentous growth in the Yellowstone River which may be connected to Western's violations of its BOD5 effluent limitations. A modification to the decree has also been filed in which the United States has expressly reserved its right to seek administrative or judicial injunctive relief to require Western to remedy the harmful environmental impacts, if any, of any unlawful discharges of pollutants from the facility on the Yegen Drain and the Yellowstone River disclosed by the study of the Yegen Drain under the decree.

If Western violates the consent decree, it will be required to pay civil penalties, including, automatically, the statutory maximum of $25,000 per day, for each day in which the daily maximum effluent limitation for BOD5 is exceeded by more than 25%. The consent decree will not terminate until Western has paid all penalties due under the decree, completed all required remedial measures, and not violated its NPDES permit for 24 consecutive months.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Western Sugar Company*, DOJ Ref. No. 90–5–1–1–3496. The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1200 Federal Building, 1961 Stout Street, Denver, Colorado. Copies of the consent decree may also be examined and obtained in person at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $2.60 (ten cents per page reproduction costs) payable to the "Consent Decree Library."

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–21563 Filed 9–12–90; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its sixth meeting on Monday, October 1, 1990. The Commission was established by Public Law 100–297, April 28, 1988.

DATE, TIME, AND PLACE: Monday, October 1, 1990, 9 a.m. to 4 p.m., the Capitol Hill Hotel, 200 C. Street, SE., Board Room 408, Washington, DC.

TYPE OF MEETING: Public Hearing—Open.

AGENDA: Review and discussion of Commission studies.

FOR ADDITIONAL INFORMATION: Contact Nancy Watson, 301–492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 90–21492 Filed 9–12–90; 8:45 am]

BILLING CODE 6820–DE

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Privacy Act of 1974; Amendment of System of Records

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of amendment of system of records.

SUMMARY: The National Endowment for the Humanities under the Privacy Act of 1974 is revising one of its systems of records, Grant Applications—NEH–5, which was last published in the Federal Register May 18, 1982, 47 FR 21352 (1982). The following notice amends the Grant Applications—NEH–5 system of records by describing in more detail the routine uses of grant applications during the grant review process.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Deputy General Counsel, National Endowment for the Humanities, Washington, D.C. 20506, (202) 786–0322.

COMMENTS: Interested persons are invited to submit written comments to the Assistant Chairman for Operations, ATTN: NEH Privacy Act Officer, 1100 Pennsylvania Avenue, NW., Room 530, Washington, DC 20506, on or before October 15, 1990.

Thomas S. Kingston,

Assistant Chairman for Operations.

NEH–5

SYSTEM NAME:

Grant Applications—NEH–5.

SYSTEM LOCATION:

1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and institutions applying to the National Endowment for the Humanities for financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant application, sample of work where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 et seq).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Grant applications, as part of the Endowment's grant review process, are reviewed and discussed by peer review panels comprised of scholars and other experts, by Endowment staff, and by members of the National Council on the Humanities. In addition, in some programs, applications are also evaluated by specialist reviewers in the specific fields addressed by the applications. Applications are also used for statistical research; congressional oversight and analysis of trends. Disclosures may be made as part of the grant review process or to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS TO THE SYSTEM:

STORAGE:

9 inch by 12 inch folders.

RETRIEVABILITY:

Indexed by name of applicant.

RETENTION AND DISPOSAL:

Successful applicants are merged into "Grants to Individuals and Institutions" file. Rejected applications are retained for five years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Officer—NEH, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See title 45 CFR part 1115.

RECORD ACCESS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual and institution on whom the record is maintained.

[FR Doc. 90–21610 Filed 9–12–90; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100.203 of the Nuclear Waste Policy Amendments Act (NWPA) of 1987, the full Board will meet October 10, 1990, at the Crystal City Marriott (Arlington Ball Room), 1999 Jefferson Davis Highway, Arlington, Virginia; (703) 521–5500. The Board will be briefed from 8:45 a.m. to 12 p.m. The U.S. Nuclear Regulatory Commission (NRC) will discuss its recently published "Waste Confidence Proceeding." The Board will also be briefed by representatives from the Electric Power Research Institute (EPRI) on the conclusions of its study looking at the overall performance of the proposed repository site at Yucca Mountain, Nevada. Representatives from EPRI originally explained the scope and nature of the study to the Board members in December, 1989. A brief question and discussion period will follow each presentation.

Members of the public are welcome to attend as observers. Due to limited space, however, those interested in attending are asked to contact Ms. Helen Einersen on or before October 5, 1990, at 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, NWTRB librarian, beginning October 31, 1990.

The NWTRB was established in the NWPAA to evaluate the scientific and technical validity of activities undertaken by the U.S. Department of Energy (DOE) in its civilian nuclear waste disposal program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the potential development of a permanent underground repository for spent nuclear fuel and defense high-level waste.

For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: September 10, 1990.

Mr. Dennis G. Condie,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–21593 Filed 9–12–90; 8:45 am]
BILLING CODE 6820–AM–M

Meetings

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Structural Geology & Geoengineering (SG&G) Panel of the Board will hold a technical exchange on Thursday, October 11, 1990, at the Crystal City Marriott (Arlington Ball Room), 1999 Jefferson Davis Highway, Arlington, Virginia; (703) 521–5500. During the meeting, which will begin at 8:30 a.m. and adjourn at 5 p.m., panel members will hear from representatives of the Department of Energy (DOE) and the Electric Power Research Institute (EPRI) on issues arising from ongoing DOE studies aimed at determining the potential suitability of the Yucca Mountain Site in Nevada as a repository for high-level radioactive waste.

Representatives of the DOE will report to SG&G panel members on the DOE's ongoing studies analyzing the risks and benefits of exploring the Calico Hills non-welded tuff at Yucca Mountain, Nevada. The DOE will also report on studies that identify priorities in the surface-based testing program at the site. EPRI will continue their presentation from the previous day on a proposed methodology for risk-based performance assessment.

Members of the public are welcome to attend as observers. Due to limited space, however, those interested in attending are asked to contact Ms. Helen Einersen on or before October 5, 1990, at 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473. The meeting will not be transcribed.

The NWTRB was established in the NWPAA to evaluate the scientific and technical validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the potential development of a permanent underground repository for spent nuclear fuel and defense high-level waste.

For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: September 10, 1990.

Mr. Dennis G. Condie,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–21592 Filed 9–12–90; 8:45 am]
BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17730; 811-3449]

T. Rowe Price U.S. Treasury Money Fund, Inc.; Application for Deregistration

September 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: T. Rowe Price U.S. Treasury Money Fund, Inc.

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 August 13, 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 October 3, 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 Fifth Street, NW., Washington, DC 20549. Applicant, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, 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).

APPLICANT'S REPRESENTATIONS:

1. Applicant is a Maryland Corporation and an open-end diversified management investment company registered under the Act. On April 15, 1982, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on June 28, 1982. Applicant's initial public offering commenced on or after June 28, 1982.

2. On January 16, 1990, applicant's board of directors adopted a plan of reorganization under which applicant would transfer all of its assets and liabilities to a newly created portfolio of T. Rowe Price U.S. Treasury Funds, Inc., a registered open-end management investment company (File No. 811-5860), known as the U.S. Treasury Money Fund Series, in exchange for shares in that portfolio, and then make a liquidating distribution to its shareholders of a like number of full and fractional shares of the U.S. Treasury Money Fund Series.

3. On June 14, 1990, at a special meeting, the reorganization plan was approved by a majority of the shareholders.

4. On June 30, 1990, applicant transferred all of its business, assets, and liabilities to the U.S. Treasury Money Fund Series. In exchange, applicant received a number of shares in the U.S. Treasury Money Fund Series equal to the number of shares applicant had issued and outstanding immediately preceding the reorganization. Applicant then made a liquidating distribution to its shareholders, each shareholder receiving shares in the new portfolio equal in both number and net asset value to the shares owned immediately preceding the reorganization.

5. Reorganization expenses of approximately $14,233 were borne by applicant.

6. As of the time of filing the application, applicant had no shareholders, assets, or 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 necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21506 Filed 9-12-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17728; 811-4582]

Weitz Value Fund, Inc.; Application for Deregistration

September 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Weitz Value Fund, Inc.

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 7, 1990, and an amendment thereto was filed on August 27, 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 October 2, 1990 and should be accompanied by proof of service on 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 Fifth Street, NW., Washington DC 20549. Applicant, 9290 West Dodge Road, suite 405, Omaha, Nebraska 68114-3323.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272-3035, or Max Berueffy, Branch Chief, (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 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).

Applicant's Representations

1. Applicant is an open-end, diversified management investment company.

2. Applicant was incorporated in the State of Nebraska on January 29, 1986.

3. On February 5, 1986, Applicant filed a registration statement on Form N-1A to register an indefinite number and amount of its common shares. On May 9, 1986, that registration statement was declared effective, and Applicant commenced its initial public offering immediately thereafter.

4. At a meeting held on October 16, 1989, Applicant's board of directors resolved that Applicant be merged into

Weitz Series Fund, Inc. ("Series Fund"), and further resolved that the proposed Agreement and Plan of Merger be submitted for consideration at a special meeting of shareholders. Thereafter, a proxy statement was mailed to each shareholder of record, and was filed with the Commission. At a special meeting held on February 7, 1990, more than two-thirds of Applicant's shares outstanding and entitled to vote voted in favor of the Agreement and Plan of Merger.

5. On March 31, 1990, Applicant had 2,070,116.23 common shares outstanding, with an aggregate net asset value of $24,540,101.47 and a per share net asset value of $11.854.

6. On April 1, 1990, Applicant was merged into Series Fund as a separate portfolio of that fund entitled "Value Portfolio." At that time, all of Applicant's assets and liabilities were transferred to Series Fund, and Applicant's shareholders received shares of the Value Portfolio of Series Fund having an aggregate net asset value equal to the aggregate net asset value of the shares of Applicant.

7. Proxy solicitation, general administration and legal expenses totalling approximately $14,755.75 were borne 80% by Applicant and 20% by Wallace R. Weitz & Co., Applicant's investment adviser.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

9. Applicant has no assets, debts, or liabilities.

10. Applicant has no securityholder to whom a distribution in complete liquidation of its interest has not been made, nor any securityholder of any other kind.

11. Applicant is not a party to any litigation or administrative proceeding.

12. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21507 Filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28406; File No. SR–NASD–90–36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Accelerated Approval to Proposed Rule Change Relating to Articles I, VII, VIII, IX, X, XI and XIV and Schedule B of the NASD By-Laws

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 2, 1990, to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to restructure the size and composition of the NASD Board of Governors ("Board") and the number and configuration of the NASD districts. Also, the proposed rule gives the Board the authority to restructure, hereinafter, the composition and size of the Board and the number and configuration of the NASD's Districts. Subsequently, three amendments were filed: One, dated July 10, 1990, that set forth the result of the member vote; a second, dated July 20, 1990, that amends the description of the comment letters and a third, dated August 13, 1990, requesting that the Commission, pursuant to section 19(b)(2) of the Act [2] approve the rule change on an accelerated basis.[3]

Notice of the filing and the terms of the substance of the proposed rule change and the first two amendments was given by the issuance of a Commission release (Securities Exchange Act Release No. 28289, July 31, 1990) and by publication in the **Federal Register** (55 FR 31924, August 6, 1990). The Commission received no comment letters on the proposed rule change.

This rule gives the Board the authority to adjust its size between 25 and 29 Governors in order to enhance the participation of individual Governors in the Board's deliberations and the Board's overall efficiency. In order for the Board to represent a variety of interests and experience and to allow a sufficient number of Governors to work as committee members, a minimum number of 25 Governors has been established.

The composition of the Board is also being changed by this proposed rule. The Board would be made up of a greater proportion of Governors elected by the Board than it has been previously. Consequently, the proposed rule change would decrease the number of Governors elected from the districts. However, the NASD does not believe that the decreased number of Governors from the districts will jeopardize fair representation of local or regional firms; the total number of Governors elected from the districts shall continue to represent an absolute majority of the Board.[4] In addition, the NASD believes the proposed rule change will result in fair and effective representation of the many types of participants in the securities industry; recruitment of candidates with a broad range of backgrounds and with specialized expertise in the international, technological and other diverse areas, improvement of the NASD's ability to recruit candidates who may be able to make significant contributions to the Board but are unable to commit the time required at both the Board and district level; and fulfilling the need for substantial public representation, and domestic and overseas issuer representation on the Board.[5]

This rule also amends Article X, section 6 of the By-Laws to give the Board the authority to provide for compensation of Governors, the Chairman of the Board and members of any committee of the Board or any District Committee. Although the Board does not currently plan on providing such compensation, this rule will give the Board the authority to do so if it becomes necessary to ensure successful recruitment of highly qualified candidates for services as chairman or on the Board or its committees.

In addition, the proposed rule change will give the Board the authority to change the district structure and in fact herein changes the district structure. The Board will be able to change the number of districts, the borders of districts, and to determine which districts shall elect more than one Governor. The NASD states that changes in district structure are necessary to address significant demographic shifts in the NASD

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 15 U.S.C. 78s(b)(2) (1982).

[3] *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, SEC, dated August 13, 1990.

[4] Under Art. VII, section 4(a) of this rule change the districts would elect from 13 to 15 Governors and the Board would elect from 11 to 13 Governors. However, if the Board were to elect 13 Governors, at least 14 Governors would have to be elected by the districts.

[5] Art. VII, section 4(c) requires that the Board elect at least three Governors representative of investors, none of whom is associated with a member of any broker or dealer, and at least three Governors representative of issuers, at least one of whom is not associated with any dealer member or broker or dealer. The Board would also be required in section 4(c) to elect three Governors representative of members from any segment of the securities industry.

membership and will enhance the Board's ability to ensure fair representation of members. Specifically, the number of districts will be reduced from 13 to 11.

The NASD believes these changes will yield somewhat fewer but larger districts which will provide fair representation of members, a larger pool of candidates from which to elect District Committee and Board members, and improve the NASD's ability to administer and supervise the districts.

The Committee believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [6] and the rules and regulations thereunder.[7]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication. The Commission believes that accelerated approval is appropriate in order to allow the District Nominating Committees to nominate and certify, in compliance with this rule change, candidates whose terms begin in 1991. This rule change amends the criteria for nomination of such candidates. The NASD determined that there is a risk, if approval is not accelerated, that candidates meeting the criteria as set forth herein would not be able to take office until 1992. Accordingly, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

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, 17 CFR 200.30–3(a)(12).

Dated: September 4, 1990.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21505 Filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78*o*–3 (1982).

[7] Specifically the proposed rule is consistent with section 15A(b)(4) of the Act that requires that "[t]he rules of the Association [NASD] assure a fair representation of its members in the selection of its directors and administraiton of its affairs."

[Rel. No. 34–28410; File No. SR–AMEX–90–06]

Self-Regulatory Organizations; Filing of Amendment to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Trading in Certain Unit Investment Trusts

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 August 27, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 to a proposed rule change under rule 19b–4 which would amend section 118 of the Amex *Company Guide* to provide listing guidelines for certain investment trusts.[1] Said amendment is 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 Amex is filing Amendment No. 1 to Exchange File No. SR–Amex–90–06 to amend proposed Section 118B of the Amex *Company Guide* relating to listing guidelines applicable to certain unit investment trusts. The amendment would specify the type of stock indices that would be accommodated by that section; modify proposed Commentary .04 to rule 411 regarding suitability requirements applicable to recommendations in Trust securities; and propose new Commentary .03 to rule 421 relating to discretionary orders in Trust securities.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 File No. SR–Amex–90–06, the Amex proposed a new section 118B of the Amex *Company Guide* to provide listing guidelines applicable to unit investment trusts ("Trusts") that issue securities based on (1) A portfolio of stocks included in a stock market index, and/or (2) a portfolio of money market or other debt instruments. Trust shares or units may be separable into components reflecting distinct interests and investment objectives.

The Exchange proposes to amend proposed section 118B to clarify that a stock index underlying a Trust must be broad-based. The Exchange states that any underlying stock index should be one that the Commission has reviewed in connection with domestic trading of derivative instruments based on a stock index, such as index options, index futures and index warrants.[2]

The Exchange has also proposed to add Commentary .04 to rule 411 (Duty to Know and Approve Customers) to provide a suitability standard applicable to recommendations in Trust units which are separable into components. The Exchange proposes to amend proposed Commentary .04 to require that, with respect to Trusts that permit separation of Trust securities into distinct trading components, investors be afforded an explanation of any special characteristics and risks attendant to trading such securities. The proposed commentary also specifies that, before a member, member organization, or registered employee of such member organization recommends a transaction in securities separable into components, or in the components themselves, a determination must be made that the transaction is not unsuitable for the customer. The person recommending establishing a position (long or short) in such securities should have a reasonable basis for believing, at the time of making the recommendation,

[1] Exchange File No. SR–Amex–90–06. Notice of the proposed rule change was given by publication of Securities Exchange Act Release No. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990).

[2] In a letter from James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated August 23, 1990, the Amex stated that prior to listing a trust based on an index that the Commission had not previously reviewed the Exchange would file a proposed rule change pursuant to rule 19b–4 under the Act to obtain Commission approval.

that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of any of the component securities.

Thus, for example, with respect to SuperTrust securities sponsored by SuperShare Services Corporation ("SSC"),[3] a recommendation to establish a position in SuperUnit securities, which are separable into SuperShare component securities, would require a determination that the investor is able to bear the risks of a position in either SuperShare component.

In addition, the amendment adds new Commentary .03 to Exchange rule 421 (Discretion as to Customers' Accounts) to require that discretionary orders in Trust securities that permit separation of securities into distinct trading components must be approved and initialled on the day entered by a person delegated such responsibility under rule 320(c)(i); or, with respect to transactions in accounts approved for options trading pursuant to rule 921, by a Senior Registered Options Principal or Registered Options Principal.

Prior to the commencement of trading in Trust securities, the Exchange will issue a circular to members informing them of Exchange policy regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

(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 October 4, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: September 6, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21502 Filed 9-12-90; 8:45 am]

BILLING CODE 8010-01-M

[3] A description of the SuperTrust securities is set forth in Securities Exchange Act Release No. 28095, supra, Note 1.

[4] Trading in SuperUnit securities would also be halted, under Exchange rule 117, if the Dow Jones Industrial Average ("Average") is calculated at a value of 250 or more points below its closing value on the previous trading day ("Closing Value"), and if, on the same day, the Average is subsequently calculated at a value of 400 or more points below its closing value.

[5] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 34-28411, File Nos. SR-CBOE-89-27 and SR-CBOE-89-29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Changes Relating to the Operational Procedures for RAES in Equity and SPX/NSX Options

On December 28, 1989 and January 8, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), proposed rule changes regarding the operational procedures governing the Exchange's Retail Automatic Execution System ("RAES")[3] in equity options and Standard & Poor's 500 ("S&P 500") stock index ("SPX" or "NSX") options, respectively.[4]

The proposed rule changes were noticed for comment in Securities Exchange Act Release Nos. 27774 (March 6, 1990), 55 FR 9384 and 27810 (March 16, 1990), 55 FR 10736.[5] No

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] RAES is an automatic execution system for options on the CBOE that provides public customers with nearly instantaneous execution of small orders at a guaranteed price. *See infra* notes 8-10 and accompanying text for a description of RAES.

[4] File No. SR-CBOE-89-27 relates to the operational procedures for RAES in equity options and File No. SR-CBOE-89-29 relates to the operational procedures for RAES in SPX/NSX options.

[5] The CBOE amended CBOE-89-27 to clarify the provisions relating to the declaration of unusual market conditions and the size of orders eligible for RAES for equity options. *See* letter from Robert P. Ackermann, Vice President, CBOE, to Howard Kramer, Division of Market Regulation, SEC, dated March 7, 1990. On August 7, 1990, the CBOE submitted an amendment to each proposal (SR-CBOE-89-27 Amendment No. 2 and SR-CBOE-89-29 Amendment No. 1) that clarifies the operational procedures for erroneous trades and marketable limit orders. *See* letter from Robert P. Ackermann, Vice President, CBOE, to Howard Kramer, Division of Market Regulation, SEC, dated August 10, 1990.

comments were received on the proposed rule changes.

The Exchange proposes that the RAES operational procedures for SPX/NSX options be approved on a permanent basis and that the RAES operational procedures for both equity and SPX/NSX options be incorporated into the Exchange's Rules, along with some proposed modifications.[6] At the present time, the RAES operational procedures applicable to equity options generally are the same as the operational proceudres applicable to RAES for SPX/NSX options.[7]

Under existing RAES operational procedures for equity and SPX/NSX options, member firms that are on the Exchange's Order Routing System ("ORS") automatically may have their small public customer market orders routed into RAES. [8] Member firms not on ORS are provided access to RAES from terminals at their booths on the floor. Market makers that participate on RAES for a specific options class are assigned as the contra parties to RAES trades for that options class on a rotating basis, with the first market maker selected randomly each day.[9] Participating market makers are obligated to trade at the displayed market quote at the time an order enters the system through ORS, thus providing public customers firm quotes for up to the maximum number of contracts eligible to be executed through RAES in one transaction.[10]

The CBOE has proposed the following changes to its rules governing RAES for equity and SPX/NSX options. First, the Exchange proposes to clarify that the Equity Floor Procedue Committee ("EFPC") and the Index Floor Procedure Committee ("IFPC") be responsible for determining the size of orders eligible for entry into RAES in equity and index options, respectively. These Committees, however, can only make determinations regarding the size of RAES elgible orders within limits that have been approved by the Commission.

Second, the Exchange proposes to increase the maximum size of RAES eligible orders for equity options. The current limit for RAES eligibility for equity options is ten contracts and the Exchange proposes to increase the contract size limit for equity options orders to twenty contracts. By contrast, the current order size limit for RAES in SPX/NSX options is up to 99 contracts.

Third, the Exchange proposes to clarify its operational procedures applicable to RAES for equity and SPX/NSX options to account for technological improvements to the system. When the RAES operational procedures were established, it was necessary to manually integrate orders on the book with orders entered through RAES.[11] Since that time, however, the CBOE has developed the computer capability automatically to provide book priority through its computerized routing system during normal market conditions. The CBOE proposals continue to provide, however, that, in the case of options on IBM, and in the case of unusual market conditions for other option classes, a transaction on RAES can take place at the price of the best bid or offer reflected by a booked order. The Exchange proposes that a declaration of unusual market conditions only may be declared by the Exchange's Vice Chairman and Chairman of the Market Performance Committee.[12]

Fourth, the Exchange proposes to include in its RAES operational procedures for equity and SPX/NSX options special provisions applicable to possible erroneous RAES trades. Specifically, the Exchange proposes that the price of RAES trades executed at erroneous market quotes should be adjusted to reflect accurately the market quote at the time the RAES trade originally was executed. The Exchange proposes that all such corrections would require the approval of an Exchange floor official.[13]

Fifth, the Exchange proposes to codify into the RAES operational procedures for equity and SPX/NSX options a reasonability test for marketable limit orders.[14] This test is designed to prevent the automatic execution of limit orders that are significantly away from the market because in such instances the size of the discrepancy between the market price and customer order suggests that further review of the correctness of the public customer order by the member firm is appropriate before the order is executed.[15]

Sixth, the Exchange proposes to clarify some existing policies regarding the execution of RAES orders. Specifically, the proposed additions provide that: (1) Marketable limit orders may use RAES; (2) only non-broker-dealer orders are allowed on RAES; and (3) orders may not be split to meet the size eligibility requirement for RAES orders. Additionally, the CBOE proposes that the RAES operational procedures shall apply to options classes that are included in the Designated Primary Market Maker ("DPM") pilot program.

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[6] In 1988, the operational procedures for RAES in equity options were approved on a permanent basis. *See* Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781. In 1986, the operational procedures for RAES in SPX/NSX options were approved on a pilot basis. *See* Securities Exchange Act Release No. 23670 (October 1, 1986), 51 FR 36123.

[7] In related filings, the Commission recently approved proposals by the CBOE to incorporate the eligibility reuqirements for market makers participating in RAES in equity and SPX/NSX options into the Exchange's rules. *See* Securities Exchange Act Release Nos. 28088 (June 1, 1990), 55 FR 23620 (SR–CBOE–89–28) and 28322 (August 9, 1990), 55 FR 33568 (SR–CBOE–89–30).

[8] ORS is a CBOE computer-driven support system that distributes customer orders received from member firms to designated destinations on the CBOE floor.

[9] *See* note 7, *supra*, for the approval orders regarding market maker eligibility requirements for RAES in equity and SPX/NSX options.

[10] RAES orders to buy are executed at the lowest offering price; while RAES orders to sell receive executions at the highest bid price.

[11] Previously, for example, if the disseminated best bid or offer was an order on the book and a public customer order was executed against a market maker on RAES, then that market would be obligated to either buy or sell against that best book bid or offer. Accordingly, the RAES order would be executed nearly simultaneously with the booked order at the booked order's limit price and the market maker would have a flat position with respect to the two trades. Under the amended procedures, when the best bid or offer is presented by a booked order, book priority is maintained by having incoming RAES orders routed in accordance with each member firm's routing parameters, either to the trading crowd or the member firm's book. The rerouted RAES order can then be voiced in the crowd and traded against the limit order book. Due to operational considerations, however, with respect to IBM options and in other options classes in the case of unusual market conditions, all RAES orders will still be instantly executed.

[12] Currently, a declaration of unusual market conditions for any options class may be made by the Exchange's Vice Chairman and President (or their representatives).

[13] In the event that an incorrect fill on a RAES trade is detected during the trading day, then in such circumstances: 1) the market maker or member firm who first notices the print outside the prevailing market quotes should promptly notify the RAES Supervisor (an Exchange staff person that monitors the RAES System); 2)(the RAES Supervisor then will examine the time and sales report of the trade (the Market Data Retrieval ("MDR")) to determine if the market quote and/or RAES trade are erroneous; and 3) if the RAES trade is erroneous, the RAES Supervisor will make the correction to the trade and the MDR. All corrections then must be approved by a floor official. *See* RAES, CBOC Circular to Members, February 1990.

[14] A marketable limit order, for purposes of the CBOE's proposal, is a limit order where the specified price at which to sell is below the current bid, or, if to buy, is at or above the current offer.

[15] Specifically, the CBOE'S proposals provide that marketable limit orders will not be executed to sell for less or buy for more than the specified price, but the order can be executed to sell for a higher price or buy for a lower price. However, the prosposals provide that, if the order's limit price is under $3, RAES will execute the order only if the necessary bid or offer is ½ point or less from the limit price. If the order's limit price is $3 or more, RAES will execute the order only if the necessary bid or offer is one dollar or less from the limit price.

Finally, the Exchange proposes to incorporate its operational procedures, as amended by this filing, into the Exchange's Rules. The Exchange believes that it will be beneficial to its members and public investors to include these operational procedures in its Rules.

The Commission finds that the proposed rule changes are 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).[16] Specifically, the Commission believes that these proposals, by developing, expanding, and enhancing the CBOE's automatic execution systems for options, will help improve market efficiency and contribute to the smooth handling of small public customer orders.

The Commission believes that it is appropriate to approve the RAES operational procedures for SPX/NSX options on a permanent basis because of the system's performance during the pilot program.[17] Specifically, the Exchange represents that it has not experienced any significant problems regarding the operation of RAES in SPX/NSX and the Exchange, based on its tests, believes that the RAES system capacity is capable of handling a significant increase in additional orders.[18]

With regard to the proposed operational procedures for equity options, the Commission believes that it is appropriate to provide the Exchange with the authority to increase the size of orders eligible for entry into RAES in equity options to twenty contracts. In support of its proposal, the Exchange submitted data to the Commission that indicated that the RAES system for equity options would be reasonably designed to handle the higher volume of orders that would result from increasing the size of eligible orders to twenty contracts.[19] Accordingly, the Commission believes that this expansion is appropriate and thereby will extend the benefits of automatic execution of RAES to larger public customer orders.

The Commission also believes that the Exchange proposals regarding erroneous market quotes and marketable limit orders are consistent with just and equitable principles of trade and the protection of investors. Specifically, the Commission believes that procedures to correct erroneous trades in a timely manner is in the interest of all parties. Moreover, the Commission believes the proposal includes adequate Exchange oversight and review procedures by requiring the approval of a floor official before any such corrections are made. Additionally, the Commission believes the reasonability standard for market limit orders is in the interest of public investors. The proposed standard will provide a check against orders where a mistake in price or option series may have been made by either a customer or a member firm. Moreover, because the RAES system promptly returns the questioned order to the member firm, the member firm, rather than an automated system, will decide whether the order should be promptly executed or whether clarification is needed from a public customer or broker.

The Commission believes that it is appropriate for the CBOE to clarify its procedures to reflect the operational changes resulting from the Exchange's computer capability to reroute orders to protect orders on the book during normal market conditions. The proposed procedures will provide for more streamlined and efficient handling of orders because market makers no longer must enter into offsetting trades, the execution of orders on the book will not be delayed due to the operation of RAES, and booked orders will always be executed before RAES orders, absent unusual market conditions. The Commission notes that the proposed procedures still require a decision by senior Exchange management before a declaration of unusual market conditions can be made.

The Commission believes that the other proposed changes to the operational procedures for equity and SPX/NSX options do not substantially alter the Exchange's current interpretations and policies governing RAES, but rather clarify existing operational procedures and codify into the Exchange's rules improvements that have been made to the RAES system. For example, the Commission believes it is beneficial for the CBOE to clarify the RAES operational procedures to provide that large orders cannot be split so that they are RAES eligible, that only non-broker-dealer orders are allowed on RAES, that RAES operational procedures apply to equity options classes that are included in DPM pilot programs, and that EFPC and IFPC exercise oversight over the operation of equity and SPX/NSX RAES operations, respectively.

Finally, the Commission believes that it is beneficial to incorporate the RAES operational procedures, including the proposed amendments, into the Exchange's rules. RAES provides public customer orders with the advantages of automatic execution and a significant portion of public customer orders are executed through RAES. Accordingly, the Commission believes that it is important that the rules relating to all aspects of RAES, including the operational procedures, be incorporated into the Exchange's rules in order to provide more ready access of these standards and procedures to market participants and investors.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule changes (SR–CBOE–89–27 and SR–CBOE–89–29) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Dated: September 6, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21503 Filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5) (1982).

[17] *See* letters from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Howard Kramer, Division of Market Regulation, dated January 22, 1990 and July 24, 1990.

[18] *See* letter from Robert Ackermann, Vice President, CBOE, to Howard Kramer, Division of Market Regulation, dated July 24, 1990. The Commission notes that the existing operational procedures for SPX/NSX options permit public customer orders as large as 99 contracts to be entered into RAES. In practice, however, the Exchange has only permitted orders of ten or fewer contracts on RAES in SPX/NSX options. Although the Commission recognizes the potential benefits of increasing the size of public customer orders that are entered in RAES, the Commission believes that any decision by the Exchange to increase the size of SPX/NSX options orders into RAES should be measured, and, more specifically, the Commission believes that the Exchange, before deciding to expand the size of RAES eligible orders, should carefully consider the potential impact that any such increases would have on the RAES system and the SPX/NSX trading crowd.

[19] *See* letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Howard Kramer, Division of Market Regulation, dated June 27, 1990 at 2. The Exchange's data for May 1990, suggests that increasing the eligible order size to twenty contract for equity options would be an increase of 4,193 contracts and 232 orders per day on RAES, a 52% and 16% increase, respectively. The Exchange believes that there will be no negative systems impact resulting from such an increase.

[20] 15 U.S.C. 78s(b) (1982).

[21] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34-28405; File No. SR-NASD-90-35]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities of Securities Dealers, Inc. Relating to a Proposed Rule Change to Articles II and III of the NASD Code of Procedure

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 13, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) of the Act, the NASD is herewith filing a proposed rule change to Articles II and III of the NASD Code of Procedure. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Proposed Amendments to the Code of Procedure

Article I—Application and Purpose of Code

Definitions

Sec. 2. (a) Unless otherwise provided, terms used in the Code of Procedure shall have the meaning as defined in Article I of the By-Laws and Article II, section 1[I] of the Rules of Fair Practice.

* * * * *

(c) The *term* "Market Surveillance Committee" *means the* [is a standing] committee of the *Corporation or* Board [of Governors] which is responsible for handling alleged violations of applicable rules of the Corporation concerning trading of securities, including applicable rules involving quotations, transaction execution and reporting, trading practices and insider trading as well as other such matters *assigned* [delegated] to it by the Board [of Governors].

(d) The *term* "National Business Conduct Committee" *means the* [is a standing] committee of the Board [of Governors] which is authorized to exercise powers *assigned* [delegated] to it by the Board in connection with disciplinary and other matters.

(e) An "Extended Hearing" is a hearing under Article II, section 4 [or Article III, section 2(a)] of the Code of Procedure that is so designated by a District Business Conduct Committee[,] *or* the Market Surveillance Committee[,]. *An "Extended Proceeding" is a proceeding under Article III, sections 2 (h) and (i) of the Code of Procedure that is so designated by* [or] the National Business Conduct Committee.

(f) An "Extended Hearing Committee" is a committee constituted as provided in the Code of Procedure to sit as a hearing panel for an Extended Hearing. *An "Extended Proceeding Committee" is a committee constituted as provided in the Code of Procedure to sit as a panel for an Extended Proceeding.*

(g) The Term "NASDAO Hearing Review Committee" means the committee of the Corporation or the Board which is responsible for handling matters regarding persons aggrieved by the operations of the NASDAO System, NASDAO qualifications and related issues.

Article II—Disciplinary Actions by the District Business Conduct Committees, the Market Surveillance Committee and Others

Venue

Sec. 5. (c) In the event the Committee considering a complaint is changed, the complaint shall be processed to completion by the Committee to which the complaint was transferred. In the event the boundaries [of one or more] *or number of* districts should be changed, any complaint pending in a district shall be processed to completion by the District Business Conduct Committee for the newly constituted district which would have had jurisdiction had the complaint been filed subsequent to the effective date of the *number or* boundary changes.

* * * * *

Acceptance, Waiver and Consent and Summary

Complaint Procedures

Sec. 10. A Committee may, prior to issuance of a complaint under section 1 of this Article, impose disciplinary penalties pursuant to the procedures set forth under this section 10.

Acceptance, Waiver and Consent of the Respondent

(a) If the Committee has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Committee may suggest that the member or associated person submit a letter containing an acceptance of a finding of violations, a waiver of all rights of appeal to the *National Business Conduct Committee (and any review thereof by the* Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the Order issued if the letter is accepted, and a consent to the imposition of sanctions. The letter shall describe the act or practice engaged in or omitted; the rule, regulation or statutory provision violated; and the sanction to be imposed therefore. If the Committee then concludes that the Letter of Acceptance, Waiver and Consent is appropriate and should be accepted, it shall be submitted to the National Business Conduct Committee. If the letter is accepted by the National Business Conduct Committee, it shall become final and shall constitute the complaint, answer and decision in the matter. If the letter is rejected by [either] *the* Committee *or the National Business Conduct Committee,* any acceptances, waviers and consents contained therein shall not be considered in any further complaint action which may be taken against the member or associated person.

* * * * *

Summary Complaint Procedure

(b)(4) Acceptance by a respondent of an offer as described above shall constitute the respondent's admission of the violations, acceptance to the sanction and a waiver of all rights of appeal to the *National Business Conduct Committee (and any review thereof by the* Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the decision, and the complaint and related documents shall constitute the Committee's decision and the record in the case. Receipt of respondent's acceptance by the Committee shall conclude the proceedings as of the date the acceptance is received, without further notice to the respondent, under the conditions stated in the offer, subject to paragraphs (5) and (6).

* * * * *

Settlement Procedure

Sec. 11. (c) Every Offer of Settlement shall be in writing and shall contain in reasonable detail:

* * * * *

(5) a waiver of all rights of appeal to the *National Business Conduct Committee (and any review thereof by the* Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or

contest the validity of the Order issued if the Offer of Settlement is accepted.

* * * * *

Complaints Directed by the Board [of Governors] *or the National Business Conduct Committee*

Sec. 12. The *National Business Conduct Committee and the* Board [of Governors] shall *each* have the authority when *(*on the basis of information and belief*)* [it] *either* is of the opinion that any act, practice or Commission of any member of the Corporation or of any person associated with a member of the Corporation is in violation of any rule, regulation or statutory provision, to file a complaint with a Committee against such member or such person associated with a member or to instruct any Committee to do so, and any such complaint shall be handled in accordance with this Article.

Article III—Review of Disciplinary Actions [and Proceedings Before] by the National Business Conduct Committee and the Board [of Governors]

Sec. 1. (a) If a Committee shall take any disciplinary action against any member, or shall dismiss any complaint, as herein provided, such action or dismissal shall be subject to review by the *National Business Conduct Committee* [Board of Governors] on its own motion within 45 calendar days after the date of the decision. Any such action or dismissal shall also be subject to review upon application by any person aggrieved thereby, filed within 15 calendar days after the date of the decision. Application to the *National Business Conduct Committee* [Board of Governors] for review, or the institution of review by the *National Business Conduct Committee* [Board of Governors] on its own motion, shall operate as a stay of any such action or dismissal, until a decision is rendered by the *National Business Conduct Committee pursuant to section 6 of this Article or by the* Board *in cases of discretionary reivew pursuant to section 7 of this Article* [of Governors upon such review as hereinafter provided].

(b) If a respondent or any aggrieved person who has made application to the *National Business Conduct Committee* [Board of Governors] for a review shall withdraw the appeal without a determination by the *National Business Conduct Committee* [Board of Governors] on the merits thereof, the *National Business Conduct Committee* [Board of Governors] shall have an additional period of 45 calendar days subsequent to the withdrawal in which to determine whether it shall review the matter on its own motion.

Proceedings [Before the Board]

Sec. 2. (a) In the case of an appeal or call for review, the party seeking review may request a hearing. If a party desires a hearing, it should be requested in his application for review. A party subject to a call for review may request a hearing within fifteen (15) calendar days of notification of the call for review. If a request is made, a hearing shall be granted, subject to the limitations of section 2(f) below. In the absence of a request for a hearing, the *National Business Conduct Committee* [Board of Governors] may have any matter set down for a hearing.

* * * * *

(c) If a hearing is not held, the matter shall be considered on the basis of the record before the Committee, and written briefs, *if submitted* [as applicable]. For purposes of this section, the record before the Committee shall include the complaint, respondent's answer, the transcript of the Committee hearing, any exhibits reviewed by the Committee, and the Committee decision.

(d) Unless otherwise consented to by the parties, all hearings shall be held before a hearing panel, and all on-the-record reviews shall be conducted by a review panel, appointed by the National Business Conduct Committee consisting of two or more persons, all of whom are *current or former Governors* associated with members of the Corporation[, at least one of whom shall also be a current or former member of the Board of Governors].

(e) A hearing on review by the *National Business Conduct Committee* [Board] shall consist of oral arguments limited to a total period of thirty (30) minutes each for argument and response by respondent and for argument and response by complainant, unless extended by the hearing panel in its discretion for good cause shown. The *National Business Conduct Committee's* [Board's] review shall be limited to consideration of oral arguments, written briefs, *if submitted* [as applicable], and the record before the Committee. A record of the hearing shall be kept in all cases.

(f) Any application for review of a matter in which the party seeking review did not participate in the proceedings before the Committee but shows good cause for the failure to participate, shall normally be dismissed by the *National Business Conduct Committee* [Board] and remanded to the Committee for further proceedings. If the party seeking review did not participate in the proceedings before the Committee and does not show good cause for failure to participate, the matter shall be considered by the *National Business Conduct Committee* [Board] on the basis of the record before the Committee, including written briefs *if* submitted to the *National Business Conduct Committee* [Board, as applicable]. For purposes of this paragraph, failure to participate shall mean failure to file an answer or otherwise respond to a complaint or failure to appear at a hearing pursuant to Article II, section 4 of this Code. A party seeking review who failed to request a hearing before a Committee pursuant to Article II, section 4 of this Code, shall be permitted to have a hearing on review as provided in this section.

(g) Any application for review as to which the party seeking review fails to advise the *National Business Conduct Committee* [Board] of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request, may be dismissed as abandoned and the decision of the Committee shall become the final *disciplinary action of the Corporation for purposes of section 8 of this Article* [Association action].

* * * * *

(j[1]) The hearing or on-the-record review panel shall present its recommended findings and sanctions to the National Business Conduct Committee.[.] [The National Business Conduct Committee shall make its recommended findings and sanctions to the Board of Governors] which shall make the final determination.

Evidence in *National Business Conduct Committee* Proceedings

Sec. 3.(a) A party to the *National Business Conduct Committee* [Board's] review may apply to the *National Business Conduct Committee* [Board] for leave to adduce additional evidence. If the party provides notice of the intention to introduce such evidence no later than ten (10) days prior to the date of the hearing, identifies and describes the evidence, and satisfies the burden of demonstrating that there was good cause for failing to adduce it before the Committee and that the evidence is material to the proceeding, the *National Business Conduct Committee* [Board] may, in its discretion, permit the evidence to be introduced into the record on review or may remand the case to the Committee for further proceedings in whatever manner and subject to whatever conditions the *National Business Conduct Committee* [Board] considers appropriate. On its

own motion, the *National Business Conduct Committee* [Board] may direct that the record on review be supplemented with such additional evidence as it may deem relevant.

(b) Where leave to adduce additional evidence is granted, the Corporation staff or the complainant, if other than a Committee, and the respondent shall make available to the *National Business Conduct Committee* [Board] hearing or review panel and to the parties all documentary evidence which was not part of the record before the Committee no later than five (5) business days before the hearing.

* * * * *

Powers of *the National Business Conduct Committee* [Board] on Review

Sec. 4. In any proceeding to review any disciplinary action taken or dismissed by a Committee, the *National Business Conduct Committee* [Board of Governors] may affirm, dismiss, modify or reverse dismissals with respect to each of the Committee findings or remand the matter with appropriate instructions to the Committee. The *National Business Conduct Committee* [Board of Governors] may affirm, increase, or reduce any sanction, or impose any other fitting sanction.

Decision of the *National Business Conduct Committee* [Board]

Sec. 5.(a) In any proceeding to review any disciplinary action taken by a Committee or a dismissal by a Committee if the *National Business Conduct Committee* [Board of Governors] determines that a violation alleged in the complaint has occurred, it shall issue a written decision which shall set forth:

(1) The act or practice which the respondent has been found to have engaged in or omitted;

(2) The rule, regulation, or statutory provision which such act or omission to act is deemed to violate;

(3) The basis upon which the findings are made; and

(4) The sanction imposed and the reason therefor.

Notification of Decision; *Final Disciplinary Action*

Sec. 6. *Unless a matter is called for discretionary review by the Board pursuant to Section 7 of this Article, the decision of the National Business Conduct Committee shall constitute final disciplinary action for purposes of Section 8 of this Article, and t*[T]he complainant, the respondent and the member of the Corporation with whom the respondent is presently an associated person shall be promptly notified and sent a copy of any written decision rendered by the *National Business Conduct Committee* [Board of Governors]. *In the event of discretionary review by the Board, the decision of the Board shall constitute final disciplinary action for purposes of Section 8 of this Article, and the complainant, the respondent and the member of the Corporation with whom the respondent is presently an associated person shall be promptly notified and sent a copy of any written decision rendered by the Board.*

Discretionary Review by the Board

Sec. 7. Determinations of the National Business Conduct Committee may be reviewed by the Board solely upon the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of National Business Conduct Committee determinations. In reviewing any determination of the National Business Conduct Committee, the Board may affirm, dismiss, modify or reverse dismissals with respect to each of the National Business Conduct Committee determinations or remand the matter with appropriate instructions to the National Business Conduct Committee or any Committee. The Board may affirm increase, or reduce any sanction, or impose any other fitting sanction. Discretionary review by the Board shall operate as a stay of any action or dismissal by the Committee and any determinations of the National Business Conduct Committee, until a decision is rendered by the Board.

Application to SEC for Review

Sec. *8*[7]. In any case where either the complainant or the respondent feels aggrieved by any *final* disciplinary action taken by the *National Business Conduct Committee or* Board [of Governors], such person may make application for review to the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, as amended. The member of the Corporation with whom the respondent is presently an associated person shall be notified promptly of any application for review to the Securities and Exchange Commission.

Article IV—Imposition of Sanctions and Costs

Sanctions

Sec. 1. In any proceeding relating to disciplinary actions involving members and associated persons, a Committee, *the National Business Conduct Committee* or the Board of Governors may impose any sanction it deems appropriate as set forth in Article V, Section 1, of the Rules of Fair Practice or in the applicable By-Law or rule of the Corporation which was the subject of the complaint.

Costs of Proceedings

Sec. 2. In any disciplinary action, the member or associated person shall bear such part of the costs of the proceedings as the Committee, *the National Business Conduct Committee* or Board of Governors deems fair and appropriate under the circumstances.

* * * * *

Article IX—Procedures on Grievances Concerning the Automated Systems

Review by *the NASDAQ Hearing Review Committee* [Board]

Sec. 6. The decision shall be subject to review by the *NASDAQ Hearing Review Committee* [Board of Governors] on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the *NASDAQ Hearing Review Committee* [Board], shall not operate as a stay of the decision.

Findings of *the NASDAQ Hearing Review Committee* [Board] on Review

Sec. 7. Upon consideration of the record, and after such further hearings as it shall order, the *NASDAQ Hearing Review Committee* [Board] shall affirm, modify, reverse, dismiss, or remand the decision. The *NASDAQ Hearing Review Committee* [Board] shall set forth specific grounds upon which its determination is based.

Discretionary Review by the Board

Sec. 8. Determinations of the NASDAQ Hearing Review Committee may be reviewed by the Board solely upon the request on one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of NASDAQ Hearing Review Committee determinations. The Board shall affirm, modify or reverse the determinations of the NASDAQ Hearing Review Committee or remand the matter to the NASDAQ Hearing Review Committee with appropriate instructions. The institution of

discretionary review by the Board shall not operate as a stay of the decision.

Application to Commission for Review

Sec. 9[8]. In any case where a person feels aggrieved by any decision [of the Board of Governors taken] *issued* pursuant to Section 7 *or Section 8 of this Article,* the person may make application for review to the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, as amended.

Article X—Miscellaneous

Grounds of Disqualification to Participate in Proceedings

Sec. 1. No member of the Board [of Governors], *National Business Conduct Committee,* any Committee or [any] other committee or subcommittee governed by this Code shall in any manner, directly or indirectly, participate in the determination of any matter substantially affecting his interest or the interests of any person in whom he is directly or indirectly interested. In any such case the particular member shall disqualify himself, or shall be disqualified by the Chairman of *the* [any such] Board, *National Business Conduct Committee, or any such* Committee *or other committee or subcommittee governed by this Code.*

Reports and Examination of Books and Records

Sec. 2. For the purpose of any examination[,] or determination as to any proceeding pursuant to this Code, any hearing panel, Committee, *other committee or subcommittee governed by this Code, the National Business Coduct Committee* or the Board [of Governors], *and* [or] any duly authorized agent or agents *thereof* [of any such hearing panel, Committee or Board], shall have the right to require any member, [or] person associated with a member, *or person no longer associated with a member when such person is subject to the Corporation's jurisdiction,* to report, *either informally or on the record,* orally or in writing with regard to any examination, determination or hearing, and to examine the books and records of any *such* member or person [associated with a member].

Rulings on Procedural Matters

Sec. 3. Except as otherwise provided by this Code, the *Board, National Business Conduct Committee or any* hearing panel, Committee or [Board] *other committee or subcommittee governed by this Code* shall have discretion to make rulings on all motions and other matters arising during the course of its proceedings (including without limitation, the presence of witnesses after completion of their testimony and of other persons not parties to the proceeding) which require resolution during the proceeding.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to Articles II and III of the NASD Code of Procedure makes two changes to the Code of Procedure to improve the disciplinary process and to reduce the burden that this process imposes on the National Business Conduct Committee ("NBCC") and the Board. The NBCC, a committee of the Board composed solely of Governors, is responsible for reviewing all formal actions [1] of the District Business Conduct Committees ("DBCCs") and the Market Surveillance Committee ("MSC"), developing enforcement policy and recommending to the Board the adoption or amendment of rules relating to the business conduct of NASD members.

Although the existing NBCC structure works well, the Board determined that the increasing workload of the NBCC raises serious concerns.[2] First, failing to address this increasing burden could reduce the amount of time available to the NBCC to address the increasingly complex policy issues before it relating to enforcement and the business conduct of members. Second, it could also limit the opportunity of members of the NBCC to participate on other committees and in the increasingly demanding work of the Board itself. Finally, the increasing burden of NBCC service could discourage valuable prospective industry and public candidates from serving on the Board.

Therefore, the NASD is proposing to amend Article III, section 2(d) of the NASD Code of Procedure to require that hearing panels (unless the parties otherwise agree) consist exclusively of current or former Governors associated with members, and to eliminate the requirement that a current Governor serve on every hearing panel. This would permit, in appropriate cases, hearing panels to be composed exclusively of recent former industry Governors.

The proposed rule change would also amend Article III, sections 6 and 7 to provide that the decisions of the NBCC are the final decisions of the NASD in disciplinary cases and would not require action of the full Board to become effective. Under the proposed rule change the Board would review only those specific decisions of the NBCC that the Board calls for review on the request of one or more Governors.[3]

Service on hearing panels is a substantial part of the NBCC workload. Under current practice, the NBCC normally appoints a Governor serving on the NBCC and a recent former Governor as a hearing panel.[4] The Board has determined that the allocation of the time of members of the NBCC to the hearing panels is increasing to a level that could detract from the ability of the NBCC to effectively address regulatory policy issues. Accordingly, the Board determined that the NBCC, in the cases it deems appropriate, should use its existing authority under the Code of Procedure to appoint hearing panels consisting of a current Governor and a recent former Governor and should be authorized to appoint hearing panels

[1] Formal disciplinary actions consist of summary complaints; letters of acceptance, waiver and consent; offers of settlement, and decisions rendered after a DBCC or MSC hearing. Informal actions consist primarily of letters of caution, letters of future observance and compliance, and staff interviews.

[2] In the period from 1985 to 1988 alone, the number of formal actions filed by the DBCCs increased by 81 percent (from 476 to 865). During this period the Board authorized the establishment of the MSC in (November 1984) which became a significant source of disciplinary actions. In 1985, the MSC filed 14 formal actions; in 1988, if filed 42 formal actions. The NBCC held 50 hearings in 1985; by 1988 this figure had more than doubled. While some of this increase in volume, particularly in the case of the MSC, reflects events surrounding the market break of October 1987, partial figures for 1989 indicate that the trend is still upward compared with the years before 1987.

[3] The proposed rule change makes parallel amendments to Article IX with respect to the decisions of the NASDAQ Hearing Review Committee.

[4] Article III, section 2(c) requires that (unless otherwise consented to by the parties) every member of a hearing panel must be currently associated with a member of the NASD. The proposed amendments would not alter this requirement.

consisting exclusively of recent former Governors. Panels so constituted would continue to provide respondents a hearing before experienced and respected members of the industry. In addition, all cases before the NBCC, regardless of the composition of the hearing panel, would continue to be reviewed by the full NBCC.

The proposed rule changes would also limit the time commitment required from all Governors with respect to decisions by the NBCC without limiting the right of the Board to review an NBCC decision when one or more Governors believe such review is appropriate. This change reflects the importance of the NBCC and recognizes the quality and consistency of its decision-making. It would, however, make appeal to the SEC the sole recourse of respondents seeking to challenge a decision of the NBCC unless a Governor requested review by the Board. The Board believes that since a significant number of Governors would have participated in the NBCC decision, the elimination of mandatory review by the full Board would not reduce the fairness of the NASD disciplinary process.

Miscellaneous Changes

The NASD is proposing miscellaneous rule changes to Article I, Section 2 of the Code of Procedure (which defines terms used in the Code) by adding definitions of "Extended Proceedings" and "Extended Proceeding Committee" to conform to the definitional changes made to Article III, Section 2 that were approved by the Commission in rule filing No. SR–NASD–89–49.

In addition, minor language changes are proposed to sections 2(c), (e) and (f) of Article III of the Code of Procedure to clarify that National Business Conduct Committee review will include written briefs, if submitted. Further, section 2(1) of the Code is proposed to be re-numbered as section 2(j) to correct a typographical error.

The proposed rule change is consistent with the provisions of section 15A(b)(8) of the Act, which requires that "[t]he rules of the association [NASD] are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment as part of Notice to Members 90–19, April 1, 1990. Thirteen comments were received in response thereto. A copy of the Notice to Members is attached to the NASD's filing as Exhibit 2. Copies of the comment letters received in response thereto are attached to the NASD's filing as Exhibit 3. Of the thirteen comment letters received, only two referenced the proposed rule change. One comment was favorable. The second comment did not express an opinion in favor or opposition to the rule change, but did question the decision to retain the NBCC's Governor-only membership because of the different expertise required for Board and NBCC service and the possible adverse impact of NBCC service on the recruitment of senior managers to serve as Governors. The Board determined that the concerns raised by the commentator were outweighed by the importance of maintaining for members and associated persons the assurance that disciplinary decisions would be reviewed by an NBCC composed of members of the governing body of the NASD, who have been elected by the members in the various districts or by the Board itself.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institue proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

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 may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 31, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21500 Filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28404 File No. SR–NASD–90–37]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the OTC Bulletin Board Service

On July 12, 1990, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change (File No. SR–NASD–90–37), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] to amend the OTC Bulletin Board Service ("Service") by expanding the Service's morning period for quotation updates in foreign securities/American Depository Receipts ("ADRs") by one half-hour. This would produce a morning update period from 8:30 to 9:30 a.m. e.t., as opposed to the original 9 to 9:30 a.m. e.t. morning period. The proposed rule change was noticed in the **Federal Register** for public comment.[2] No comments were received in response to this proposal. This order approves the proposed expansion of the morning session.

On May 1, 1990, the Commission issued an order approving the operation of the NASD's OTC Bulletin Board

[1] 15 USC 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 28207, July 16, 1990, 55 FR 30054.

Service for a pilot term of one year.[3] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ securities in which they are registered as market makers. Individual market makers had been permitted to update their displayed quotations in foreign securities and ADRs twice daily, once between 9 and 9:30 a.m. e.t. and one between noon and 12:30 p.m. e.t. Domestic securities quoted in the Service are not subject to this update restriction.

The purpose of the proposed rule change is to extend, by one half-hour, the morning window update by Service market makers registered in foreign securities or ADRs. Several market makers utilizing the Service have informally advised the NASD staff that the current period is insufficient to permit the entry of updates in all affected securities. These market makers have noted that much of the 9–9:30 period is dedicated to updating quotations in the NASDAQ and NASDAQ/NMS issues in which they are also market makers.[4]

Moreover, the Service is designed to carry over a market maker's quotation in a security from the previous market session unless the quotation is superseded by an update. Currently, if a firm does not update its quote in a foreign security or ADR by 9:30 a.m., it is precluded from doing so until noon of that day. Consequently, a stale quote remains in the Service for at least two and one–half hours before the market maker has another opportunity to correct the situation. Although the original quote is not designated as firm, it is unlikely to reflect the market maker's current trading interest based upon orders received or news announced following the previous day's close.

The Commission has determined that it is appropriate to approve the NASD's proposed rule change because the Commission believes it is consistent with section 15A(b)(6) and (11).[5] Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations.

Given the time pressure that market makers experience prior to 9:30 a.m. by having to update their NASDAQ and NASDAQ/NMS securities, the Commission finds this extension of the morning session appropriate to avoid stale quotations appearing in the Service. By providing market makers and extra half-hour to update their quotations, the NASD will facilitate the accurate and efficient entry of quotations that reflect the current interest of each market maker.

In light of these factors, the Commission believes that it is appropriate to expand the morning window for quotation updates by Service market makers in foreign securities/ADRs to one hour, 8:30–9:30 a.m. e.t. on each business day.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 31, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21504 filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28415; [File No. SR–NSCC–90–16]]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Regarding an Interpretation of the Board of Directors

September 6, 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 August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 proposed rule change is attached hereto as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to file with the Commission an NSCC policy statement which clarifies NSCC's intentions respecting submission to NSCC of locked-in trade data by Qualified Special Representatives ("QSRs") on trade date plus one (T+1). The policy was developed, in part, to evidence NSCC's intention that such capability be restricted to extraordinary events and to address concerns raised by the National Association of Securities Dealers, Inc. ("NASD") about the misuse of this capability and the potential impact such would have on the goal of reducing clearance and settlement cycles.

The policy provides that T+1 submissions should occur only in the event of extraordinary circumstances, and that NSCC will monitor the submission of locked-in data. In addition, it provides that NSCC may require a written explanation of a T+1 submission, and has the right to notify a QSR's Designated Examining Authority if NSCC determines that the T+1 capability is used inappropriately. The policy further provides that continued, inappropriate use of T+1 submissions may be grounds for NSCC to limit the QSR's right to submit locked-in data.

(2) Since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible and relates to NSCC's capacity to enforce compliance by its

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[3] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[4] Inserting updated quotations in NASDAQ/NMS issues by 9:30 a.m. e.t. is particularly critical because of the Small Order Execution System obligations that attach to such market making commitments. This task, therefore, represents a significant operational priority during the period immediately preceding the daily opening of the market.

[5] 15 U.S.C. 78o–3 (1982).

[6] 17CFR 200.30–3(a)(12).

participants with its rules, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act because it constitutes an interpretation with respect to the meaning of an existing rule of NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inpsection 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 principle office of NSCC. All submissions should refer to file number SR–NSCC–90–16 number and should be submitted by October 4, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A, Addendum N—Interpretation of the Board of Directors

Pursuant to SCC Division Rule 47, the Board of Directors has the authority to interpret the Rules of the Corporation. The purpose of this interpretation is to clarify certain provisions of SCC Division Procedure II. C.1(d) ("Procedure") regarding the submission to the Corporation of locked-in trade data from Qualified Special Representatives on trade date plus one (T+1).

It is expected that Qualified Special Representatives will have sufficient capability and systems which will enable them to submit locked-in trade data on T. The Corporation acknowledge that, in practically all instances to date, the T submission deadline has been met. The Corporation recognizes, however, that there may be circumstances which preclude Qualified Special Representatives from submitting part or all of their locked-in trade data on T. In these cases, to avoid requiring Members on whose behalf a Qualified Speical Representative acts, to submit data to the Corporation, the Corporation has provided a capability to accept from Qualified Special Representatives locked-in trade data submission on T+1. However, it is the Corporation's desire that comparison be accomplished as early as possible. The Corporation does not intend that Qualified Special Representatives submit locked-in trade data, on a routine basis, on T+1. Submissions on T+1 are expected to occur only in the event of extraordinary circumstances.

The Corporation intends to periodically monitor the submission of locked-in trade data by Qualified Special Representatives to submit a written explanation for any T+1 submission. If the Corporation, in its sole discretion, determines that a Member is inappropriately using the T+1 submission facility, the Corporation may send an advisory notification to the Qualified Special Representative's Designated Examining Authority, if any, and to the Securities and Exchange Commission. If the Qualified Special Representative continues to inappropriately use the T+1 submission facility, the Corporation may determine to limit the Qualified Special Representative's right to continue to submit such locked-in trade data.

This interpretation shall also be applicable to Service Bureaus which submit locked-in trade data to the Corporation.

[FR Doc. 90–21498 Filed 9–12–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1264]

Determination Iraq

In accordance with Section 6 (j) of the Export Administration Act (50 U.S.C. App. 2405 (j)), I hereby determine that Iraq is a country which has repeatedly provided support for acts of international terrorism. The list of 6(j) countries as of this time therefore includes Cuba, Iran, Iraq, Libya, North Korea, and Syria.

Lawrence S. Eagleburger,

Acting Secretary.

[FR Doc. 90–21564 Filed 9–12–90; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 90–9–7]

Aviation Proceedings: International Air Transportation Association

Issued by the Department of Transportation on the 7th day of September, 1990.

Order Extending Time

In the matter of application of the International Air Transportation Association for approval of Revised Traffic Conference Provisions Pursuant to sections 412 and 414 of the Federal Aviation Act; Docket 46928 Agreement CAB 1175 as amended.

By Order 90–8–33, served August 20, 1990, the Department authorized the filing of comments in response to the application and pleadings filed in this docket. Such comments are due by September 17, 1990.

Motions and letter requests for a 30-day extension of the filing deadline, until October 17, 1990, have been received from Air France, Japan Airlines, Swissair and Air Canada. The carriers state that the extension is necessary due to the need for extensive coordination and the unavailability of key personnel during the peak summer vacation period, that the record will benefit from meaningful responses, and that no party will be prejudiced by the delay.

We feel that good cause has been shown for the requested extension, and we will grant it. Moreover, to provide

potentially interested parties the maximum amount of time to take advantage of our action, we are granting the extension without waiting for answers to the motions.

Accordingly, the date for filing responsive comments in Docket 46928 is extended to October 17, 1990.

A copy of this order will be published in the Federal Register.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 90-21588 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Draft Advisory Circular Information; Restricted Category Agricultural Dispensing Equipment Installations on Helicopters.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and availability of draft advisory circular (AC) changes.

SUMMARY: This notice announces the availability of and request for comments on Draft Revision 1 of Paragraph 785 for AC 27-1, Certification of Normal Category Rotorcraft and new Paragraph 785 for AC 29-2A, Certification of Transport Category Rotorcraft. The draft contains revised material which expands and enhances the information needed to certificate Restricted Category agricultural dispensing equipment installations. Included in the draft material is information regarding the structural and ground clearance requirements for the evaluation of agricultural dispensing equipment designs. A public meeting to discuss the draft material will be sponsored by the Rotorcraft Directorate.

DATES: The public meeting will begin at 9 a.m. on October 10 and 11, 1990. Written comments must be received by November 9, 1990.

ADDRESSES: The public meeting will be held at the Holdiay Inn Portland Airport, 8439 NE. Columbia Boulevard, Portland, Oregon; phone (503) 256-5000.

Comments may be mailed to the FAA, Rotorcraft Policy and Procedures Staff, ASW-112, Rotorcarft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Ms. Jannette Fletcher, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: Copies of the draft changes have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not receiving these draft changes may obtain a copy by contacting the person named under "**FOR FURTHER INFORMATION CONTACT.**"

Interested persons are invited to submit comments on these draft changes. Comments should specify applicability to the AC 27-1 or AC 29-2A paragraphs. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, Building 3B, room 142, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Fort Worth, Texas, on September 4, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-21558 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-13-M

Office of Hearings

[Docket No. 47149]

U.S.-U.S.S.R. North Atlantic Combination Service Case; Prehearing Conference

September 7, 1990.

The prehearing conference in this proceeding will be held on September 20, 1990, at 10 a.m. in room 5332, Nassif Building, 400 Seventh Street, SW., Washington, DC. The parties are advised that the following procedural dates will be set unless there is a convincing need for a change:

Information Responses: September 20, 1990 [1]
Direct Exhibits: October 12, 1990
Rebuttal Exhibits: November 16, 1990
Filing of List of Witnesses Each Counsel Intends to Cross-Examine: November 21, 1990
Commencement of Hearing: November 26, 1990 [2]

[1] One copy of Public Counsel's information response should be provided to the Judge no later than September 20, 1990, in addition to the two copies of the materials made available for the parties in Room 4210 at the Department of Transportation. *See* Order 90-9-1, Appendix C at n.1. Pan American's Information Response, see Appendix C, III B, also should be served on the Judge and the parties no later than September 20, 1990.

[2] Because the Recommended Decision in the proceeding must be issued no later than February 19, 1991, no more than three weeks will be allotted (and hopefully less will be needed) for the hearing. If necessary, therefore, the hearing will include evening and Saturday sessions.

I encourage civic parties and public officials, as rule 14 participants, *see* 14 CFR 302.14, to offer written presentations without oral testimony * * * In any event, I expect the first day of the hearing to be the only day which will be set aside for oral presentations by rule 14 participants. Since this case will involve selection of gateways, I anticipate that some civic parties will file petitions to intervene. See 14 CFR 302.15. Although their testimony may be helpful, experience indicates that such presentations usually do not require extensive direct or cross-examination. All parties in the proceeding will be required to indicate in advance of the hearing which parties they intend to cross-examine. If no parties wish to cross-examine, the testimony will be received in evidence without oral testimony.

On or before September 17, 1990, the applicants and any putative intervening parties shall submit one copy to each other and three copies to the Judge of any proposed statement of issues, stipulations, and any proposals for changes in the evidence request contained in Appendix C to instituting order, 90-9-1, Docket 47149, served September 5, 1990.

Furthermore, at the prehearing conference the parties should be prepared to discuss means to expedite this case, including, but not limited to, the prohibition of advertising materials as part of exhibits, alignment of parties in interest, limits on direct and cross-examination, and admission of written testimony without a sponsoring witness.

Robert L. Barton, Jr.,

Administrative Law Judge.

[FR Doc. 90-21510 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47149]

U.S.-U.S.S.R. North Atlantic Combination Service Route Proceeding; Assignment of Proceeding

September 7, 1990.

This proceeding has been assigned to Administrative Law Judge Robert L. Barton, Jr. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50 room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 90-21511 Filed 9-12-90; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on Friday, September 28, 1990, from 9 a.m. to approximately 1 p.m. at USIA headquarters, 301 4th Street, SW., Conference room 800, Washington, DC. The meeting's agenda will consist of security and ethics briefings; a report by the U.S. Customs Service; and a report by Manuel Lopez, Director of the National Museum of El Salvador.

The Committee's meeting will be open to the public. Due to security requirements and limited space, persons wishing to attend should telephone the Cultural Property Staff at (202) 619–6612 by 5 p.m. on Wednesday, September 26. A list of public attendees will be posted at the security desk of USIA headquarters in order to facilitate access to the meeting room.

Dated: September 7, 1990.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 90–21559 Filed 9–12–90; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Installation of Selected Paintings from Italian Banks: Loans Supplementing the National Gallery's Collection" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural signficance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about September 26, 1990 to on or about November 11, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 10, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90–21674 Filed 9–12–90; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 178
Thursday, September 13, 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).

COMMISSION ON CIVIL RIGHTS

September 11, 1990.

DATE AND TIME: Friday, September 21, 1990, 9:00 a.m.–5:00 p.m.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of June Meetings
III. Announcements
  IRCA Update
IV. Indian Civil Rights Act Report
V. State Advisory Committee Reports
  Rights of the Hearing Impaired—Illinois
  Ageism Affecting * * * Older Workers—Vermont
VI. Staff Director's Report
  —FY 92 Budget
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 90–21818 Filed 9–11–90; 3:55 pm]

BILLING CODE 6335–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at approximately 2:30 p.m. (or immediately following the adjournment of the open meeting of the Board of Directors of the Resolution Trust Corporation which is scheduled for 2:00 p.m. on that same day) on Tuesday, September 18, 1990, to consider the following matter:

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would establish the criteria and standards the Corporation would use in calculating the minimum leverage capital requirement and in determining capital adequacy.

The meeting will be held in the Amphitheater of the RTC Building located at 801 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–3811.

Dated: September 11, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–21730 Filed 9–11–90; 2:11 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 18, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 20, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Advisory Opinions
1. AO 1990–10
  Carolyn F. Bigda on behalf of the Texas Air Corporation PAC
2. AO 1990–17
  Jim Swain on behalf of Conrad Burns/U.S. Senate
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90–21795 Filed 9–11–90; 2:44 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 36930, September 7, 1990.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: September 12, 1990–10:00 a.m.

CHANGE IN THE MEETING: Addition of Item to the open session of the meeting.

Subject: Middle East Bunker Fuel/War Risk Surcharges—Briefing

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90–21676 Filed 9–11–90; 2:09 pm]

BILLING CODE 6730–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 26, 1990, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: September 11, 1990.

M.J. Brodie,

Executive Director.

[FR Doc. 90–21726 Filed 9–11–90; 2:10 pm]

BILLING CODE 7630–01–M

Corrections

Federal Register
Vol. 55, No. 178
Thursday, September 13, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 84N-0153]
RIN 0905-AB68

Food Labeling; Definitions of the Terms Cholesterol Free, Low Cholesterol, and Reduced Cholesterol; Extension of Comment Period

Correction

In proposed rule document 90-19491 beginning on page 33923 in the issue of Monday, August 20, 1990, make the following correction:

On page 33924, in the first column, in the 14th line from the bottom of the page, "fatty" should read "final".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Na Pali Coast Plants: Hedyotis st. johnii (Na Pali Beach Hedyotis) and Schiedea apokremnos (Ma'oli'oli)

Correction

In proposed rule document 90-18167 beginning on page 31612, in the issue of Friday, August 3, 1990, make the following corrections:

1. On page 31613, in the first column, in the fourth line, replace "between Kaalahin and Manono ridges" with "between Kaaalahina and Manono ridges".

2. On the same page, in the same column, in the 13th line from the bottom, replace "and a large leafy calyx lobes" with "and large leafy calyx lobes."

3. On page 31614, in the second column, 21st and 22nd lines from bottom, replace "R. Hodby" with "R. Hobdy".

4. On the same page, in the third column, in lines 29 and 30 replace "if two species were listed as threatened or endangered" with "if the two species were listed as threatened or endangered".

5. On page 31615, in the first column, lines 18 and 19, under **Critical Habitat,** replace "Hedyotis Hedyotis st.-johnii" with "Hedyotis st.-johnii".

6. On the same page, in the second column, line 10, replace "requires Federals agencies" with "requires Federal agencies".

NOTE: For a Department of the Interior/ Fish and Wildlife Service correction to the document referenced in this correction, see the **PROPOSED RULES** section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for a Plant, Argyroxiphium kauense (Ka'u silversword)

Correction

In proposed rule document 90-18233 beginning on page 31860, in the issue of Monday, August 6, 1990, make the following corrections:

1. On page 31861, in the third column, seventh line from the bottom, replace "However, such activity is not minimal" with "However, such activity is now minimal".

2. On page 31862, in the first column, 12th line from the bottom, replace "Kahuka Ranch" with "Kahuku Ranch".

3. On the same page, in the second column, line 18, replace "A. kausense" with "A. kauense".

4. On the same page, in the third column, line 12, replace "Power 1986" and "E. Power" with "Powell 1986" and "E. Powell" respectively.

5. On page 31863, in the first column, lines 15 and 17, replace "Therefore, it would now be prudent to determine critical habitat for Argyroxiphium kauense" with "Therefore, it would not now be prudent to determine critical habitat for Argyroxiphium kauense."

6. On the same page, in the same column, lines 19 through 20, replace "Conservation measures provide to species listed as endangered" with "Conservation measures provided to species listed as endangered"; lines 38 through 39, replace "The protection required on Federal agencies"with "The protection required of Federal agencies"; 12th to 16th lines from the bottom, replace "on any action is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification or proposed critical habitat" with "on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat".

7. On the same page, in the second column, line 3, replace "privatey owned land" with "privately owned land"; lines 39 through 40, replace "because the species in uncommon" with "because the species is uncommon"; 5th and 6th lines from the bottom, replace "relevant data concerning any treat (or lack thereof) to this species" with "relevant data concerning any threat (or lack thereof) to this species".

8. On the same page, in the third column, line 6, replace "Current of planned activities" with "Current or planned activities"; 10th line from the bottom, replace "Element Occurance Record" with "Element Occurrence Record".

NOTE: For a Department of the Interior/ Fish and Wildlife Service correction the document referenced in this correction see the **PROPOSED RULES** section of this issue.

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federal register

Thursday
September 13, 1990

PART II

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1990; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and of Solicitation for Grant Applications.

SUMMARY: The Employment and Training Administration announces the availability of Job Training Partnership Act (JTPA) Title III discretionary national reserve funds for Program Year (PY) 1990 (July 1, 1990–June 30, 1991) for the delivery of dislocated worker services, and the procedures for making application in PY 1990. Applications will be accepted for five funding categories: Category I—Intrastate Dislocated Worker Projects; Category II—Multistate Dislocated Worker Projects; Category III—Indian Reservation Dislocated Worker Projects; Category IV—Emergency Dislocated Worker Projects; and Category v—Additional Financial Assistance to Formula-funded Programs and Activities Provided by State and Substate Grantees. Information is also provided regarding application procedures to be used for technical assistance and training grants, contracts and agreements which are also funded through the Title III national reserve account.

DATES: Applications will be accepted on an ongoing basis throughout the Program Year as the need for funds arises. Grant awards will be made during the Program Year in response to the applications received. There is no closing date for applications under this announcement. All applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds are available, however, and applications submitted too late for consideration under Program Year 1990 funding due to the review and processing time required will be automatically held over for Program Year 1991 funding consideration. Therefore, applicants are encouraged to submit applications as early as possible.

ADDRESSES: It is preferred that applications be mailed. Mail or hand-deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Dislocated Worker Grants—Barbara J. Carroll, Grant Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by Section 302(a)(2) of the Job Training Partnership Act (JTPA or the Act) (29 U.S.C. 1652(a)(2)), as added by Section 6302(a) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), Pub. L. 100–418, 102 Stat. 1107, 1525. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with JTPA and 20 CFR 631.61.

This program announcement consists of four parts. Part I provides the background and purpose of the discretionary funds reserved for the Secretary of Labor (Secretary) for activities under Section 323 of the Act. 29 U.S.C. 1662b. Part II describes the basic grant application process, which is relevant to all applications. Part III provides detailed guidelines for the preparation of each category of application, *i.e.*, Intrastate Dislocated Worker Projects, Multistate Dislocated Worker Projects, Indian Reservation Dislocated Worker Projects, Emergency Dislocated Worker Projects, and Additional Financial Assistance to Formula Funded Programs. The primary selection criteria used in reviewing each type of application is also included. Part IV provides information regarding applications for funding of Technical Assistance and Training grants, contracts and agreements. Any entity interested in submitting a discretionary proposal should carefully review Parts I, II and the subpart of Part III which is relevant to the type of proposal being submitted.

This program is listed in the "Catalogue of Federal Domestic Assistance" at No. 17–246 "Employment and Training Assistance—Dislocated Workers" (JTPA Title III Programs).

Table of Contents

JTPA Title III National Reserve Program Year 1990 Solicitation for Grant Applications

Part I. Background

A. Fund Availability

Funds available for Title III of JTPA for Program Year (PY) 1990 (July 1, 1990–June 30, 1991) total $463,603,000. Of this amount, $370,882,400 has been allotted by formula as prescribed in Section 302 (a) (1) of the JTPA and the remainder, $92,720,600 is available to be used by the Secretary pursuant to JTPA Section 322(a) for discretionary purposes,

including projects funded under this Notice.

B. Circumstances Under Which Services May Be Provided With National Reserve Funds

Services may be provided as described in JTPA Section 314 in the following circumstances:

(1) Mass layoffs, including mass layoffs caused by natural disasters or Federal Government actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(2) Industrywide projects;

(3) Multistate projects;

(4) Special projects carried out through agreements with Indian tribal entities;

(5) Special projects to address national and regional concerns;

(6) Demonstration projects;

(7) To provide additional financial assistance to programs and activities provided by States and substate grantees under part A of Title III; and

(8) To provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate. 29 U.S.C. 1652(a) (1), 1661c, and 1662b.

In addition, these funds may be used for emergency assistance to a distressed industry or area as determined by the Secretary with the agreement of the Governor.

C. Department of Labor Policy and Program Emphasis

Pursuant to JTPA Section 322(a)(3), the discretionary funds reserved by the Secretary shall be allocated in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes effective use of funds. 29 U.S.C. 1662a(a)(3).

Projects and activities funded pursuant to Section 323 (29 U.S.C. 1662b) shall be subject to the Act and regulations with the exception of the cost limitations (which may, at the Secretary's discretion, be varied for a particular grant or project) and the performance standards. In addition, attention is called to:

- Section 141(c) (29 U.S.C. 1551(c)) regarding restrictions on services to assist in the relocation of an establishment, and
- The Department of Labor (USDOL) policy regarding requirements for acceptable fixed-unit-price, performance based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989).

Title III national reserve funds shall not be considered as an ongoing source of funds for existing centers or other permanent arrangements. For this reason, it is a general policy that the Department will not refund previously funded (by State or national reserve Title III) projects, except under extraordinary circumstances.

In addition, in the case where an existing JTPA substate area grantee is the proposed project operator, it is important to note that national reserve funds are not intended to subsidize the grantee's on-going operations. Only those additional expenses directly attributable to the grant target population which are over and above those service costs associated with the regular Title III "formula" grant formula program may be charged to the project.

The need for national reserve funds must be sufficiently warranted that:

(1) These needs cannot be met by JTPA programs and funds currently within the State, or other State and local resources, and

(2) Substantial numbers of individuals concentrated in a substate area (as defined at 20 CFR 631.34), labor market area, region or industry are affected. In the case of Intrastate, and Multistate project applications, the threshold for determining that a "substantial" number of workers have been affected is the same as that used to define a "substantial layoff" at 20 CFR 631.2 of the JTPA regulations. The State may also apply for assistance for workers dislocated from small and medium-sized companies within a single State where the Governor has determined they constitute a substantial proportion of the local economic base as described at 20 CFR 631.30(b) of the JTPA regulations.

Eligible dislocated workers shall be those described in Section 301(a) of the Act. 29 U.S.C. 1651(a). Special emphasis will be placed on those workers who "are unlikely to return to their previous industry or occupation."

Because the Department recognizes the need for early intervention, proposals will be considered on a timely basis and every effort will be made to respond within 45 days of the Department's receipt of a proposal.

Generally, funds will be distributed as discussed in this notice. However, the Secretary reserves the right to distribute some of these funds taking into consideration special circumstances and unique needs that may arise throughout the course of the program year. If applications of acceptable quality that meet the guidelines and selection criteria are insufficient to exhaust the Title III national reserve account authorized funding level, the Department will take actions it considers appropriate and may return the remaining national reserve funds to the United States Treasury.

Part II. The Basic Application Process

A. Funding Considerations

I. Identification of dislocated workers.

a. Dislocated workers eligible to be provided services with national reserve funds are defined as individuals who meet the definition set forth in Section 301(a) of the Act. 29 U.S.C. 1651(a). The dislocated workers to be served must be specifically identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (Section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", *i.e.*, those least likely to be recalled, those with the least transferrable skills, those with the most barriers to other employment opportunities such as poor reading or math skills. They should also indicate that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources such as the State Employment Service.

2. Dislocated Worker Project applications selected for funding will generally be those which define the need precisely, *i.e.*,

a. Specify groups of dislocated workers, industries or plants, occupations and geographic areas;

b. Link training and placement services with specific local demand occupations;

c. Demonstrate a timely response to the target group's employment and training needs for such services; and

d. Are cost-effective in terms of services to be provided and results to be achieved.

3. Priority consideration will be given to applications focusing on services to workers who "are unlikely to return to their previous occupation or industry" with particular emphasis on those requiring and wanting retraining for occupations determined to be in demand in the local economy.

B. Screening and Review of Applications

1. Screening requirements. All applications will be screened to determine completeness and conformity to the application guidelines and any other requirements contained in this announcement.

In order for an application to be in conformance, it must include the following:

a. A transmittal letter from the Governor or authorized representative, or other authorized signatory containing the required assurances.

b. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. A detailed line item budget for and according to the applicable cost categories found at 20 CFR 631.13 of the JTPA Title III regulations.

d. Project narrative. The narrative portion of the application including attachments shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. A certification regarding "Drug-Free Workplace" (codified at 29 CFR 98), except in the case where the applicant is a State and has already submitted its annual certification to the USDOL Grant Officer for JTPA. These requirements apply only to the Federal grant applicant. The "Certification for A Drug-Free Workplace" form is found in Appendix A.

f. A certification regarding "Debarment, Suspension and Other Responsibility Matters, Primary Covered Transactions", except those transactions pursuant to national or agency recognized (DOL) emergencies or disasters, as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510, "Participants' responsibilities." This certification form is found in Appendix B.

g. A certification regarding "Lobbying", as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in Appendix C.

2. Complete, conforming applications will then be reviewed and evaluated based on the selection criteria and the availability of funds.

C. Information and Reporting Requirements

1. By accepting a grant, the grantee agrees that it shall maintain and make available to the Department of Labor upon request, information on the operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants and cumulative expenditures.

2. Reports. The grantee shall submit to the Employment and Training Administration, an original and two copies of

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205–0274).

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205–0274).

Part III. Specific Application Requirements

A. Category I—Intrastate Dislocated Worker Projects

An application for an Intrastate Dislocated Worker Project, *i.e.*, within a single State, must comply with the following requirements:

1. *Eligible grant applicants.* The eligible grant applicants for such a project are the States and territories of the United States (including the District of Columbia, Puerto Rico, the Freely Associated States of the Republic of Marshall Islands and the Federated States of Micronesia, and the Trust Territory of the Republic of Palau) as represented by the governor-designated, State JTPA grant recipient or grant administering agency under the Federal-State, Governor-Secretary Agreement.

2. *Eligible project operators.* Eligible subgrantees who may operate such a dislocated worker project include but are not limited to State agencies, JTPA Title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; private-for-profit organizations and Indian tribal entities.

3. *Submission of applications.* Applications for Intrastate Dislocated Worker Projects must be submitted to the Department of Labor by the Governor or the State JTPA agency accompanied by the assurances listed below from the authorized signatory. Such applications submitted by other entities shall not be considered for funding.

4. *Required assurances.* a. Applications submitted by, or through, the substate grantee and the State shall be transmitted with a letter from the Governor or authorized JTPA signatory containing the following paragraphs:

If the proposed project is funded, any Title III funds awarded from funds reserved by the Secretary shall be administered in accordance with the proposal and amendments approved by the Grant Officer, and consistent with the letter signed by the U.S. Department of Labor Grant Officer accompanying the grant award.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

The State agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

Following receipt of the grant approval, the State will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State will provide additional information explaining the projected implementation date.

The State agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

Based on the State's oversight authority, the State agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

5. *Review and coordination requirements.* a. The Governor and substate area grantee. The Governor and substate area grantee must include comments regarding the proposed project with respect to the availability of State and substate formula funds, experience of the program operator in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project. These comments shall be forwarded by the Governor or authorized signatory at the time of submission.

b. Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

c. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for *each* union representing at least 20 percent of the affected workers.

6. *Application content.* Following are the areas to be addressed and information to be provided in each grant

application submitted for JTPA Title III national reserve funds. It is strongly recommended that grant applicants follow the format and sequence presented.

a. Period of Performance: Applications should cover a period of time generally not to exceed 18 months. Applications for periods in excess of 18 months may be submitted with information supporting the need for the additional period. No grant funds awarded may be used to reimburse project expenditures incurred prior to the date authorized in the grant award letter.

b. Period of Award: Generally, awards will be made for an 18-month period to allow for project start-up, operation, and phasedown.

c. Synopsis of the Project to serve dislocated workers. A short summary of the pertinent facts regarding the project that includes the following:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location (city, county); (3) The planned starting and ending dates of the project;

(4) The total amount of Title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the counties and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

d. The Project Narrative must address the following elements:

(1) Target Group Identification. A description of the need for a project to serve the target group and an explanation of how this need was determined. The description should include:

(a) The industry(ies) affected;

(b) The schedule for layoff(s) and/or closing(s);

(c) The number of individuals likely to participate in the program, taking into consideration:

(i) The total number of individuals affected by specific occupations and the wage levels for each occupation;

(ii) The number of individuals eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their occupational skills;

(iii) The number of individuals likely to retire;

(iv) The number of individuals likely to transfer;

(v) The number of individuals likely to be recalled; (vi) The number of individuals who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information should be provided to show how the proposed operator determined the number of individuals who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (*i.e.*, current survey of affected workers, unemployment insurance (UI) data, *etc.*).

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the State and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the City and State to which the plant will be relocated shall be provided.

(2) Why the need cannot be met by existing resources. A statement of why the need cannot be met by existing Federal, State and local resources. The statement should indicate why the proposed project was not funded with State or substate grantee Title III funds.

(a) The status of fund availability for both the State's Title III formula program and discretionary awards, including total obligations and expenditures from available Title III funds against total availability shall be provided. This information should be through the end of the quarter prior to the subject application. Where a substate grantee will operate the proposed program, the same information regarding fund availability, obligation and expenditure of substate formula funds, as well as any discretionary national reserve funds, shall be provided.

(b) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated should be provided. A statement shall be provided, pursuant to section 141 (b) and (h) of JTPA, that the project operator will ensure that duplication of services does not occur. 29 U.S.C. 1551(h).

(c) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be noted.

(3) Labor market employment opportunities.

All applications must contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be trained, retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State or Substate Area is the least acceptable approach to providing this information. Current local information, including special employer surveys, should be submitted.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) Coordination and linkage.

In addition to the applicable review and coordination requirements described in paragraph III.A.5. above, all applications for funds will be required to:

(a) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to:

(i) The local Substate Area Grantee(s),

(ii) Veterans' programs (including JTPA) available in the area,

(iii) The State Employment Service, including the Trade Adjustment Assistance (TAA) program, if appropriate,

(iv) The Unemployment Compensation System, to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations,

(v) The Pell Grant program, and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, TAA, or special appropriations are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

(5) Description of services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant.

(b) Basic Readjustment Services (JTPA section 314 (c); 29 U.S.C. l661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 7th grade level);

(c) Retraining services (JTPA Section 314(d); 29 U.S.C. l661c(d)). Describe the training to be provided, including the types and lengths of training for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training (Note: National reserve funds will not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products, general employee upgrading, etc.);

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA Section 314(e); 29 U.S.C. 166lc(e)); and

(6) Implementation plan.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of participants should normally occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided should be included.

(b) Quarterly implementation data showing the following projected cumulative data:

(i) Enrollments for each major activity—assessment, job search assistance, classroom remedial education training, skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) Planned outcomes. Project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) Financial and management capability. Except where the actual project operator will be the State or the substate grantee, a description of the fiscal and management capabilities of the prospective project operator should include: (Limit to no more than two pages.)

(a) Background description of how the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering such programs.

(c) The capability to maintain and report as necessary required fiscal and management information.

(9) Detailed line item budget.

(a) Costs for each item shall be allocated under administration, basic readjustment services, retraining, needs-related payments and supportive services cost categories as classified in 20 CFR 631.13.

(i) Line items include but are not limited to: facilities, equipment, supplies, staffing and fringe benefits (by position and percentage of time working on the project), job search assistance, classroom vocational skill training, on-the-job training, remedial education, counseling, transportation assistance, child care, relocation assistance, and needs-related payments.

(ii) In the case of an Intrastate Project, where the State is not the project operator, the State may reserve 1½ percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. State administrative costs requested that are above this established set aside must be accompanied by a justification showing the projected person-hours and functions to be performed.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. The general intent of the limitations should be reflected in the allocation of the budget. The Secretary will decide, in the grant award, whether and to what extent the cost limitations apply.

7. *Selection Criteria.* Grant applications for JTPA Title III national reserve funds will be evaluated and selected for funding based on the following:

a. *Overall criteria* (JTPA Section 322 (a)(3); 29 U.S.C. 1662b(a)(3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

(1) Efficiently targets resources to areas of most need,

(2) Encourages a rapid response to economic dislocations, and

(3) Promotes the effective use of funds.

b. *Application Review.* (1) Applications will be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where—

(a) Other available applications appear to be more effective in achieving the goals of Title III, or

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal, or

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided.

c. *Additional specific criteria for evaluation and selection of applications for Intrastate Dislocated Worker Projects.* (1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for

layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the scope of a natural disaster, the projected short- and long-term effect of events on unemployment).

(2) Target Group. The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments by the Governor or other interested parties regarding the application submitted.

d. *Funding mechanisms.* (1)(a) In the case of an Intrastate Dislocated Project the Department will issue a Notice of Obligation (NOO) of Title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(b) A grant award letter containing the general specifications expected as a condition of the grant will accompany the NOO.

(c) The Act, regulations, grant award letter, grant application, assurances and any amendments approved will govern the operation of the project.

(2) Unless otherwise directed in the grant award letter, the effective date for the use of the funds will be the date of the Notice of Obligation accompanying the grant award letter and no costs may be incurred prior to this date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

(3) Instructions regarding Grant Amendments required due to changes in circumstances after the grant award will be transmitted in a separate document.

B. Category II—Multistate Dislocated Worker Projects

An application for a Multistate (including regionwide, national or industrywide) Dislocated Worker Project must comply with the following requirements:

1. *Eligible grant applicants and project operators.* Applications may be submitted by, but are not limited to, State agencies, local public agencies such as community colleges or area vocational schools, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, industry-sponsored associations, and private-for-profit organizations.

All entities may not be appropriate applicants for this grant category. Applicant entities must be an appropriate agency given the nature and extent of the proposed project.

2. *Submission of applications.* a. In the case of Multistate projects, applications shall be submitted directly to the Grant Officer accompanied by the required certifications (Appendices A, B, and C to this notice) and with the assurances listed below from the authorized signatory for the applicant.

b. The application will not be accepted for consideration unless the applicant can demonstrate that there has been a series of mass layoffs affecting a minimum of 100 workers per site in at least 2 States with a minimum of 2 distinct separate subsites planned for the project.

3. *Required assurances.*

a. Applications for multistate, regionwide, and industrywide projects for dislocated workers shall be transmitted with a letter from the proposed grantee containing the following assurances:

If the proposed project is funded, Title III funds awarded from funds reserved by the Secretary shall be administered by the grantee in a manner consistent with the Act and JTPA regulations, and in accordance with provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the U.S. Department of Labor Grant Officer.

The proposed Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Grantor as requested.

The proposed grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

Following receipt of the grant approval, the proposed grantee will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee will provide additional information explaining the projected implementation date.

b. Project proposals not accompanied by these required assurances will not be accepted for review.

4. *Application Content.* Following are the areas to be addressed and information to be provided in each grant application submitted for JTPA Title III national reserve funds. It is strongly recommended that grant applicants follow the format and sequence presented.

a. Period of performance: Applications should cover a period of time generally not to exceed 18 months. Applications for periods in excess of 18 months may be submitted with information supporting the need for the additional period.

b. Period of award: Generally, awards will be made for an 18-month period to allow for project start-up, operation, and phasedown.

c. Synopsis of the project. A short summary of the pertinent facts regarding the project that includes the following:

(1) The name and address of the project operator along with the name

and telephone number of a contact person for the project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of Title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the project operator.

d. The Project Narrative shall address the following elements:

(1) Target group identification. A description of the need for a project to serve the target group and an explanation of how this need was determined shall be included. The description shall include:

(a) Applicants for Multistate projects shall demonstrate that the subject industry's or company's employment is declining and there are poor prospects for reemployment in a similar occupations or industry based on any combination of the following data: labor turnover, Employment Service vacancy data, labor market conditions in the States with industry facilities, and production trends, or that the Secretary has determined the industry to be depressed based on data available to the Federal Government.

(b) The schedule for layoff(s) and/or closing(s).

(c) The number of individuals likely to participate in the program, taking into consideration:

(i) The total number of individuals affected by specific occupations and the wage levels for each occupation;

(ii) The number of individuals eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment service agency, based on their occupational skills;

(iii) The number of individuals likely to retire;

(iv) The number of individuals likely to transfer;

(v) The number of individuals likely to be recalled; Applicants must certify that recall within the next 12 months is highly unlikely for the majority of affected workers.

(vi) The number of individuals who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information should be provided to show how the proposed operator determined the number of individuals who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers (*i.e.*, survey of affected workers, UI data, *etc.*).

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated should be provided.

(2) Why the need cannot be met by existing resources. A statement of why the need cannot be met by existing Federal, State and local resources. The statement should indicate why the proposed project was not funded with State or Substate Area grantee Title III funds.

(a) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated should be provided. A statement shall be provided, pursuant to Section 141(h) of JTPA, that the project operator will ensure that duplication of services does not occur. 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve these workers.

Note: TAA eligibility may vary by subproject site and must be addressed on a site by site basis.

(b) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included. When applicable, severance pay arrangements should be addressed.

(3) Labor market employment opportunities. All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be trained, retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State(s) of substate areas is the least acceptable approach to providing this information. Current local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market in which training and/or placement will occur.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) Coordination and linkage.

(a) Governors and substate grantees. Applications shall include evidence that the Governor of each State and the appropriate Title III grantee of each substate area in which a project site is proposed have been informed of such an application and given an opportunity to comment on the proposed project as it would affect workers in the State or substate area.

Letters from the appropriate Governors and substate grantees shall be included to document that the opportunity was provided for review and comment of the application. Each Governor's letter should indicate why the State has not funded the proposed subproject for that State. The substate area grantee letter should indicate why the substate grantee is unable to provide sufficient services to the proposed subproject in the substate area, as well as a description of the funding and assistance it will provide to the subproject.

(b) Private industry council (PIC)/ local elected official (LEO). All grant applications shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comments.

(c) Labor/Organizations. All applications for dislocated workers projects where a substantial number (at least 20 percent) or affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers. Describe the involvement if any) of organized labor in the development and operation of the proposed project activities.

(d) Other. All applications shall show that the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to;

(i) The local substate grantee(s),

(ii) Veterans' programs (including JTPA) available in the area;

(iii) The State Employment Service, including the Trade Adjustment Assistance (TAA) program, if appropriate;

(iv) The Unemployment Compensation System to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;

(v) The Pell Grant program; and

(vi) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, TAA, or special appropriations are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration Section 141(b) of the Act.

(5) Description of services. All applications shall include the description of services to be provided:

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant.

(b) Basic readjustment services (JTPA Section 314 (c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 7th grade level).

(c) Retraining services (JTPA Section 314(d); 29 U.S.C. 1661c(d)). Describe the training to be provided, including the types and lengths of training for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training (Note: National reserve funds will not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, *etc.*

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA Section 314(e); 29 U.S.C. 1661c(e)).

(6) Implementation plan.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation shall be submitted with the application. Enrollment of participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided should be included.

(b) Quarterly implementation data showing the following projected cumulative data for the overall project and for each subproject site:

(i) Enrollments for each major activity—assessment, job search assistance, classroom skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) Planned outcomes. Project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) Financial and management capability. Except where the actual project operator will be the State or the substate grantee, a description of the fiscal and management capabilities of the prospective project operator including how the prospective project operator (or the division which will have responsibility for this project) is or will be organized. (Limit to no more than two pages.)

(a) Current or previous relevant experience in providing services to dislocated workers or in administering such programs.

(b) The capability to maintain and report as necessary required fiscal and management information.

(9) A Detailed line item budget.

(a) Costs for each item shall be allocated under Administration, Basic Readjustment Services, Retraining, Needs-related Payments and Supportive Services cost categories as classified in 20 CFR 631.13. Line items include but are not limited to: facilities, equipment, supplies, staffing and fringe benefits (by position and percentage of time working on the project), job search assistance, classroom vocational skill training, on-the-job training, remedial education, counseling, transportation assistance, child care, relocation assistance, and needs-related payments.

(b) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. The general intent of the limitations should be reflected in the allocation of the budget. The Secretary will decide, in the grant award, whether and to what extent the cost limitations apply.

(c) Where national reserve funds will be combined with funds from other sources—the employer, union training funds, State formula-allotted funds, State vocational education, or economic development funds, *etc.*—the budget should indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

5. *Selection Criteria.* Grant applications for JTPA Title III national reserve funds will be evaluated and selected for funding based on the following:

a. *Overall criteria.* The overall criteria (JTPA Section 322(a)(3); 29 U.S.C. 1662b(a)(3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

(1) Efficiently targets resources to areas of most need,

(2) Encourages a rapid response to economic dislocations, and

(3) Promotes the effective use of funds.

b. *Application Review.* (1) Applications will be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where—

(a) Other available applications appear to be more effective in achieving the goals of Title III;

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal; or

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided.

c. *Additional specific criteria for evaluation and selection of applications for Multistate Dislocated Worker Projects.* (1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate).

(2) Target group. The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including State/substate Title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application submitted by the Governor or other interested parties.

6. *Funding mechanism.* a. (1) In the case of an award to an existing State JTPA grantee, the grant officer will issue an award letter and Notice of Obligation. For others, an appropriate grant document shall be executed by the USDOL Grant Officer and the grant applicant's official signatory.

(2) The Act, regulations, grant award letter/agreement, grant application, assurances and any amendments approved shall govern the operation of the project.

b. The effective date for the use of the funds shall be the date of the grant award letter or grant agreement and no costs may be incurred prior to this date. The authority to expend funds immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker.

c. Instructions regarding grant amendments required due to changes in circumstances after the grant award will be transmitted in a separate document.

C. *Indian Reservation Dislocated Worker Projects.* An application for a dislocated worker project on an Indian reservation shall comply with the following requirements:

1. *Eligible grant applicants.* In the case of dislocation events affecting American Indians on an Indian reservation, tribal entities shall be eligible grant applicants.

2. *Eligible project operators.* Indian tribal entities may, in turn, contract with appropriate entities to administer the delivery of employment and training services to project participants.

3. *Submission of application and required assurances.* Applications for dislocated worker projects to operate on Indian reservations shall be submitted directly to the Grant Officer accompanied by the appropriate certifications (see Appendices A, B, and C to this notice) and by the following assurances:

If the proposed project is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the Act and JTPA regulations, the proposal and amendments approved by the Grant Officer, if any, and shall be consistent with the grant document signed by the Department of Labor Grant Officer.

The Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

Following receipt of the grant approval, the Grantee will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee will provide additional information explaining the projected implementation date.

4. *Application Content.* Following are the areas to be addressed and information to be provided in each grant application submitted for JTPA Title III national reserve funds. It is strongly recommended that grant applicants follow the format and sequence presented.

a. *Period of Performance.* Applications should cover a period of time generally not to exceed 18 months. Applications for periods in excess of 18 months may be submitted with information supporting the need for the additional period.

b. *Period of Award.* Generally, awards will be made for an 18-month period to allow for project start-up, operation, and phasedown.

c. Synopsis of the project to serve dislocated workers. A short summary of the pertinent facts regarding the project shall be submitted, including the following:

(1) The name and address of the project operator along with the name and phone number of a contact person for the project operator;

(2) The project location (Indian reservation);

(3) The planned starting and ending dates of the project;

(4) The total amount of Title III national reserve funds requested;

(5) The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

(6) The date(s) of employment termination and the number of workers affected;

(7) The name of the Indian reservation on which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;
(11) The planned cost per entered employment; and
(12) The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

d. The Project Narrative shall address the following elements:

(1) Target group identification. A description of the need for a project to serve the target group and an explanation of how this need was determined. An application by an Indian tribal entity for funds for a dislocated worker project shall be based upon a specific plant closure or mass layoff that has occurred within the past year. The facility involved must be located on an Indian reservation. The description should include:

(a) The industry(ies) affected;
(b) The schedule for layoff(s) and/or closing(s);
(c) The number of individuals likely to participate in the program, taking into consideration:
(i) The total number of individuals affected by specific occupations and the wage levels for each occupation;
(ii) The number of individuals eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, or other entities, such as the Bureau of Indian Affairs, based on their occupational skills;
(iii) The number of individuals likely to retire;
(iv) The number of individuals likely to transfer;
(v) The number of individuals likely to be recalled;
(vi) The number of individuals who posses locally transferable skills and, therefore, will find other employment with minimal assistance; and
(vii) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information should be provided to show how the proposed operator determined the number of individuals who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers.

(d) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(e) The economic conditions for the reservation and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(f) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and State to which the plant will be relocated should be provided.

(2) Why the need cannot be met by existing resources. A statement of why the need cannot be met by existing Federal, State and local resources. The statement should indicate why the proposed project was not funded with State or substate grantee JTPA Title III funds or Title IV funds.

(a) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a description of how TAA resources and national reserve grant funds will be coordinated should be provided. A statement shall be provided, pursuant to Section 141(h) of JTPA, that the project operator will ensure that duplication of services does not occur. 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve these workers.

(b) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included.

(3) Labor market employment opportunities.

All applications shall contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be trained, retrained or placed. The discussion shall include the following:

(a) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State is the least acceptable approach to providing this information. Local information, including special employer surveys, should be provided.

(b) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market for placement.

(c) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

(4) Coordination and linkage.

Each application for funds shall:

(a) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities. Each application for dislocated worker project where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

(b) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs, including, but not limited to:

(i) The JTPA grantee(s), especially the Title IV grantee;
(ii) Veterans' programs (including JTPA) available in the area;
(iii) The State Employment Service, including the Trade Adjustment Assistance (TAA) program, if appropriate;
(iv) The Unemployment Compensation System, to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations;
(v) The Pell Grant program; and
(vi) Other appropriate local program resources.

In those instances where JTPA Title IV or Bureau of Indian Affairs funds, as well as other Federal funds, such as vocational education, economic development, TAA, or special appropriations, are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration Section 141(b) of the Act.

(5) Description of services.

(a) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant.

(b) Basic readjustment services (JTPA Section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other basic readjustment activities will be

coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 7th grade level); (c) Retraining services (JTPA Section 314(d); 29 U.S.C. 1661c(d)). Describe the training to be provided, including the types and lengths of training for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training (Note: National reserve funds will not be provided to substitute for such activities as the employers traditional training responsibility associated with model changes, the introduction of new products general employee upgrading, *etc.*).

(d) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA Section 314(e); 29 U.S.C. 1661c(e)).

(6) Implementation plan.

(a) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation shall be submitted with the application. Enrollment of participants normally should occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided should be included.

(b) Quarterly implementation data showing the following projected cumulative data:

(i) Enrollments for each major activity—assessment, job search assistance, classroom skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(7) Planned outcomes. Project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(8) Financial and management capability. A description of the fiscal and management capabilities of the prospective project operator should include: (Limit to no more than two pages.)

(a) Background description of how the prospective project operator is or will be organized.

(b) Current or previous relevant experience in providing services to dislocated workers or in administering such programs.

(c) The capability to maintain and report as necessary required fiscal and management information.

(9) A detailed line item budget.

(a) Costs for each item shall be allocated under Administration, Basic Readjustment Services, Retraining, Needs-related Payments and Supportive Services cost categories as classified in 20 CFR 631.13. Line items include, but are not limited to: facilities, equipment, supplies, staffing and fringe benefits (by position and percentage of time working on the project), job search assistance, classroom vocational skill training, on-the-job training, remedial education, counseling, transportation assistance, child care, relocation assistance, and needs-related payments.

(b) Where national reserve funds will be combined with funds from other sources—the employer, union training funds, JTPA Title IV allotted funds, State vocational education, or economic development funds, *etc.*—the budget should indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

(c) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. The general intent of the limitations should be reflected in the allocation of the budget. The Secretary will decide, in the grant award, whether and to what extent the cost limitations apply.

5. *Selection Criteria.* Grant applications for JTPA Title III national reserve funds will be evaluated and selected for funding based on the following:

a. *Overall criteria.* The overall criteria (JTPA Section 322(a) (3); 29 U.S.C. 1662b (a) (3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

(1) Efficiently targets resources to areas of most need;

(2) Encourages a rapid response to economic dislocations; and

(3) Promotes the effective use of funds.

b. *Application Review.* (1) Applications will be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where—

(a) Other available applications appear to be more effective in achieving the goals of Title III, or

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal.

c. *Additional specific criteria for evaluation and selection of applications for Indian reservation dislocated Worker Projects.* (1) Severity of need. The severity of the circumstances and need as described in the grant application (*e.g.* the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the reservation, local and State unemployment rates compared to the national rate).

(2) Target group. The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities JTPA Title IV activities, and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost effectiveness. The cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools,

etc. The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Other considerations. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(8) Comments regarding the application received by the Grant Officer.

6. *Funding mechanisms.* a. (1) A grant agreement will be executed by the USDOL grant officer and the grant applicant's signatory official.

(2) The Act, regulations, grant document, grant award letter and any approved amendments shall govern the operation of the project.

b. The effective date for the use of the funds shall be indicated in the grant document and no costs may be incurred prior to this date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated worker.

c. Instructions regarding grant amendments required due to changes in circumstances after the grant award will be transmitted in a separate document.

D. Category IV—Emergency Dislocated Worker Proiects

There are two basic types of emergency dislocated worker projects. One involves unexpected mass layoffs including plant shutdowns that create emergency situations. Such layoffs include those created as a result of government action. The second involves an emergency (and generally short-term layoffs) caused by a natural disaster.

The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a natural disaster constitutes as emergency requiring emergency assistance with funds under JTPA Section 302(a)(2) to those areas that are distressed as a result of the natural disaster. 29 U.S.C. 1652(a)(2). Under such circumstances, the Secretary, with the Governor(s) of the principal State(s) affected, may determine to mount special programs to demonstrate that Title III funds can be used to assist the affected communities in a response that will enable workers to return to employment as soon as possible.

A principal strategy in this approach would be to develop special temporary jobs that would inure to the public benefit. Such jobs shall be in public or private non-profit agencies for up to six months duration to assist in community repairs and cleanup, to enable resumption of regular employment. It is in the interest of the public and affected individuals that these jobs be filled as rapidly as possible. These jobs are to be filled consistent with Section 301(a) of the Act. 29 U.S.C. 1651(a). Therefore, for purposes of eligibility for emergency jobs under these special programs, individuals who have become unemployed because of the natural disaster, shall meet the eligibility requirements.

An application for an Emergency Dislocated Worker Project shall be accompanied by the required certifications (See Appendices A and C to this notice) and comply with the following requirements. Basically, the information for both types of emergency applications is the same. The following requirements specifically indicate where different information must be provided.

1. The determination that a situation or set of circumstances has resulted in a distressed area or industry which is appropriate for emergency funding may be initiated by either the Governor of the State where the emergency exists or by the Secretary.

2. The eligible grant applicants for such projects are the States and territories of the United States (including the District of Columbia, Puerto Rico, the Freely Associated States of the Republic of Marshall Islands and the Federated States of Micronesia, and the Trust Territory of the Republic of Palau) as represented by the governor designated, State JTPA grant recipient or grant administering agency under the Federal-State, Governor-Secretary Agreement.

3. Eligible subgrantees which may operate such a dislocated worker project include, but are not limited to, State agencies, JTPA Title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; and private-for-profit entities.

4. *Assurances.* a. Applications shall be transmitted with a letter from the Governor or authorized JTPA signatory containing the following paragraphs:

If the proposed project is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the proposal and amendments approved by the Grant Officer, if any, and consistent with the letter signed by the Department of Labor Grant Officer accompanying the grant award.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

The State agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

Following receipt of the grant approval, the State will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State will provide additional information explaining the projected implementation date.

The State agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

5. *Content of an application for emergency funds.* Emergency grants shall be funded following a two-step process. The first step shall be an initial request for funds which will contain relevant, but limited information. The second step will be the fully documented proposal required for discretionary funds.

a. *Initial Request.* The State's initial request for funding should be brief and provide the following information (a written request, which may be submitted by telefacsimile (fax), must be on file before funds may be released):

(1) An explanation of the circumstances requiring the emergency funds;

(2) The areas to be served by the grant;

(3) A brief assessment of the need;

(4) An estimate of the number of individuals impacted by the emergency;

(5) A brief summary of the activities to be conducted; these activities must be allowable under section 314 of the Act, 29 U.S.C. 1661c; in the case of a natural disaster, temporary job creation may be permitted as a demonstration program under section 324 of the Act (see 29 U.S.C. 1662(c), as discussed above); wages paid for any temporary jobs created shall meet the requirements set forth in section 142(a)(3) of the Act, 29 U.S.C. 1552(a)(3);

(6) An estimate of the number of participants to be served by the emergency grant request; participants shall be eligible pursuant to the definitions set forth at JTPA section 301(a). 29 U.S.C. 1661(a);

(7) The total amount of funds requested; where an emergency request is approved, the Department will immediately release up to one-third of the total funds approved for the emergency to the State; and

(8) The State shall assure that no other JTPA, Federal, or local funds are available to meet the identified need.

b. The Department shall review the material required to be submitted for an initial request and, based on that information and other information available to the Department, a decision whether to fund the emergency project will be made.

c. *Project plan.* A fully documented project plan submitted by the State must have been approved by the USDOL before the remaining balance of the approved grant amount will be allocated to the State.

(1) A fully documented proposal regarding an emergency which has not resulted from a natural disaster shall include the same items required for a dislocated worker project application as enumerated in the content of an Intrastate Dislocated Worker Project (see paragraph III.A.6 above).

(2) The fully documented proposal for a natural disaster emergency to conduct only short-term emergency activities shall include:

(a) A period of performance not to exceed 6 months.

(b) A substantive description of the nature and extent of the problem in the State with an estimate of the number of individuals affected, including the geographic location of the emergency circumstances, the area where services and activities will be conducted, if different from the location of the emergency circumstances, and the projected immediate recovery period.

(c) A description of how the State will identify and recruit individuals to be served under the project, and the total number of individuals to be served.

(d)(i) A description of the types of services to be provided and the numbers of individuals to receive various services under the short-term emergency response. This includes the number of individuals to be provided temporary jobs, the types and location of temporary jobs, a statement that the workers are authorized to perform the temporary jobs, the wages (or wage range) to be paid in major job categories, and a description of the employers for such jobs with any criteria the State uses in selecting such employers. To the extent that regular employees of the employing unit (*e.g.*, unit of government utilizing the emergency JTPA funds) have the authority to do this work, then so do the employees hired with the emergency funds.

(ii) A description of how the State will select individuals to fill any temporary jobs.

(iii) A monthly implementation schedule for each of the activities to be conducted.

(e)(i) Identification of the entity in the State that will be responsible for the overall administration of the emergency project.

(ii) A description of and schedule for the monitoring plan of the project and the steps that will be taken to ensure the integrity of project activities.

(f)(i) A line-item budget for JTPA national reserve funds by major activities that specifically reflects staff and other costs to be supported by the award in each of the cost categories. The title III cost categories—administration, basic readjustment services, retraining, and participant support services including needs-related payments—shall be used in the proposal. Expenditures on temporary jobs for participants are to be included under the cost category of retraining-natural disaster. The title III cost limitations on administration and needs-related payments/supportive services shall apply.

(ii) A description of the relationship between JTPA funds and any other funds which may be available.

(g)(i) The reporting of JTPA funds and activities shall reflect the budget categories and activities contained in the approved project proposal.

(ii) The State shall submit a detailed report of the project within 45 days of the end of the project.

(iii) The State also shall provide brief monthly cumulative reports on the number served, total expenditures and the number of monitoring visits conducted. These reports shall be submitted on the 10th of the month for the previous month.

(h) The State shall assure that it will monitor on a regular basis and provide technical assistance to each subgrantee to ensure that:

(i) The objectives of the program will be met;

(ii) The jobs created will be consistent with jobs specified by subgrantees;

(iii) Time and attendance records will be accurate; and

(iv) The subgrantee is managing and operating its programs in accordance with the Act, JTPA and other applicable regulations, and the provisions, terms, and conditions of the emergency grant.

(3) Documentation in support of each emergency request, accompanied by a complete application for any balance of the available national reserve grant funds, shall be submitted within 60 days of receipt of emergency funds, unless the Governor and the Secretary have agreed to a different time frame.

6. *Selection Criteria.* Grant applications for JTPA Title III national reserve emergency funds shall be evaluated and selected for funding based on the following:

a. *Overall criteria.* The overall criteria (JTPA Section 322 (a)(3); 29 U.S.C. 1662b(a)(3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

(1) Efficiently targets resources to areas of most need;

(2) Encourages a rapid response to economic dislocations; and

(3) Promotes the effective use of funds.

b. *Application Review.* (1) Applications shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(2) Applications may be rejected where—

(a) Other available applications appear to be more effective in achieving the goals of JTPA title III;

(b) The information required is not provided in sufficient detail to permit adequate assessment of the proposal; or

(c) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided.

c. A fully documented application for an emergency dislocated worker project other than in response to a natural disaster will be reviewed using the same selection criteria as those used for other title III national reserve Intrastate Projects. See paragraph III. A.7. above. The Secretary also may require specific information relating to the particular circumstances of the emergency, including:

(1) Severity of Need. The severity of the circumstances and need as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate).

(2) Target group. The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

(3) Coordination and linkages; utilization of resources. The extent to which it is demonstrated that the project

will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities and other JTPA programs.

(4) Services. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which specific occupations are identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

(5) Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost Effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tuition, tools, *etc.* The cost effectiveness of the project shall be a major factor in determining fundability.

(7) Comments regarding the application submitted by the Governor or other interested parties.

(8) The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

d. Additional specific criteria for evaluation of a fully documented application for Emergency Dislocated Worker Projects in response to a natural disaster.

(1) Demonstrated need. The severity of the circumstances and need as described in the grant application *(e.g.*, the scope of the natural disaster, the projected short-term and long-term effect of events on unemployment, the plant closing(s) and other businesses affected, the number of workers affected, the increases in local and State unemployment rates, the number of disaster unemployment assistance claims).

(2) Target group. The identification of a specific target group(s) based on the concentration of the eligible individuals in specific geographic areas, and, where appropriate, occupation(s), plant(s), or industry(ies).

(3) Coordination and linkages; utilization of resources. The extent applicable to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate title III formula-funded activities and other JTPA programs as well as Federal Emergency Management Administration efforts where appropriate.

(4) Services. The services to be provided and the degree to which the services appear to meet the needs of the target population. The extent to which specific providers and occupations are identified as related to the community needs resulting from the disaster.

(5) Management capability. Assurance of the project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

(6) Cost Effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, and cost per activity in relation to services provided and where appropriate, the outcomes projected including expected wage levels. The proportion of staff costs to those costs directly attributable to client services such as tools, wages and fringe for temporary jobs, tuition, *etc.* The cost effectiveness of the project shall be a major factor in determining the level of funding.

(7) Comments regarding the application submitted by the Governor or other interested parties.

(8) The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

7. *Funding mechanisms.* a. Initial emergency funding, not to exceed one-third of the total amount approved for the grant award, may be made available based on the initial funding request and shall be used to provide funds for project planning (including surveys or other needs assessment activities), start-up costs (obtaining facilities, hiring costs) and early implementation costs (such as staff salaries until the grant application is approved), assessment, wages and fringe benefits for temporary jobs, and training costs. It is intended that enrollment and service provision will begin during this initial funding period.

b. The balance of the approved funding level based on review and approval of the fully documented proposal will be issued within 10 days of the receipt of the fully documented proposal.

c. (1) In the case of emergency funding of a dislocated worker project, the Department will issue a Notice of Obligation (NOO) for the initial Title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary agreement. A second NOO will be issued for the balance of funds. The effective date for the expenditure of the additional funds will be the date of the grant officer's signature on the second NOO.

(2) A grant award letter containing the general specifications expected as a condition of the grant will accompany the NOO.

(3) The grant award letter, the grant application and the assurances and any amendments approved will govern the operation of the project.

d. The effective date for the use of the funds will be the date of the grant award letter or grant document and no costs may be incurred prior to this date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated worker.

e. Instructions regarding Grant Amendments required due to changes in circumstances after the grant award will be transmitted with the grant award letter or grant document.

E. Category V—Additional Financial Assistance to Formula-Funded Programs and Activities Provided by State and Substate Grantees (Section 323(a)(7); 29 U.S.C. 1662b(a)(7))

Such applications shall meet the following requirements.

1. *Funding considerations and policy.* a. The Secretary may consider applications for Title III discretionary funds to be used for on-going Title III formula-funded activities. Such applications shall be submitted only under unusual circumstances. The Department expects States and substate grantees to plan and operate their programs within the constraints of their formula allotments. Operations should not be conducted in a manner that anticipates discretionary funds in order to sustain Title III "formula" program operations.

b. The Department shall evaluate the use of both the formula allotments and the reallocated funds in its funding decision process.

c. These funds shall be treated the same as all other formula funds. If the State has applied for additional funds, they are subject to the "forty percent/sixty percent" State and substate grantee distribution requirement (Section 302(c)(1); 29 U.S.C. 1652(c)(1)) and the cost limitations. If the State has applied for additional funds for a specific substate grantee, all funds shall pass directly to the substate area. In any case, these funds are not subject to

recapture and reallotment. However, it is expected that these funds will be expended by the end of the following program year.

d. For purposes of tracking national reserve funds, expenditures shall be reported by the grantee separately from other funds.

c. In determining a State or substate area grantee's performance, expenditures and additional participants resulting from such funding will be included in performance standard computations.

2. The eligible grant applicants for such projects are the States and territories of the United States (including the District of Columbia, Puerto Rico, the Freely Associated States of the Republic of Marshall Islands and the Federated States of Micronesia, and the Trust territory of the Republic of Palau), as represented by the governor designated, State JTPA grant recipient or grant administering agency under the Federal-State, Governor-Secretary Agreement.

3. Additional eligibility requirements:

a. No State or substate area grantee shall be eligible if funds from that State were reallotted or funds from that substate area were reallocated the previous year.

b. No State or substate area grantee shall be eligible as long as there are unused funds that would not be expended by the end of the Program Year.

c. No State or substate area grantee may request funds just for a single activity such as administration or needs-related payments.

d. The State shall demonstrate that, based on the statutory formula used to allot funds to the State (Section 302(b); 29 U.S.C. 1652(b)), there has been an increase of at least 20 percent in at least one of the appropriate funding formula factors, such as: the number of relative unemployed individuals who reside in the State or substate area, as compared to the total number of unemployed individuals in all States or in all of that State's substate areas; in the relative excess number of unemployed individuals residing in the State; or in the number of individuals who have been unemployed in excess of 15 weeks.

e. No State or substate area grantee may receive grant funds to serve additional dislocated workers if the State or substate grantee is presently serving displaced homemakers with formula funds in the year in which the application is submitted (as a result of a determination that service to this additional dislocated worker group could be provided without adversely affecting the delivery of services to dislocated workers eligible for services under JTPA Section 301(a)(1) (A) and (B); 29 U.S.C. 1651(a)(1) (A) and (B)).

4. Submission of applications. The Governor or authorized signatory for the State shall submit a national reserve application for additional financial assistance in support of Title III formula-funded activities and programs provided by the State or substate area grantees to the Grant Officer. The application shall be accompanied by the required certifications (see Appendices A, B and C to this notice) and the assurances listed below.

5. Assurances. Applications shall be transmitted with a letter from the Governor or authorized signatory containing the following paragraphs:

If the proposed request for financial assistance is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the grant application approved by the Grant Officer and consistent with the letter signed by the U.S. Department of Labor Grant Officer.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

Within 30 days of receipt of the grant approval, the State agrees to allocate the grant funds for additional financial assistance to the substate grantees in accordance with the proposal and grant award letter.

6. *Content of an application for additional financial assistance to formula-funded Title III programs and activities provided by State and substate grantees (Section 323(a)(7); 29 U.S.C. 1662b(a)(7)).*— a. *Period of Award.* Applications should cover a period of time not to exceed 12 months. Applications for periods in excess of 12 months may be submitted with information supporting the need for the additional period.

b. *Synopsis of the proposal:*

(1) Total amount of Title III national reserve funds requested;

(2) Total number of participants to be served with the requested funds;

(3) Total number of placements planned;

(4) Planned cost per participant based on additional funds to be used by substate grantees; and

(5) Planned cost per entered employment based on additional funds to be used by substate grantees.

c. *Application narrative:*

(1) Describe the substate area or areas for which the additional financial assistance is required including the projected number of participants served under the substate plan and the substate grantee's performance to date based on the services provided.

(2) Address why the need cannot be met by existing resources:

(a) Provide the status of fund availability (obligations and expenditures) for the State and substate grantees, where appropriate, for the most recent quarter.

(b) Where appropriate, a statement from the State should be included certifying that the substate grantee's funds have not been subject to reallocation.

(c) The State shall indicate that it has exercised State reallocation procedures and that no funds are available from either the 60 percent or 40 percent funds within the State.

(3) An explanation shall be submitted, stating how the circumstances under which State formula funds were provided, or under which the State allocated funds to the substate area(s), have substantially and significantly changed so as to justify the need for additional funds. Such circumstances would include an increase in mass layoffs or plant closings with accompanying numbers of dislocated workers which are at least 10 percent of the State or local labor force, a 20 percent increase in the State or local unemployment rate or rate of long-term unemployment. This increase shall be a 20 percent in the data used to determine the State's formula allotment for the period during which the discretionary funds will be used. If more than one such period is involved, it shall be the period during which a maturity of the funds will reused. Generally this will be the most recent data.

(4) A statement must be included providing information to indicate the severity of need for additional funds, such as the area unemployment rate, an analysis of unemployment insurance (UI) exhaustees, the proportion of unemployed workers who lack sufficient skills to remain in the labor force without assistance, *etc.*

(5) Include a brief description of the activity(ies) to be funded.

(6) Include an implementation plan which provides:

(a) A schedule for the implementation of proposed activities upon receipt of funds; and

(b) Quarterly implementation data showing the following cumulative projected data as appropriate: enrollments by activity, total terminations, number of participants who entered employment and expenditures.

(7) Set forth planned outcomes, if appropriate, including: cost per participant, cost per entered

employment, and entered employment rate.

(8) A detailed line-item budget must be submitted. These funds are subject to the cost limitations found in section 315 of the Act (29 U.S.C. 1661d) and are subject to the regulations found at 20 CFR 631.14. Line-item costs shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker Adjustment Program Quarterly Financial Report" (WQFR). (OMB Control No. 1205–0274)

7. *Specific criteria for evaluation and selection of applications for Title III discretionary funds to be used by States and substate grantees for formula activities*:

a. A demonstration that State and substate grantee formula funds will not remain unused and that formula funds are not available to meet the need. The burden of proof regarding the unavailability of funds lies with the applicant.

b. A demonstration that the circumstances under which State formula funds were provided or under which the State allocated funds to the substate grantee have substantially and significantly changed so as to justify the need for additional funds.

c. The severity of circumstances and need in the State or substate area as described in the grant application.

d. The ability of the State or substate grantee(s) to utilize the funds provided immediately.

e. The cost effectiveness of the project or activity, including the extent to which other State and substate public and private resources, have been integrated into the proposed project or activity.

f. The extent to which the expenditure of funds will be directly for, or related to, the provision of services to participants.

g. The overall effectiveness and efficiency of the proposal itself.

8. *Funding mechanisms.*

a. (1) In the case of additional financial assistance to programs and activities provided by State or substate area grantees, the Department will issue a Notice of Obligation (NOO) of Title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(2) A grant award letter containing the general specifications expected as a condition of the grant will accompany the NOO.

(3) The Act, Regulations, grant award letter, the grant application and the assurances and any amendments approved will govern the operation of the project.

b. The effective date for the use of the funds will be the date indicated on the grant award letter and no costs may be incurred prior to this date. The authority to expend funds immediately is given in most cases to permit the most timely response to the need of the newly dislocated worker.

Part IV. Technical Assistance and Trainino (TAT)

Section 323(c)(1) and (2) of the JTPA allows for amounts, not to exceed 5 percent of the funds reserved under Section 302 (a)(2), for Staff Training and Technical Assistance. 29 U.S.C. 1662b(c)(1) and (2); see 29 U.S.C. 1652(a)(2). Section 323(d) allows for those same amounts to be used for training of rapid response staffs. Such funds may be used under 20 CFR 631.61. Should the Department decide to compete such services, it will issue an appropriate public solicitation. The selection of grantees and contractors shall be in compliance with Employment and Training Order 2–87, "Management of Procurements Administered by Employment and Training Administration National and Regional Offices," as it applies to Technical Assistance and Training Grants, Contracts and Agreements.

Signed at Washington, DC, this 30th day of August, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A—Certification Regarding Drug-Free Workplace Requirements

A. The grantee 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 ongoing 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 ten 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 every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. 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 sites(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.

_____

Name of Organization

_____

Name and Title of Authorized Signatory

_____

Signature Date

Appendix B—Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, § 98.510, Participants' responsibilities.

(Before signing certification, read attached instructions which are an integral part of the certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, 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 proposal 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 government 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/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature Date

Appendix C—Certification Regarding Lobbying; Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 an agency, a Member of Congress, an officer of employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant local, or cooperative agreement.

(2) 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Grantee/Contractor Organization

Program/Title

Name of Certifying Official

Signature Date

Note: In this Appendix C, "All," in the Final Rule is expected to be clarified to show that is applies to covered contract/grant transactions over $100,000 (per OMB).

[FR Doc. 90–21370 Filed 9–12–90; 8:45 am]

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Thursday
September 13, 1990

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 225

Railroad Accidents/Incidents; Reports Classification and Investigations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-3, Notice No. 2]

RIN 2130-AA44

Railroad Accidents/Incidents; Reports Classification and Investigations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This notice amends the rules pertaining to the reporting of railroad accidents to FRA. When a railroad alleges the act, omission, or physical condition of a railroad employee as the primary cause or a contributing cause of an accident, the railroad will be required to enter the name of the employee on an additional report to FRA and to notify the employee (i) that the railroad has made such an allegation and (ii) that the employee has the right to submit a statement to FRA, with a copy to the railroad, as a supplement to the railroad's accident report. If the employee chooses to submit a statement, the railroad must then review it and correct any inaccuracies in its own reports to FRA. This action is taken in order to implement section 24 of the Rail Safety Improvement Act of 1988 (Pub. L. 100-342), 45 U.S.C. 43a.

EFFECTIVE DATE: This final rule is effective on December 1, 1990; that is, this rule applies to rail equipment accidents/incidents that occur on or after December 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Mr. Stan Ellis, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone 202-366-2760 (FTS 366-2760).

Principal Attorney: Ms. Billie Stultz, Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Telephone 202-366-0635 (FTS 366-0635).

SUPPLEMENTARY INFORMATION:

Introduction

On December 1, 1988, FRA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend 49 CFR part 225, entitled "Railroad Accidents/Incidents; Reports Classification, and Investigations," by adding several provisions regarding the procedure to be followed by railroads in reporting accidents that the railroad attributes, at least in part, to a railroad employee's "error." 53 FR 48560; 45 U.S.C. 43a. In the NPRM the statutory term "human error" of an "employee" was interpreted to include the whole gamut of human factors, from failure to comply with a signal indication, through improper train handling, to physical incapacitation due to illness. 45 U.S.C. 43a. These "employee human factors" were defined as including all but one of the accident causes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports" ("FRA Guide"). (See proposed § 225.12(a) and Appendix A to this final rule.) In FRA's accident reporting system, three-character codes, known as "cause codes," are used to denote the causes of accidents. As proposed, the procedure applied when, in reporting an accident to FRA, a railroad cited any of the cause codes denoting an "employee human factor" as the primary cause or a contributing cause of the accident. The "employee human factor" cause codes are used to report only "rail equipment accidents/incidents." See 49 CFR 225.19(c).

Under the proposed procedures, the railroad would be required to state in the narrative section of the Rail Equipment Accident/Incident Report whether or not the railroad had identified an employee as "responsible, at least in part, for the act, omission, or condition cited by the railroad as the human factor." (See proposed § 225.12 (a), (b).) If the railroad had identified, or through reasonable inquiry should have identified, a specific employee, the railroad would be required to state the name of the employee and to notify the employee (i) that the railroad had made such an allegation and (ii) that the employee had the right to submit a statement to FRA concerning the accident.

A public hearing was held in Washington, DC, on January 11, 1989, at which four organizations were represented: one railroad, one organization representing railroads, and two organizations representing railroad employees. Three of those organizations also provided prepared statements or written comments or both. In addition, responses were received from one individual and three other railroads.

Statutory Requirement

On June 22, 1988, the President signed into law the Rail Safety Improved Act of 1988 (RSIA). Section 24 of that Act provides that

> [i]f a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 et seq.), assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining any factor the employee alleges contributed to the accident or incident.

45 U.S.C. 43a.

The legislative history of this provision indicates that Congress intended for FRA to promulgate rules to allow submission of the employee's statement without delaying the submission of the railroad's monthly accident report, which, under 45 U.S.C. 39 and 49 CFR 225.11, must be submitted within 30 days after the end of the month in which the accident occurred. (See "Joint Explanatory Statement of the Committee of Conference," in the Conference Report to accompany S. 1539, H.R. Rept. No. 100-637 (100th Cong., 2d Sess.) (1988).)

The legislative history of section 24 further states that FRA is expected to file the employee's statement with the applicable report from the railroad. *Id.* This has been FRA's practice for many years during accident investigations initiated by FRA. During FRA's investigations of human factor accidents implicating employees, FRA interviews the employee to get his or her views, makes a written report of interview or obtains a signed statement from the employee, and compares that information with the information supplied by the railroad.

FRA's accident data base depends largely not upon FRA-initiated accident investigations but upon the railroad's own reports to FRA. This regulation implementing section 24 ensures that all employees wno are the subject of a railroad's allegations are notified of those allegations and informed of their opportunity to provide FRA with their own, independent views on the accident. If employees exercise their option to submit a statement supplementing the railroad's accident report, FRA will have a new, independent source of information on accidents that FRA has not investigated itself. Consequently, FRA should receive more accurate reports from the railroads themselves because when the railroad that made the allegations receives a copy of the employee supplement, the railroad must review it, reassess it own reports to FRA on the accident, revise each if necessary for accuracy, and submit corrected reports to FRA and the employee. See §§ 225.12(g), 225.13.

Discussion of Comments and Conclusions

A total of 22 responses were received concerning the NPRM published in the December 1, 1988, issued of the **Federal Register**. At the public hearing on

January 11, 1989, four organizations testified: One railroad (Consolidated Rail Corporation), one organization representing railroads (the Association of American Railroads), and two organizations representing railroad employees (the Railway Labor Executives' Association and the Brotherhood of Locomotive Engineers). Those organizations, with the exception of the Brotherhood of Locomotive Engineers, also provided prepared statements or comments or both. Finally, comments were received from one individual (Wayne Witt Bates) and three other railroads (Grand Trunk Western Railroad Company, Long Island Rail Road, and Union Pacific Railroad Company). The following is a discussion of the primary issues raised in these responses.

1. Assuming that an employee human factor is cited by the reporting railroad, should the proposed reporting procedure be required with respect to rail equipment accidents/incidents only under certain circumstances?

As proposed, the reporting procedure applied to all rail equipment accidents/incidents attributed by the railroad to an employee human factor. "Rail equipment accidents/incidents" are defined as

> collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that result in more than $5,700 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repair or replacement in kind.

(See 49 CFR 225.19(c) and 53 FR 48547 (1988), increasing the reporting threshold to $5,700.) In 1988, railroads attributed about 1,028 rail equipment accidents/incidents to employee human factors.

One commenter, the Consolidated Rail Corporation (Conrail), proposed that the procedure apply to a rail equipment accident/incident only "when there is a fatality, or when an employee loses more than ten days work, or when damage to railroad property exceeds $50,000."

The statute does not provide for such exceptions. Section 24 of the RSIA calls for the railroad's report to include an employee statement, at the employee's option, "if a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 et seq.), assigns human error as a cause of the accident or incident * * * ." 45 U.S.C. 43a. The language clearly shows that the impact of an accident is not to be a factor in determining whether the employee is given the special opportunity to submit a statement (assuming that basic reportability criteria are met); the primary requisite is the railroad's allegation of the employee's "error" as a cause of the accident. 45 U.S.C. 43a. FRA equated the statutory term "human error" with the employee human factor cause codes, which are used in reporting only rail equipment accidents/incidents. (See Statement of FRA Administrator John H. Riley, Hearing on Rail Safety before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science, and Transportation, 100th Cong., 1st Sess., S. Hrg. 100–49, part 2, 151–152 (1987).)

The other broad accident categories ("rail-highway grade crossing" accidents/incidents and "death, injury, or occupational illness" accidents/incidents) are reported using codes that do not ordinarily suggest employee error. See 49 CFR 225.19 and "FRA Guide," e.g., Appendix F, "Casualty Occurrence Codes." (Of course, some "rail-highway grade crossing" accidents/incidents and "death, injury, or occupational illness" accidents/incidents also qualify as rail equipment accidents/incidents and are, as such, subject to the final rule procedures.) In addition, FRA investigates virtually all accidents in the excluded categories that result in an employee fatality, making the notice and employee supplement a redundancy. See discussion under tenth issue, *infra*. Finally, the "death, injury, or occupational illness" accidents/incidents were excluded because they are reported largely in code, which would have required that the employee be sent extensive individual "translations" or major excerpts from the "FRA Guide," either of which option would be expensive. For these reasons, "rail-highway grade crossing" and "death, injury, or occupational illness" accidents/incidents were excluded from coverage. FRA does not, however, see any statutory basis for limiting the coverage to the portion of rail equipment accidents/incidents recommended by Conrail. The final rule reflects this determination. See § 225.12(a).

2. Should a procedure similar to the proposed procedure be required for false proceed signal reports under 49 CFR 233.7 in which the railroad contradicts or questions an employee's claim of signal failure?

One commenter, Mr. Bates, suggested that many railroads are challenging employees' claims of false proceed signal indications without the employee's knowledge and are often alleging employee error, rather than signal failure, as the cause of the reported event.

Section 233.7, entitled "Signal failure reports," states that "[e]ach carrier shall report within 15 days each failure of an appliance, device, method or system to function or indicate as required by part 236 of this title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train." This rulemaking, however, is being conducted to fulfill the mandate of Section 24 of the RSIA, which addresses the circumstance of a railroad making a report "*under the Accident Reports Act (45 U.S.C. 38 et seq.).*" [Emphasis added.] 45 U.S.C. 43a. Since false proceed reports are required under the Signal Inspection Act (49 U.S.C. 26), they are not within the scope of this rulemaking.

To address the commenter's concerns from a practical standpoint, virtually all reported false proceeds are investigated by FRA; therefore, any implicated employee will have an opportunity to provide FRA with information through an interview. In addition, under § 225.12 of the final rule, if an alleged signal failure is associated with a rail equipment accident/incident attributed to an employee human factor, all implicated employees must be given an opportunity to submit a statement.

3. Should the proposed reporting-and-notice procedure be required if the railroad suspects one or more members of a particular train crew, but has not determined exactly which members are responsible?

The proposed rule required notice only if the railroad had identified a specific employee as causing or contributing to the accident. One commenter, RLEA, advocated requiring a notice even if the employee was only one of several people whom the railroad suspected. FRA believes that this proposed requirement is beyond the scope of the statutory mandate because only the "employee whose error is alleged" is to be given the special opportunity to submit a statement that becomes part of the railroad's report. If the railroad is not yet prepared to make an allegation against a certain employee, Congress does not mandate that the opportunity be afforded. FRA believes that only if a railroad is prepared to identify a specific individual whose act, omission, or physical condition has caused or contributed to an accident, should a notice be sent.

4. Should FRA's Rail Equipment Accident/Incident Report form be revised to elicit the specific new information called for by the regulation?

One commenter, Conrail, suggested that the Rail Equipment Accident/Incident Report form be revised by FRA " include a specific section (or box) for each element of information which it

proposes to require, in order to ensure proper completion of the form."

In response to Conrail's comment, FRA has decided to create a separate form to collect the new information (the Employee Human Factor Attachment, Form FRA F 6180.81). A separate form is necessary for two reasons. First, because the Rail Equipment Accident/Incident Report is already a busy form, inclusion of all the information called for by § 225.12 would require going from a one-page form to two pages. A two-page Rail Equipment Accident/Incident Report form is unwarranted because the second page would be wasted in reporting the majority of rail equipment accidents/incidents because they do not involve employee human factors. Second, since the information currently required to be included on the Rail Equipment Accident/Incident Report is entered in FRA's computerized accident data base, a separate form will make it easier to prevent the names of identified employees from being mistakenly entered in FRA's computerized data base, thus avoiding a possible violation of the Privacy Act (5 U.S.C. 552a).

5. Should railroads provide information on employees' work-rest patterns in accident reports to FRA citing an employee human factor?

One commenter, RLEA, recommended that the railroad provide hours-of-duty information regarding the "employee whose error is alleged" (45 U.S.C. 43a) so that it could be determined whether "changes are needed in the work cycles of railroad employees in order to reduce accidents/incidents caused by human error." This suggestion goes beyond the scope of this rulemaking, which is focused on eliciting information from the employee, not the railroad, except insofar as the railroad's revised report under § 225.13 will relate to the issues raised by the employee. Topics such as this, with appropriate documentation, could, however, serve as the basis for further study.

6. Should railroads provide a tonnage profile on each accident attributed to excessive buffing or slack action (Cause Code 570), improper use of independent brake (Cause Code 507), or excessive lateral drawbar force on curve (Cause Code 572)? In the alternative, should the railroad keep the tonnage profile on file two years for possible FRA review?

One commenter, Mr. Bates, advocated the addition of such a reporting or records requirement. "We need a tool * * * in sorting out challenges between railroads and engineers who feel that they have been unjustly blamed for poor train handling. I point to the 'Tonnage Profile' as a tool helpful in sorting out challenges." According to Mr. Bates, "[s]ome 30% of Human Factor Cause Code 570 (Slack Action) accidents have profile of an improperly makeup train." (FRA does not necessarily agree with the commenter's characterization of certain trains as being improperly made up.)

This suggestion, like the previous one, goes beyond the scope of this rulemaking, which is primarily concerned with soliciting information from the employee, not the railroad. In addition, it should be pointed out that some railroads do not generate tonnage profiles at all; other railroads that generate tonnage profiles do not do so for every train. Employees are welcome, however, to attach a copy of the tonnage profile to their statement supplementing the railroad's accident report, if such a document is relevant and available.

7. Should the railroad that makes an allegation concerning the employee of another railroad notify the employee, or should the employing railroad make the notification?

The proposed regulation provided that the alleging railroad shall make the notification; however, the proposal did not specifically address joint operations situations in which more than one railroad is required to report on the same accident. See proposed § 225.12(a) and 49 CFR 225.23.

In response to a question at the hearing, Conrail recommended that each railroad be required to inform its own employees, but did not state a specific reason for its recommendation.

FRA believes that the reporting and notification duties should rest with the railroad that makes the allegation, even if it is not the employing railroad, for two primary reasons: first, to avoid confusing the notified employee as to which railroad is making the allegation, and second, to prevent the employing railroad from misstating the allegations made by the non-employing railroad. The main disadvantage of having the non-employing railroad make the notification is that it may lack certain information and access to information. For example, the non-employing railroad probably does not already have on file the employee's address. Sections 225.12 (e) and (f) of the final rule also complicate notification for the non-employing railroad. The non-employing railroad can much less readily gather the information necessary to make wise use of its discretion under § 225.12(e) to defer notification of an employee for medical reasons and can less easily find out whether the employee has subsequently died. To offset this disadvantage, the final rule contains a new provision, § 225.12(c), requiring that the employing railroad provide this information to the alleging, non-employing railroad upon request.

8. If a railroad cites an employee as causing or contributing to an accident in an amended accident report to FRA submitted after the deadline for submission of the original report, should the railroad send a Notice to the employee?

The proposed regulation did not address the situation in which a railroad makes a late identification of an employee whom it believes to have caused or contributed to an accident, after the time that the report is due to be transmitted to FRA.

Of course, existing § 225.13, entitled, "Late reports," requires a railroad to amend its accident report if it learns that an accident has been incorrectly reported; however, the proposed § 225.12 did not call for notification of late-identified employees.

AAR argues against notification.

FRA believes that the language of section 24 of the RSIA requires that all employees identified in a railroad's accident report as causing or contributing to the accident be afforded the opportunity to respond to that report, whether the allegation is made at the normal reporting time or later. See § 225.12(d) of this final rule.

9. Should a Notice be sent to an employee seriously injured in the accident? If so, should it be sent only after the employee is determined to be medically fit to return to service?

The proposed rule did not contain an exception for the situation in which the implicated employee was seriously injured in the accident.

One commenter, AAR, recommended holding the Notice "until the employee is determined to be fit to return to service."

Another commenter, UP, wrote that

> in the event of an accident which results in injury to an employee which requires his hospitalization, no report should be sent to the injured employee which could be detrimental to his medical recovery. At the very least, the 45-day notification period should be suspended until the employee recovers sufficiently to be released from the hospital. Ideally, the report should not be sent to the injured employee until he has recovered sufficiently to return to work.

On the other side of the issue, RLEA stated at the hearing that the timing of the Notice was not significant as long as notification was made.

FRA considered issuing a specific provision prohibiting notification of employees until they were medically fit for duty as determined by the employing railroad. FRA decided that such a provision would be overbroad because

many employees who are medically unfit for duty are not injured in such a way or to such an extent that receiving a Notice would delay their recovery. FRA believes that railroads should be given reasonable discretion to defer notification of implicated employees on medical grounds. See § 225.12(e). FRA hopes that railroads will use this discretion wisely, to address situations in which an employee's recovery will probably be set back, and not abuse it to avoid notifying healthy employees. If this discretion is misused, FRA will consider issuing a more specific provision.

10. Should a Notice be sent if the implicated employee was killed in the accident or dies of injuries sustained in the accident before being found fit to return to duty? If so, to whom should the Notice be sent?

The proposed regulation did not explicitly address the situation in which the employee cited died in the accident; however, in requiring that the Notice be sent to the employee, and not to a representative, it was intended to mean that a Notice is not required if the employee is no longer living by the time that the Notice is due to be sent. See proposed § 225.12(a)(3).

Two commenters opposed requiring a Notice if the employee died in the accident. AAR said that "[n]o useful purpose would be served by sending it to the next of kin or to the estate of the deceased." UP urged that

> no report be sent to the employee's family or to any other person. In a situation where a fatality has resulted, the family has suffered enough without being provided with a report which implicates the deceased in the accident which resulted in his death. In addition, no legitimate purpose can be served as the deceased's family is in no position to provide any valid information regarding the cause of the accident.

Opposing this view, RLEA said at the hearing that "the notice should still go out because there are many occasions where the employee representative could be involved in the process to determine whether or not the accident report form is true and accurate." RLEA suggested that the Notice be sent to "the employee's personal representative, collective bargaining representative, not the personal representative of the estate, so that there would be an opportunity to respond if it is appropriate."

FRA agrees with AAR and UP that a Notice should not be sent to the employee's family or estate representative because of the likely emotional impact. The collective bargaining representative, on the other hand, is less likely to be personally involved with the employee and may well be able to collect information relevant to the accident. FRA considered requiring that the Notice be sent to the collective bargaining representative because it is particularly important for FRA to understand the causes of accidents that result in an employee fatality. The idea was rejected because virtually all accidents that result in an employee fatality are investigated by FRA; therefore, a notice to the collective bargaining representative would be redundant. (See 49 CFR 225.9, which requires that FRA receive immediate telephonic reports of any accident that results in the death of a railroad employee, and 49 CFR 225.31(a), which states that "[i]t is the policy of the FRA to investigate rail transportation accident/incidents which result in the death of a railroad employee.") The only instances in which FRA might not investigate an employee fatality are those in which the employee was injured in the accident, but survived for a considerable period before succumbing to his or her injuries. The final rule provides that in cases in which the employee was killed as a result of the accident, no Notice addressed to that employee shall be sent to any person. See § 225.12(f)(1). The final rule also provides an exception to the Notice requirement in cases in which the employee has died from whatever causes by the time the Notice is ready to be sent. See § 225.12(f)(2).

11. Should the warning on the employee statement form regarding penalties for falsification be shortened?

The proposed form, entitled "Railroad Employee Accident Statement," included the following warning:

> Any person who willfully files a false Railroad Employee Accident Statement with FRA is subject to a civil penalty of up to $10,000. Sections 3(a) and 15 of the Rail Safety Improvement Act of 1988. Any person who knowingly and willfully files a false Railroad Employee Accident Statement is subject to a $5,000 fine or up to two years' imprisonment, or both. Federal Railroad Safety Act of 1970, 45 U.S.C. 438(e).

One commenter, RLEA, complained that "FRA still is discouraging employees from responding by giving expansive warning of fines and criminal sanctions for making false statements."

Of course, this warning was in no way intended to discourage employees from responding to the Notice, but rather to inform them of the special need for factual accuracy in making such statements and to reassure them that only willful misstatements carry a penalty. In response to the comment, however, the warning has been condensed and softened. See revised form, now entitled "Employee Statement Supplementing Railroad Accident Report" (hereinafter, "Employee Supplement" or "Supplement"), at Appendix C to this final rule.

12. Should the 35-day time limit for filing an Employee Supplement be waived for good cause shown?

The proposed Supplement form gave the employee 35 days from the date that the Supplement form was mailed or hand delivered to the employee, in which to mail or hand deliver the completed Supplement. No reference to late filing was made.

One commenter, RLEA, recommended that the response time be extended for employees who were injured in the accident. In the final rule, the railroad is given discretion to defer notification of employees on medical grounds. See § 225.12(e).

In addition, a general extension is provided for good cause shown. See § 225.12(g)(2) and Appendix C to this final rule.

13. Should FRA treat all Employee Supplements as confidential?

The proposed rule does not address the issue of confidentiality. It simply provides that the Employee Supplement be submitted to FRA, not to both FRA and the alleging railroad.

One participant at the hearing, BLE, stated that:

> [i]n the adjudicating case where an individual has been charged with a violation and has been disciplined for some reason, I am fearful of the fact that any statement given, if not held in the strictest confidence between the employee and the FRA, that that statement may be interjected in the final adjudication of a case which is based solely, or supposedly based solely on what testimony at an investigation is given.

BLE went on to say that "if you will assure us of the confidentiality of our report, you'll get a lot more information and a true statement as to what happened."

However, BLE also went on record at the hearing as being in agreement with RLEA's position that, absent any allegation by the employee of a violation of the safety laws and regulations, the Supplements should be releasable. (See discussion of fourteenth issue.)

AAR, UP, and Conrail argued that the employee be required to submit a copy of his or her Supplement to the railroad. In support of simultaneous transmission to FRA and the railroad, AAR emphasized that anyone falsifying a Rail Equipment Accident/Incident Report is subject to criminal penalties under the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(e)). See revised 49 CFR 225.29, 53 FR 52918, 52931.

UP supported AAR's position. UP pointed out that the Accident Reports Act imposes a *duty on railroads to* investigate and *accurately report to the FRA the causes of railway accidents.* It is imperative that, in the event an employee alleges the Railroad report is in error, the Railroad be given an opportunity to investigate other factors which the employee believes contributed to the accident.

The primary purpose of the Accident Reports Act and Section 24 of the Rail Safety Improvement Act is to accurately determine causes of railway accidents so that the identified conditions can be corrected and the overall safety of the railway industry can be improved. *Providing the Railroads with a copy of the employees' statements* is consistent with this goal and *is necessary if the Railroads are to determine the cause of accidents and attempt to prevent them in the future.*

[Emphasis added.]

Conrail echoed UP's safety concerns and gave an additional argument for requiring a copy of the Supplement to be submitted to the alleging railroad.

First, if the statement provides FRA with useful information concerning the cause of the accident, that information would also be useful to the railroad. Conrail and other *carriers have an interest in immediately detecting and correcting any safety problems, and the employee's statement may help in that regard. Second, access to the employee's statement would enable the railroad to point out to FRA any inconsistencies between the employees' statement and the railroad's own investigation of an accident.* In its investigation, Conrail frequently takes statements from employees, including those who are not alleged to have caused the accident. If these statements or other evidence collected by Conrail in its internal accident investigation conflict with the employee's statement filed with FRA, FRA should be made aware of this inconsistency. Sending a copy of the employee's statement to the railroad will promote such disclosure, and help ensure that FRA has accurate information on file. This is particularly important given the serious consequences of filing a false statement under § 225.12(d).

[Emphasis added.]

FRA agrees with the railroad industry commenters that these are important reasons for the Supplements to be releasable to the alleging railroad. The plain language of section 24 also shows that these Supplements are part of the railroad's accident report and, therefore, releasable to the railroad:

[i]f a railroad, *in reporting an accident or incident under the Accident Reports Act* (45 U.S.C. 38 et seq.), assigns human error as a cause of the accident or incident, *such report shall include,* at the option of each employee whose error is alleged, *a statement by such employee* explaining any factor the employee alleges contributed to the accident or incident.

[Emphasis added.] As will be discussed later, the commenters from both management and labor agreed that the Supplement should be considered part of the railroad's report for purposes of 45 U.S.C. 41. (See discussion of sixteenth issue.) Under existing § 225.7, the railroad's accident reports to FRA are available to the public for inspection or copying in accordance with the provisions of 49 CFR part 7. These reports are usually releasable. If the Supplement is considered part of the railroad's report to FRA, then its release would be governed by the same regulations and would be releasable to the same extent. See 49 CFR part 7, subpart G.

For these reasons and the reasons stated by the railroad industry commenters, FRA has concluded that the Employee Supplement is releasable to the railroad making the allegations, absent some other privilege. See § 225.12(g)(2). Under the final rule, the railroads have a specific duty to review these Supplements and to revise their reports to FRA if necessary for accuracy. See § 225.13. FRA believes that this system will improve the accuracy of FRA's accident data base. BLE's possible concerns can be accommodated by some means other than the Employee Supplement form such as by sending a confidential letter to FRA. See § 225.12(g)(3) and the instructions for the Employee Supplement form at appendix C to this final rule.

14. Should those Employee Supplements under section 24 of the RSIA (45 U.S.C. 43a) that allege violations of the federal railroad safety laws or regulations be treated as privileged under section 5(b) of the RSIA (45 U.S.C. 441(f))?

The proposed regulations did not address this issue; under the final rules, the issue does not arise if the employee follows the stated procedures, to be detailed later, and sends a copy of the Supplement to the railroad. See § 225.12(g)(2). The issue arises only if the employee (i) deviates from the procedures and sends the Supplement to FRA but not the railroad and (ii), in the Supplement, alleges a violation of the federal railroad safety laws and regulations.

Section 5(b) of the RSIA states that

(b) Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), or with the written consent of the employee, the Secretary shall not disclose the name of any employee of a railroad who has provided information with respect to an alleged violation of this title, any other Federal railroad safety law, or any rule, regulation, order, or standard issued under this title or any other Federal railroad safety law.

(2) The Secretary shall disclose to the Attorney General the name of any employee described in paragraph (1) who has provided information with respect to a matter being referred to the Attorney General for enforcement under this title, any other Federal railroad safety law, or any rule, regulation, order, or standard issued under this title or any other Federal railroad safety law.".

RLEA and BLE argued strenuously that section 5(b) prohibits FRA from releasing Employee Supplements that allege a violation of the federal railroad safety laws or regulations. AAR countered that section 24 requires the railroad to make the Employee Supplement a part of the railroad's own accident/ incident report and, therefore, not subject to section 5(b)'s prohibition.

FRA interprets section 5(b) as a whistle blower provision protecting only those complainants who offer information concerning alleged safety violations confidentially. (See remarks of Rep. Dingell at 133 Cong. Rec. H 11748 (1987), Rep. Luken at 133 Cong. Rec. H 11753 (1987), and Sen. Hollings at 134 Cong. Rec. S7510 (1988).) For this reason and for all of the reasons stated under the discussion of confidentiality in general (Issue 13), FRA believes that the Employee Supplements under section 24 that happen to allege a violation of federal regulations are not subject to the section 5(b) prohibition against release to the railroad, unless the employee overtly requests confidential treatment of the Supplement. In fact, the form itself (read in conjunction with its explicit instructions), absent such a specific request for confidentiality, constitutes "written consent" to disclosure under section 5(b). See appendix C to this final rule.

If the employee wishes to make a confidential statement to FRA protected by section 5(b), that option remains open and is made known to the employee through an item on the Supplement form. Of course, if an employee alleges a safety violation and marks his or her Supplement "confidential," FRA will protect it to the extent permitted by law.

15. If Supplements are not confidential simply because they are Supplements (Issue 13) or simply because they allege a violation of one of the safety laws or regulations (Issue 14), and if their contents, unless otherwise privileged, are releasable to the alleging railroad (and to the public under the Freedom of Information Act), should the employee be required to make and submit a copy

of his or her Supplement to the alleging railroad?

The proposed regulations did not address this issue. FRA has considered several options, including the following:

(i) The employee simultaneously transmits the original to FRA and a copy to the railroad;

(ii) The employee submits the original to the railroad; the railroad makes a copy for itself and then submits the original to FRA;

(iii) The employee submits the original to FRA; FRA supplies a copy to the railroad on request; and

(iv) The employee submits the original to FRA; FRA supplies a copy to the railroad automatically.

The railroad industry commenters indicated that they would like a copy of each Supplement that concerned an accident on their own railroad. No other comments were received on this specific issue.

FRA believes that requring the employee to transmit the original to FRA and a copy to the railroad simultaneously would reduce the amount of paperwork required, put the responsibility for copying and sending the Supplement on the one person probably most directly interested in communicating its contents, and speed up transmittal of the information, thereby enhancing the possibility of a fruitful accident investigation. The final rule includes such a requirement at § 225.12(g)(2).

16. Should the Notice and Supplement under section 43a of the Accident Reports Act (45 U.S.C. 43a) be considered part of the railroad's accident report to FRA under section 38 of the same Act (45 U.S.C. 38), and thus be subject to the Act's prohibition (45 U.S.C. 41) against their use or admission in evidence in any suit or action for damages?

The proposed rule did not address this issue. The Accident Reports Act provides that "[n]either the report required by section 38 of this title * * * nor *any part* thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation." [Emphasis added.] 45 U.S.C. 41.

Three commenters (UP, AAR, and RLEA) agreed that the Employee Supplement should be inadmissible as part of the railroad's accident report. For the reasons stated in the discussion of confidentiality (the thirteenth issue), FRA agrees that the Notice and Employee Supplement should be treated as part of the railroad's report to FRA on the accident and, therefore, should be inadmissible. FRA has, therefore, amended § 225.7(b) and added a statement to that effect on the Employee Supplement form.

17. Should the regulations contain a provision stating that nonresponse to a Notice, or to certain allegations in a Notice, does not constitute consent to any of the allegations in the Notice?

The proposed regulations addressed this issue indirectly by characterizing the Supplement as completely optional, in accordance with the language of section 24 of the RSIA ("at the option of each employee whose error is alleged"). 45 U.S.C. 43a. At the hearing, RLEA recommended that the regulations clearly state that nonresponse does not constitute agreement with the allegations. The Supplement form has been amended, and § 225.12(g)(1) has been added, to make it clear that nonresponse does not constitute agreement with the allegations. Furthermore, FRA interprets the nonresponse as "part" of "the report required by section 38 of this title" and, therefore, subject to the Accident Reports Act prohibition against its being "admitted as evidence or used for any purpose in a suit or action for damages growing out of any matter mentioned in said report * * *." 45 U.S.C. 41.

18. Should the maximum statutory penalty be assessed for willfully filing a false Employee Supplement or accident report with FRA?

The proposed rule contained no specific proposals on penalty amounts. One commenter, UP, "urge[d] the FRA to assess the maximum penalty against any person who willfully files a false statement." No other commenters addressed the issue.

The statutory maximum is $20,000 "where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury" and, otherwise, $10,000. 45 U.S.C. 43. The statutory minimum is $250.

The existing penalty schedule does provide for assessing the statutory maximum for violation of any provision of part 225 "where circumstances warrant. See 49 CFR part 209, appendix A." 53 FR 52931 (1988). Generally, however, the willful filing of a false report under § 225.11 is to be assessed at only $5,000. FRA believes that false reports under § 225.11 and false reports or Employee Supplements under § 225.12 are equally serious violations and that they should, therefore, be penalized equally. But it is beyond the scope of this rulemaking to increase the penalty for violations of § 225.11 to the statutory maximum; therefore, FRA has decided to apply the same $5,000 penalty for violations of § 225.12 as well.

19. Should the regulation prescribe what action FRA will take if there is a pattern of false accident reports or Employee Supplements?

The proposed rule did not address this issue. One commenter, GTW, recommended that the regulation prescribe action to be taken "[s]hould it become apparent that the carrier may be misrepresenting the actual causes of [accidents] * * * or that Labor is misusing the regulation in an attempt to influence Management/Labor relations * * *."

FRA believes that a special provision is not necessary. The existing penalty schedule calls for a $20,000 penalty for certain violations involving a pattern. 53 FR 52918, 52931 (1988), to be codified at 49 CFR part 225, appendix B, Footnote 1. In addition, 49 CFR part 209 contains procedures for issuing compliance orders to enforce compliance where a pattern of violations has been demonstrated. See 49 CFR 209.201(b)(1).

20. Should the regulations specify limits on FRA's use of Employee Supplements for investigations and other actions?

The proposed rule did not deal with this issue. One commenter, GTW, voiced its concern that the proposed amendments will draw FRA into the "arbitration of Labor/Management disputes" arising from railroad accidents. GTW proposed adding language that releases "FRA from the obligation of investigating each and every incident but rather looks at the submissions from the employee for trends that would indicate that a carrier may be misrepresenting itself in the determination of derailment causes."

FRA believes that additional language on FRA's accident investigation policy in relation to Employee Supplements is not necessary because FRA's accident investigation policy is already adequately stated in existing § 225.31.

Another commenter, UP, recommended that FRA—

> provide in the rules that any investigation or action taken by [FRA] in response to an employee's statement will be concluded not later than six months after receipt of the employee's statement by the FRA. In this way, the evidence and witness statements can be preserved before the facts surrounding the incident become stale.

Although FRA understands the commenter's concern and will endeavor to have investigated Employee Supplements within six months after receipt, the agency does not think it wise to bind itself in this way, given its current resources.

Section-by-Section Analysis of Final Rule

The final rule contains substantial revisions in response to the comments received, testimony at the public hearing, and further review and reflection within FRA. Each comment received has been considered by FRA in preparing this final rule. If the section citation in the final rule differs from that in the NPRM, the latter citation is also provided. Sections not previously proposed are noted as such.

1. Section 225.5(j) (not previously proposed) explicitly defines the term "employee human factor," by giving it the same meaning that it had from context when it appeared in paragraphs (a), (b), and (c) of proposed § 225.12. An "employee human factor" is any of the accident causes denoted by a rail equipment accident/incident cause code listed under "Train Operation—Human Factors" in the current "FRA Guide for Preparing Accident/Incident Reports," with the exception of Cause Code 506. The accident cause represented by Cause Code 506 is not classified as an employee human factor because it refers to "[f]ailure to properly secure engine(s) or car(s) (*non-railroad employee*)," that is, action by someone other than the employee of a railroad. [Emphasis added.] FRA recognizes that some "employee human factor" accidents will not in fact involve a railroad employee, but rather a vandal or other non-railroad employee. For example, misalignment of a switch (under Cause Code 561) could be the act of a non-railroad employee vandal. Of course, if the accident does not involve a railroad employee, no Notice is required, but a negative report in the form of the Employee Human Factor Attachment must be completed. See § 225.12(a).

2. Section 225.7(b) (not previously proposed) provides that the Employee Human Factor Attachment, Notice, and Employee Supplement under § 225.12 are part of the reporting railroad's accident report to FRA pursuant to the Accident Reports Act. As such, neither shall "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report * * *." 45 U.S.C. 41.

3. Section 225.12(a) (proposed as § 225.12(a)(1)) requires a railroad to report additional information to FRA when the railroad cites an employee human factor in a Rail Equipment Accident/Incident Report. (See definition of "employee human factor" in § 225.5(j).) In addition to furnishing the information already required to be reported, the railroad must complete a new form entitled "Employee Human Factor Attachment," Form FRA F 6180.81. The Employee Human Factor Attachment is at Appendix B to this final rule. It must be completed in accordance with instructions printed on the form and in the current "FRA Guide for Preparing Accident/Incident Reports" ("FRA Guide"). If an employee human factor cause code is cited, but an employee is not involved or cannot be identified, the Employee Human Factor Attachment must nevertheless be completed.

4. Section 225.12(b) (proposed as § 225.12(a)) requires that, except as provided in paragraphs (e) and (f), the railroad provide written notification to each railroad employee whom the railroad has listed in the Employee Human Factor Attachment (or whom the railroad has actually identified and should have listed in the Attachment), whose act, omission, or physical condition was alleged by the railroad to be a primary or contributing cause of a rail equipment accident/incident. The proposed rule referred to employees "responsible, at least in part, for the act, omission, or condition cited by that railroad as the human factor * * *." See proposed § 225.12 (a), (b). The word "responsible" has been eliminated primarily because "incapacitation due to injury or illness," for which an employee is normally not responsible, is included as an "employee human factor." See Cause Code 511. In rewording this section to avoid the false implications of the word "responsible," however, a lesser problem has arisen: some of the employee human factors are stated as a situation or external condition, with a human act, omission, or physical condition clearly implied but not explicit; e.g., "[a]bsence of fixed signal (Blue Signal)" (Cause Code 517); "[a]utomatic cab signal cut out" (Cause Code 52D); "[c]ars left foul" (Cause Code 531); "[s]witch previously run through" (Cause Code 563). Such employee human factors are to be construed as referring to the underlying human act, human omission, or human physical condition that caused the situation or external condition.

Under the new procedures, the railroad must inform the employee of the relevant allegations and of his or her right to file a statement under § 225.12(g). A copy of the standard form required to be used for notification of employees (FRA F 6180.78) is at Appendix C to this final rule. Part I of the form, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor," must be completed in accordance with instructions printed on the form and in the current "FRA Guide." To that form, the railroad must attach a copy of the Rail Equipment Accident/Incident Report, the Employee Human Factor Attachment, and any Rail-Highway Grade Crossing Accident/Incident Report on the accident. This material must be hand delivered or mailed first class, postage prepaid, to the employee within 45 days after the end of the month in which the rail equipment accident/incident occurred, unless § 225.12 (e) or (f) applies.

The proposed rule had imposed a duty to send a Notice to employees whom the railroad through reasonable inquiry should have been able to identify. See proposed § 225.12(a). This duty has been eliminated as vague and difficult to enforce.

The special case of joint operations deserves some discussion. See 49 CFR 225.5(c), 225.23. It must be emphasized that in joint operations, in which two or more railroads are required to report to FRA concerning the same accident, if one of the reporting railroads makes allegations under § 225.12(a) concerning the employee of another reporting railroad, the alleging railroad must notify that employee. If more than one reporting railroad makes allegations regarding the same employee, each alleging railroad must send the employee a Notice.

5. Section 225.12(c) (not previously proposed) addresses reporting of an accident involving joint operations. If requested by the alleging railroad, the employing railroad must promptly provide the name, job title, address, and medical status of any employee reasonably identified by the alleging railroad.

6. Section 225.12(d) (not previously proposed) states that, except as provided in paragraphs (e) and (f) of this section, a railroad must send the Notice described in § 225.12(b) to any employee whom the railroad identifies late, i.e., after the Employee Human Factor Attachment is initially submitted. The Notice is required to be submitted to the employee within 15 days of when the revised Employee Human Factor Attachment is required to be submitted.

7. Section 225.12(e) (not previously proposed) provides that railroads have reasonable discretion to defer notification of implicated employees on medical grounds. This discretion is available to address situations in which the railroad has reason to believe that sending a Notice would pose a substantial risk to an employee's health or recovery from injury or illness. The burden of proof is on the railroad, and

any failure to notify resulting from an abuse of this discretion subjects the railroad to the applicable civil penalty. During this rulemaking, more detailed versions of this provision were considered and finally rejected as excessively complex and either overbroad or overnarrow despite their complexity. The present provision was preferred because the railroad is closer to the situation than is FRA and, for that reason, is better able to determine which employees should not receive a notice for medical reasons. If this discretion is misused, however, FRA will consider issuing a more specific provision.

8. Section 225.12(f)(1) (not previously proposed) prohibits a railroad from sending to any person the Notice described in § 225.12(b) (Form FRA F 6180.78) for an employee who died as a result of the accident. Section 225.12(f)(2) (not previously proposed) provides that no Notice is required if the employee has died of any cause by the time that the Notice is ready to be sent.

Subparagraph (1) is a prohibition enforced with a penalty. The railroad has an obligation to make reasonable inquiry to determine whether an employee injured in the accident died as a result of the accident. For purposes of subparagraph (1), "died as a result of the accident" means died of injuries sustained in the accident before the Notice is due and ready to be sent.

Subparagraph (2) is an exception to the Notice requirement; if a Notice is sent under those circumstances, no penalty attaches (unless the employee died as a result of the accident, in which case a penalty applies under § 225.12 (f)(1)).

9. Section 225.12(g) (proposed as § 225.12(c)) addresses the statements that employees notified under § 225.12(b) are entitled to submit to FRA and the alleging railroad concerning the accident in which the employee is involved. Section 225.12(g)(1) explains that the Employee Statement Supplementing Railroad Accident Report (Supplement) is not required and that nonresponse to a § 225.12(b) Notice does not constitute an admission by the employee that the railroad's allegations are true. Section 225.12(g)(2) summarizes the procedures for submitting a Supplement. The new standard form, Form FRA F 6180.78, contains additional instructions. Section 225.12(g)(3) states that the Supplement should not include information that the employee wishes to withhold from the railroad. If the employee wishes to provide FRA with confidential information regarding the accident, the employee should send a letter to a collective bargaining representative or directly to FRA at the specified address.

10. Section 225.12(h) (proposed as § 225.12(d)) states the civil penalties for making willful false statements under § 225.12 and the criminal penalties for making knowing and willful false statements under § 225.12. (The criminal penalties authorized by 45 U.S.C. 438 are not exclusive. Criminal penalties for making false statements under § 225.12 are also available under the authority of, e.g., 18 U.S.C. 1001 if the statements are both knowing and willful within the meaning of that statute.)

FRA's definition of a "willful" violation in the *civil* context is discussed in detail in 49 CFR part 209, Appendix A. "willful" act to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Consequently, proof that conduct constitutes a violation does not require a showing of evil purpose (as is sometimes required in criminal law) or actual knowledge of the law. A level of culpability higher than simple negligence, however, must be established. A willful violation also requires actual or constructive knowledge of the facts costituting the violation.

11. Section 225.13 (not previously proposed) requires certain action by a railroad that receives an Employee Supplement from an employee in response to a Notice issued by that railroad and mailed or hand delivered to the employee. The railroad must (i) review the Supplement; (ii) based on the review, determine whether any of its existing reports under part 225 concerning the same accident require revision for accuracy; (iii) if so, revise and resubmit each such report to FRA; and (iv) send a copy of any such revised Rail Equipment Accident/Incident Report, Employee Human Factor Attachment, and Rail-Highway Grade Crossing Accident/Incident Report on the accident to the employee who submitted the Supplement. (A copy of any other reports under part 225, e.g., the Railroad Injury and Illness Summary, need not be sent to the employee.) If changes are made in any of the reports, a second notice under § 225.12 is not required for the employee who submitted the Supplement. If an employee who was never sent a notice under § 225.12 for that accident is listed in a revised Employee Human Factor Attachment, the procedures set forth in § 225.12(d) must be followed.

12. Section 225.21(g) (not previously proposed) prescribes that the Employee Human Factor Attachment, designated Form FRA F 6180.81, shall be used by railroads, in reporting rail equipment accidents/incidents attributed to an employee human factor. This form must be completed in accordance with instructions printed on the form and in the current "FRA Guide" and is to be attached to the railroad's Rail Equipment Accident/Incident Report on the accident and submitted to FRA within 30 days after the end of the month in which the accident/incident occurred.

13. Section 225.21(h) (not previously proposed) prescribes the two-part form, designated Form FRA F 6180.78, that shall be used by railroads in providing notification under § 225.12 to a railroad employee and by notified railroad employees in making a statement under § 225.12 to FRA, with a copy to the railroad, in response to that notification. When making a notification under § 225.12, the railroad must complete part I of Form FRA F 6180.78 (Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor) in accordance with the instructions printed on the form and in the current "FRA Guide." If the notified employee chooses to make a statement jointly to FRA and the railroad in response to the Notice that will be placed by FRA in a file with the railroad's Rail Equipment Accident/Incident Report on that accident, then the employee must complete part II of Form FRA F 6180.78 (Employee Statement Supplementing Railroad Accident Report) and submit the entire form, and any attachments, to FRA, with a copy to the railroad that issued the Notice, in accordance with the instructions printed on the form.

14. The addition to § 225.27(a) prescribes that Employee Human Factor Attachments (Form FRA F 6180.81), written notices to employees required by § 225.12 (part I of Form FRA F 6180.78), and completed Employee Statements Supplementing Railroad Accident Reports under § 225.12(g) (part II of Form FRA F 6180.78) must be kept for at least two years after the end of the calendar year to which they relate. This provision is added in order to make § 225.12 more enforceable.

15. The additions to Appendix B (not previously proposed) establish penalties for violation of § 225.12. The penalties in the existing schedule apply to revised §§ 225.13 and 225.27. Section 209 of the Federal Railroad Safety Act of 1970 provides that "[t]he Secretary shall include in, or make applicable to, any railroad safety * * * regulation issued under this title a civil penalty for violation thereof * * *." The RSIA

increases the maximum penalty for violation of a regulation issued under the FRSA from $2,500 to $10,000 and, in certain circumstances, $20,000. See 53 FR 28594 (1988). This final rule includes a revised penalty schedule adding entries for the added provisions reflecting the higher maximum penalties now available. See the recent revisions of the penalty provision and penalty schedule of part 225 required by the RSIA. 53 FR 28594, 28601; 53 FR 52918, 52931 (1988). Because FRA's penalty schedules are statements of policy, notice and comment are not required to revisions of those schedules. See 5 U.S.C. 553(b)(3)(A). Nevertheless, interested parties were invited to submit their views on what penalties might be appropriate. See eighteenth issue under "Discussion of Comments and Conclusions" in this preamble.

Regulatory Impact

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 but significant under the Department of Transportation policies and procedures (44 FR 11034; February 26, 1979).

This rule will not have any significant direct or indirect economic impact.

The costs that can be attributed to this rule will be incurred only if a railroad experiences a rail equipment accident/incident that the railroad alleges was caused by an employee human factor. The only mandatory costs will be imposed on railroads and FRA, because individuals are free not to respond. Based on reporting data filed in recent years, FRA anticipates that fewer than 1,100 such events will occur in any given year. FRA estimates that the maximum annual cost to comply with this rule will be $345,030.

Although FRA believes that the benefits that can be attributed to this rule will exceed its minimal costs, FRA has not been able to quantify these benefits. The benefits attributable to this rule will involve improved accident analysis and the development of remedial actions either to prevent future accidents or mitigate the consequences of unavoidable accidents. It is not possible to determine the degree to which future accident analysis and remedial response efforts will be improved by this rule.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Paperwork Reduction Act

This final rule contains information collection requirements. These information collection requirements are being submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). When OMB has approved these information collection requirements, FRA will publish a notice in the **Federal Register** announcing that action. (These information collection requirements will become a part of the existing OMB approval number for 49 CFR part 225, which is control number 2130–0500.)

FRA has endeavored to keep the burden associated with this rule as simple and minimal as possible. The sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Section	Brief description	Estimated average time
225.12(a), (d)	Employee Human Factor Attachment (Form FRA F 6180.81).	15 min.
225.12(b), (d)	Notice to Railroad Employee (Form FRA F 6180.78, part I).	15 min.
225.12(c)	Joint Operations—information obtained from employing railroad.	1 hour.
225.12(g)	Employee Statement Supplementing Railroad Accident Report (Form FRA F 6180.78, part II).	2 hours.
225.12(g)	Employee confidential letter to FRA concerning the accident.	2 hours.
225.13	Railroad review of Employee Statement Supplementing Railroad Accident Report.	1.5 hours.
225.13	Railroad preparation of amended reports, when necessary.	4 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the FRA estimates, the practical utility of the information, and alternative methods to obtain this information that might be less burdensome. Persons desiring to comment on this topic should submit their views in writing to Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590; and to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: FRA Desk Officer, Washington, DC 20503.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

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

List of Subjects in 49 CFR Part 225

Railroad accident reporting rules, Railroad safety.

The Final Rule

In consideration of the foregoing, part 225, title 49, Code of Federal Regulations is amended as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 is revised to read as follows:

Authority: 45 U.S.C. 38, 42, 43, and 43a as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

2. The table of contents is amended to add a new entry as follows:

* * * * *

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor attachment; notice to employee; employee supplement.

* * * * *

3. Section 225.5 is amended to add a new paragraph (j) as follows:

§ 225.5 Definitions.

* * * * *

(j) *Employee human factor* includes any of the accident causes signified by the rail equipment accident/incident cause codes listed under "Train Operation—Human Factors" in the current "FRA Guide for Preparing Accident/Incident Reports," except for Cause Code 506.

4. Section 225.7(b) is amended to add the following at the end thereof:

§ 225.7 Public examination and use of reports.

* * * * *

(b) * * * The Employee Human Factor Attachment, Notice, and Employee Supplement under § 225.12 are part of the reporting railroad's accident report to FRA pursuant to the Accident Reports Act and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report * * *." 45 U.S.C. 41.

5. Section 225.12 is added to read as follows:

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

(a) *Rail Equipment Accident/Incident Report alleging employee human factor as cause; completion of Employee Human Factor Attachment.* If, in reporting a rail equipment accident/incident to FRA, a railroad cites an employee human factor as the primary cause or a contributing cause of the accident; then the railroad that cited such employee human factor must complete, in accordance with instructions on the form and in the current "FRA Guide for Preparing Accident/Incident Reports," an Employee Human Factor Attachment form on the accident.

(b) *Notice to identified implicated employees.* Except as provided in paragraphs (e) and (f) of this section, for each employee whose act, omission, or physical condition was alleged by the railroad as the employee human factor that was the primary cause or a contributing cause of a rail equipment accident/incident and whose name was listed in the Employee Human Factor Attachment for the accident and for each such railroad employee of whose identity the railroad has actual knowledge, the alleging railroad shall—

(1) Complete part I, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor," of Form FRA F 6180.78 with information regarding the accident, in accordance with instructions on the form and in the current "FRA Guide for Preparing Accident/Incident Reports"; and

(2) Hand deliver or send by first class mail (postage prepaid) to that employee, within 45 days after the end of the month in which the rail equipment accident/incident occurred—

(i) A copy of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report," with part I completed as to the applicable employee and accident;

(ii) A copy of the railroad's Rail Equipment Accident/Incident Report and Employee Human Factor Attachment on the rail equipment accident/incident involved; and

(iii) If the accident was also reportable as a rail-highway grade crossing accident/incident, a copy of the railroad's Rail-Highway Grade Crossing Accident/Incident Report on that accident.

(c) *Joint operations.* If a reporting railroad makes allegations under paragraph (a) of this section concerning the employee of another railroad, the employing railroad must promptly provide the name, job title, address, and medical status of any employee reasonably identified by the alleging railroad, if requested by the alleging railroad.

(d) *Late identification.* Except as provided in paragraphs (e) and (f) of this section, if a railroad is initially unable to identify a particular railroad employee whose act, omission, or physical condition was cited by the railroad as a primary or contributing cause of the accident, but subsequently makes such identification, the railroad shall submit a revised Employee Human Factor Attachment to FRA immediately, and shall submit the Notice described in paragraph (b) of this section to that employee within 15 days of when the revised report is to be submitted.

(e) *Deferred notification on medical grounds.* The reporting railroad has reasonable discretion to defer notification of implicated employees on medical grounds.

(f) *Implicated employees who have died by the time that the Notice is ready to be sent.*

(1) If an implicated employee has died as a result of the accident, a Notice under paragraph (b) addressed to that employee must not be sent to any person.

(2) If an implicated employee has died of whatever causes by the time that the Notice is ready to be sent, no Notice addressed to that employee is required.

(g) *Employee Statement Supplementing Railroad Accident Report (Supplements or Employee Supplements).*

(1) Employee Statements Supplementing Railroad Accident Reports are voluntary, not mandatory; nonsubmission of a Supplement does not imply that the employee admits or endorses the railroad's conclusions as to cause or any other allegations.

(2) Although a Supplement is completely optional and not required, if an employee wishes to submit a Supplement and assure that, after receipt, it will be properly placed by FRA in a file with the railroad's Rail Equipment Accident/Incident Report and that it will be required to be reviewed by the railroad that issued the Notice, the Supplement must be made on part II of Form FRA F 6180.78 (entitled "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), following the instructions printed on the form. These instructions require that, within 35 days of the date that the Notice was hand delivered or sent by first class mail (postage prepaid) to the employee (except for good cause shown), the original of the Supplement be filed with FRA and a copy be hand delivered or sent by first class mail (postage prepaid) to the railroad that issued the Notice so that the railroad will have an opportunity to reassess its reports to FRA concerning the accident.

(3) Information that the employee wishes to withhold from the railroad must not be included in this Supplement. If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, if any, or to the Federal Railroad Administration, Office of Safety, Office of Safety Enforcement, PRS–13 400 Seventh St. SW., Washington, DC 20590. The letter should include the name of the railroad making the allegations, the date and place of the accident, and the rail equipment accident/incident number.

(h) *Willful false statements; penalties.* If an employee chooses to submit a Supplement to FRA, all of the employee's assertions in the Supplement must be true and correct to the best of the employee's knowledge and belief.

(1) Under sections 3(a) and 15 or the Rail Safety Improvement Act of 1988, any person who willfully files a false

Supplement with FRA is subject to a civil penalty. See appendix B to this part.

(2) Any person who knowingly and willfully files a false Supplement is subject to a $5,000 fine, or up to two years' imprisonment, or both, under the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(e)).

6. Section 225.13 is amended to add the following at the end thereof:

§ 225.13 Late reports.

* * * Whenever a railroad receives a partially or fully completed Employee Statement Supplementing Railroad Accident Report (part II of Form FRA F 6180.78), in response to a Notice to Railroad Employee (part I of Form FRA F 6180.78) issued by the railroad and mailed or hand delivered to the employee, the railroad must promptly review that Supplement; based on that review, reassess the accuracy and validity of the railroad's Rail Equipment Accident/Incident Report and of any other reports and records required by this part concerning the same accident, including the Employee Human Factor Attachment; make all justified revisions to each of those reports and records; submit any amended reports to FRA; and submit a copy of any amended Rail Equipment Accident/Incident Report, Employee Human Factor Attachment, and Rail-Highway Grade Crossing Accident/Incident Report on the accident to the employee. A second notice under § 225.12 is not required for the employee. If an employee who was never sent a notice under §225.12 for that accident is implicated in the revised Employee Human Factor Attachment, the railroad must follow the procedures of § 225.12(d).

7. Section 225.21 is amended by adding paragraphs (g) and (h) to read as follows:

§ 225.21 Forms.

* * * * *

(g) *Form FRA F 6180.81—Employee Human Factor Attachment.* Form FRA F 6180.81 shall be used by railroads, as a supplement to the Rail Equipment Accident/Incident Report (Form FRA F 6180.54), in reporting rail equipment accidents/incidents that they attribute to an employee human factor. This form shall be completed in accordance with instructions printed on the form and in the current "FRA Guide for Preparing Accident/Incident Reports." The form shall be attached to the Rail Equipment Accident/Incident Report and shall be submitted within 30 days after expiration of the month in which the accident/incident occurred.

(h) *Form FRA F 6180.78—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report.* When a railroad alleges, in the Employee Human Factor Attachment to a Rail Equipment Accident/Incident Report, that the act, omission, or physical condition of a specific employee was a primary or contributing cause of the rail equipment accident/incident, the railroad shall complete part I of Form FRA F 6180.78 to notify each such employee identified that the railroad has made such allegation and that the employee has the right to submit a statement to FRA. The railroad shall then submit the entire form, parts I and II, to the employee. The Employee Statement Supplementing Railroad Accident Report (Employee Supplement) is completely at the option of the employee; however, if the employee desires to make a statement about the accident that will become part of the railroad's Rail Equipment Accident/Incident Report, the employee shall complete the Employee Supplement form (part II of Form FRA F 6180.78) and shall then submit the original of the entire form, parts I and II, and any attachments, to FRA and submit a copy of the same to the railroad that issued the Notice in part I.

8. Section 225.27(a) is amended by adding at the end thereof the following sentence:

§ 225.27 Retention of records.

(a) * * * Each railroad must retain the Employee Human Factor Attachments required by § 225.12, the written notices to employees required by § 225.12, and the Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) that have been received by the railroad for at least 2 years after the end of the calendar year to which they relate.

* * * * *

9. Appendix B to part 225 is amended to add new entries to read as follows:

Appendix B to Part 225—[Amended]

Section	Violation	Willful violation
* * *	*	*
225.12(a):		
Failure to file Employee Human Factor Attachment properly:		
Employee identified	2,500	5,000
No employee identified	250	1,000
225.12(b):		
Failure to notify employee properly	2,500	5,000
Notification of employee not involved in accident	2,500	5,000
225.12(c):		
Failure of employing railroad to provide requested information properly	1,000	2,500
225.12(d):		
Failure to revise report when identity becomes known	2,500	5,000
Failure to notify after late identification	2,500	5,000
225.12(f)(1):		
Submission to notice if employee died as result of the reported accident	2,500	5,000
225.12(g):		
Willfully false accident statement by employee		5,000
* * *	*	*

Issued in Washington, DC, on September 7, 1990.

Gilbert E. Carmichael,

Federal Railroad Administrator.

Note: Appendices A, B and C will not appear in the Code of Federal Regulations.

Appendix A—Train Operation—Human Factors

Brakes, Use of

500 Automatic brake, improper use
501 Dynamic brake, improper use
502 Failure to properly secure engine(s) (railroad employee)
503 Failure to properly secure hand brake on car(s) (railroad employee)
504 Failure to apply sufficient number of hand brakes on car(s) (railroad employees)
505 Failure to apply hand brakes on car(s) (railroad employee)
506 Failure to properly secure engine(s) or car(s) (non-railroad employee)
507 Independent (engine) brake, improper use
508 Failure to control speed of car using hand brake, (railroad employee)
509 Use of brakes, other (enter Code 509 in item 35 and explain in item 50)

Employee Physical Condition

510 Impairment of efficiency and judgement because of drugs or alcohol
511 Incapacitation due to injury or illness
512 Employee restricted in work or motion
513 Employee asleep
515 Employee physical condition, other (enter code 515 in item 35 and explain in item 50)

Flagging, Fixed, Hand and Radio Signals

517 Absence of fixed signal (Blue Signal)
518 Fixed signal improperly displayed (Blue Signal)
519 Fixed signal improperly displayed
52A Block signal, failure to comply
52B Interlocking signal, failure to comply
52C Automatic cab signal, failure to comply
52D Automatic cab signal cut out
52E Automatic train-stop device cut out
52F Automatic train control device cut out

52G Failure to observe hand signals given during a wayside inspection of a moving train
520 Fixed signal, failure to comply
521 Flagging, improper or failure to flag
522 Flagging signal, failure to comply
523 Hand signal, failure to comply
524 Hand signal improper
525 Hand signal, failure to give/receive
526 Radio communication, failure to comply
527 Radio communication, improper
528 Radio communication, failure to give/receive
529 Flagging, fixed, hand and radio signals, other (enter Code 529 in item 35 and explain in item 50)

Other Rules and Instructions

530 Car(s) shoved out and left out of clear
531 Cars left foul
532 Derail, failure to apply or remove
533 Failure to stop train in clear
534 Hazardous materials regulations, failure to comply
535 Instruction to train/yard crew improper
536 Motor car or on-track equipment rules, failure to comply
537 Movement of engine(s) or car(s) without authority, (railroad employee)
538 Shoving movement, absence of man on or at leading end of movement
539 Shoving movement, man on or at leading end of movement, failure to control
540 Skate, failure to remove or place
541 Special operating instruction, failure to comply (identify in item 50)
542 Train order or timetable authority, failure to comply
543 Train orders, radio, error in preparation, transmission or delivery
544 Train orders, written, error in preparation, transmission or delivery
549 Rules and instructions, other (enter Code 549 in item 35 and explain in item 50)

Speed

550 Coupling speed excessive
553 Switch movement, excessive speed
554 Train inside yard limits, excessive speed
555 Train outside yard limits under clear block, excessive speed
559 Speed, other (enter Code 559 in item 35 and explain in item 50)

Switches, Use of

560 Spring Switch not cleared before reversing
561 Switch improperly lined
562 Switch not latched or locked
563 Switch previously run through
569 Use of switches, other (enter Code 569 in item 35 and explain in item 50)

Miscellaneous

570 Buffing or slack action excessive
571 Failure to couple
572 Lateral drawbar force on curve excessive
573 Moving cars while loading ramp or bridge plate not in proper position
574 Passed couplers
575 Retarder, improper manual operation
576 Retarder yard skate improperly applied
599 Other train operation/human factors (enter code 599 in item 35 and explain in item 50)

Appendix B—Employee Human Factor Attachment

Name of Railroad

Railroad Accident/Incident No. (Block 1b, FRA F 6180.54)

Date of Accident/Incident (mo/day/year)

The railroad has determined that [check only one]

_____ a. One or more railroad employees committed an act or omission or were in a physical condition that was a primary or a contributing cause of the accident/incident.

_____ b. Either no railroad employee committed an act or omission or was in a physical condition that was a primary or a contributing cause of the accident/incident or it is uncertain whether any person who was a railroad employee committed an act or omission or was in a physical condition that was a primary or a contributing cause of the accident/incident.

If "a" was checked, complete the following: The railroad has *identified:* [check only one]

_____ 1. All of the railroad employees who committed an act or omission or were in a physical condition that was a primary or contributing cause of the accident/incident.

_____ 2. Some, but not all, of the railroad employees who committed an act or omission or were in a physical condition that was a primary or contributing cause of the accident/incident.

_____ 3. None of the railroad employees who committed an act or omission or was in a physical condition that was a primary or contributing cause of the accident/incident.

If Item "3" above was checked, go to last line of form.

If Item "1" or "2" above was checked, complete the following for each employee whom the railroad has identified as having committed an act or omission or having been in a physical condition that was a primary or contributing cause of the accident/incident:

Name of railroad employee (last, first, middle)	Job Title	Railroad code of employing railroad	Cause code(s) applicable to this employee

Briefly describe the employee's act, omission or physical condition that was a primary or a contributing cause of this accident/incident. The meanings of most cause codes are already stated in the "FRA Guide for Preparing Accident/Incident Reports." Briefly expand further, if information is not already stated in the narrative section of the Rail Equipment Accident/Incident Report.

Did this employee die as a result of the Accident? _____
(Attach additional pages if more room is needed.)

Typed Name and Title

Signature

Date

Form FRA F 6180.81 (6/90)

Instructions on Completing Form FRA F 6180.81, Employee Human Factor Attachment

This form should be completed only when a railroad, in reporting a rail equipment accident/incident to FRA, assigns any of the cause codes listed under "Train Operation—Human Factors" in the "FRA Guide for Preparing Accident/Incident Reports," except Cause Code 506, as the primary cause or a contributing cause of the rail equipment accident/incident.

Note on Notices to Railroad Employees Involved in Rail Equipment Accidents/Incidents

Part I of FRA's Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor" ("Notice"), must be completed and the entire form (parts I and II) forwarded to each employee listed in the Employee Human Factor Attachment as causing or contributing to the accident, with certain exceptions. The railroad's Rail Equipment Accident/Incident Report and Employee Human Factor Attachment must not be delayed in order to complete the Notice.

A Notice for an employee must not be sent if that employee has died as a result of the accident. A Notice for an employee is not required (and is not recommended) if the employee has died of whatever causes by the time that the Notice is ready to be sent.

A Notice for an employee must be sent within 45 days from the end of the month in which the accident/incident occurred, unless (i) the employee has died by the time that the Notice is ready to be sent or (ii) the reporting railroad, in its reasonable discretion, believes that notification of the employee should be deferred for a time on medical grounds.

Appendix C—Notice to Railroad Employee Involved in rail equipment Accident/Incident attributed To Employee Human Factor; Employee Statement Supplementing Railroad Accident Report

Part I—Notice To Railroad Employee Involved in Rail Equipment Accident/Incident Attributed To Employee Human Factor (To Be Completed by Reporting Railroad)

Name of reporting railroad	Date of accident/ incident (month, day, year)	Accident/ Incident No.	Location of Accident/ Incident

Check the Cause Code Applicable to this Employee — Cause Codes Listed on Accident/ Incident Report (State meaning of each cause code as stated in "FRA Guide for Preparing Accident/Incident Reports.")

_____ Primary Cause: _____
Number Meaning
_____ Contributing Cause: _____
Number Meaning

Employee's Name (First, middle, last)

Job Title on Date of Accident

Name of Employing Railroad on Date of Accident

Employee's Home Address or RFD No. (include apt. no., if any)
City
State Zip

Notice of Railroad Employee

This Notice is required by safety regulations of the Federal Railroad Administration (FRA), U.S. Department of Transportation.

This railroad, in submitting its report to FRA on the accident described above, has alleged that you committed an act or omission or were in a physical conditon that was either the primary cause or a contributing cause of the accident. (For the railroads's specific allegations, please see above on this form and the reports themselves, which are enclosed or attached.)

Under FRA safety regulations (published in title 49, § 225.12 of the Code of Federal Regulations), you may submit a statement to FRA, with a copy to this railroad, commenting on the railroad's allegations and explaining any factors that you believe caused or contributed to the accident. YOU ARE NOT REQUIRED TO SUBMIT THIS STATEMENT SUPPLEMENTING THE RAILROAD'S ACCIDENT REPORT; HOWEVER, IF YOU CHOOSE TO DO SO, YOU MUST FOLLOW THE INSTRUCTIONS PRINTED ON THE REVERSE OF THIS PAGE.

Name of Railroad Representative

Signature of Railroad Representative

Date Signed

Date Mailed or Hand Delivered to Employee

Name and address of railroad representative to whom form is to be returned:

Part II—Employee Statement Supplementing Railroad Accident Report

(To Be Completed by Notified Employee, If Employee Wishes to File this Supplement. See instructions on reverse of this form.)

Attention: THIS STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT MUST BE SIGNED. (Otherwise it will be returned to the employee.)

Note: Willful false statements can result in the imposition of civil penalties. Knowing and willful false statements can result in the imposition of criminal penalties.

I have carefully read this statement and confirm that it is true and correct to the best of my knowledge and belief.

Signature of Employee

Date Signed

Date Mailed/Hand Delivered to FRA

Date Mailed/Hand Delivered to Railroad that Issued this Notice

Telephone Numbers:
Home: ( )
Work: ( )

Home address, if different from address shown in part I:

Note: This Notice and Employee Supplement under 49 CFR 225.12 are part of the reporting railroad's accident report to FRA pursuant to the Accident Reports Act and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report * * *." 45 U.S.C. 41. See 49 CFR 225.7(b).

Form FRA F 6180.78 (6/90)

Instructions to Notified Railroad Employee on Completing Part II of This Form, Employee Statement Supplementing Railroad Accident Report

1. Please read all of these instructions before completing the form.

2. If you wish to do so, please submit an Employee Statement Supplementing Railroad Accident Report (Supplement) concerning the accident described in part I of this form. Nonsubmission of a Supplement does not constitute consent to any of the railroad's allegations.

3. If you choose to submit a Supplement, you must send a copy to the railroad shown in Part I as the "reporting railroad." (If more than one railroad reported this accident to the Federal Railroad Administration, you may receive more than one Notice. A Supplement may be submitted in response to each Notice.)

4. Supplements become part of the railroad's accident report to the Federal Railroad Administration (FRA), U.S. Department of Transportation, and are available through the Freedom of Information Act to railroads and the general public to the same extent as other government records. See 49 CFR part 7 and 225.7. The reporting railroad is required to read your Supplement and determine, in light of your Supplement, whether the railroad's reports to FRA concerning the accident should be revised. If you wish to submit confidential information to the Federal Railroad Administration, this form is not to be used to submit it. Instead, you should use another means of communication such as a confidential letter addressed to your collective bargaining representative, if any, or to the Federal Railroad Administration, Office of Safety, Office of Safety Enforcement, RRS–13, 400 Seventh Street, SW., Washington, DC 20590. The confidential letter should include the name of the "reporting railroad," the date and place of the accident, and the "rail equipment accident/incident number." See part I of this form.

5. Print or type. If more room is needed, attach one or more additional pieces of paper.

6. FRA advises preparing a rough draft before filling in the Supplement form.

7. Please be aware that willful false statements can result in the imposition of civil penalties. Knowing and willful false statements can result in the imposition of criminal penalties.

8. Relevant supporting documents and photographs may also be attached.

9. After rereading the Notice to Railroad Employee (part I of this form) and reading its attachments (the Rail Equipment Accident/ Incident Report and Employee Human Factor Attachment)—

a. State the item number (for example, Item No. 30b for "Position in Train") of any item on the Rail Equipment Accident/Incident Report with which you disagree or which you question, and state what you believe to be the correct information.

b. If not already discussed, state the item number of any item in part I of the Notice with which you disagree or which you question, and state what you believe to be the correct information.

c. If not already discussed, state the item number of any item in the Employee Human Factor Attachment with which you disagree or which you question, and state what you believe to be the correct information.

d. Comment as clearly and concisely as you can on the railroad's allegations concerning your role in the accident and explain any factors that you believe caused or contributed to the accident.

10. Sign and date the Supplement. Otherwise it will be returned to you.

11. Attach one copy of the railroad's Rail Equipment Accident/Incident Report and Employee Human Factor Attachment on this accident.

12. Note the number of copies of this form and any attachments to be made:

Original—to FRA
1 copy—to railroad
1 copy—for your records

FRA suggests that you make and keep a copy of your Supplement and any other supporting material submitted with it, including a copy of the railroad's reports.

13. Fill in the date of mailing on the original and each copy. Mail the original of the entire form (parts I and II), with one copy of the railroad's Rail Equipment Accident/Incident Report and Employee Human Factor Attachment on this accident, continuation pages (if any), and any other supporting documents, by first class mail, to the following: Federal Railroad Administration, Office of Safety, Office of Safety Analysis (RRS-22), 400 Seventh Street SW., Washington, DC 20590.

Also, mail a copy of the same, by first class mail, to the railroad representative listed at the end of part I of this form. You must pay the postage for each.

14. The time limit for mailing your Supplement is 35 days from the date that the Notice (part I of this form) was mailed or hand delivered to you. Exceptions will be made if you state a good reason for delay. Supplements submitted late should be accompanied by a letter of explanation; however, there is no penalty for filing a Supplement late.

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federal register

Thursday
September 13, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the St. Louis Control Area, Missouri; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-3]

RIN 2120-AD61

Proposed Alteration of the St. Louis Terminal Control Area; Missouri

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the St. Louis, MO, Terminal Control Area (TCA). This proposal would maintain the altitude of the upper limit of the TCA at 8,000 feet mean sea level (MSL) and redefine several existing subareas to improve air traffic procedures and simplify visual flight rules (VFR) operations outside the TGA. The primary air of this modification to the TCA is to improve the degree of safety while providing the most efficient use of the terminal airspace. This action would improve the flow of traffic and increase safety in the St. Louis terminal area.

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

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10] Airspace Docket No. 90-AWA-3, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch [ATO-240], Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for futher NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91-78 to part 91 of the Federal Aviation Regulations (35 FR 7782) which enabled the establishment of TCA's.

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to use a transponder for operation in a TCA.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing air traffic control (ATC) with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 27 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

Airspace Meetings

A pre-NPRM airspace meeting was held in July 26, 1989, at the University of Missouri, St. Louis, MO, to allow local aviation interests and airspace users an

opportunity to present input on the design of the proposed alteration of the St. Louis TCA. Twenty-four letters were received in response to the announcement of an informal airspace meeting. Approximately 146 people attended the informal airspace meeting and 15 presentations were made by attendees.

An Ad Hoc Committee was formed to discuss the design of the TCA, and the following comments of the committee were submitted to the FAA on November 27, 1989:

1. Many helicopter operators objected to the increase of the inner area of the TCA from 6 to 10 miles, their objection being that the additional area would encompass 19 active heliports. Most are private-use heliports associated with hospitals. The St. Louis Police Department said it would affect their surveillance operations. Attendees also stated that Interstate Highway 64 is a "VFR flyway" between the Spirit of St. Louis and the St. Louis Downtown-Parks Airport.

The FAA agrees with the Ad Hoc Committee recommendation that the 6-mile inner area should remain essentially the same with minor adjustments so that it may be easily identified by landmarks.

2. A helicopter operator recommended that a VFR corridor be established through the TCA that would allow access to a ramp area on the airport.

FAA did not accept this recommendation because an uncontrolled corridor in the area could compromise safety and would not be in the best interest of efficient air traffic management. Aircraft regularly conduct instrument landing systems (ILS) approaches to Runway 30R and then transition to land on Runway 24. A VFR corridor would be in the flight path of this transition and would eliminate some of the flexibility now available to controllers. In addition, helicopters are routinely handled with no delays and no complaints have been received.

3. A flight instructors organization objected to the expansion of the TCA because it would require significant additional flying time for training flights.

The FAA's proposed modifications would add airspace to both the north and south boundaries of the existing TCA. However, the base of that airspace would be 5,000 feet MSL, which raises the floor of the existing TCA. We believe that this change would have a minimal impact on flight training, except for those maneuvers which require higher altitudes.

4. Several attendees voiced concern with regard to access to the 3 public-use airports that are located within 10 miles of Lambert-St. Louis International Airport.

The FAA reaffirms the fact that modifications proposed for the TCA would not require pilots to enter the TCA to gain access to these airports. In fact, the proposed new description would clarify the boundaries of the 6-mile ring by using more landmarks.

5. Several attendees recommended that additional landmarks should be used in the design of the TCA.

The proposed modifications to the TCA do in fact describe some of the boundaries of the TCA by using more prominent landmarks, such as rivers, highways, railroad tracks, etc.

6. A city within the metroplex of St. Louis was concerned about the modification of the TCA because of the increased traffic and associated noise over the community.

The proposed modifications would have no effect on the traffic patterns at any airport within the TCA.

The committee also recommended the following in order to enhance safety and to help avoid TCA intrusions:

1. Establish a traffic flow depiction on the back of the TCA chart to enhance understanding by VFR pilots and assist pilots in avoiding congested areas.

2. Locate a terminal very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) on STL in order to improve navigational reference in and around the TCA.

3. Clearly depict highway numbers on the sectional chart.

The St. Louis TCA chart when published will depict VFR fly-way routes and specific access instructions to facilitate entry into and flight through the TCA. There is an active project to place a terminal VOR/DME on the airport which is expected to be included in the FY 91 budget.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the St. Louis TCA located at the Lambert-St. Louis International Airport (STL), St. Louis, MO. The annual enplaned passengers increased from 3.1 million to 10 million as of December 31, 1989. The airport operations increased from 337,000 in 1980 to 436,000 by December 3, 1989. This volume of traffic cannot be accommodated by the present configuration of TCA airspace. Aircraft are routinely vectored beyond the boundaries of the current TCA into airspace where ATC services are not provided to all aircraft. This proposed alteration of the TCA would better serve the users, as well as the FAA. The FAA's responsibility is to efficiently manage the airspace surrounding the St. Louis area, while providing a level of safety expected by the flying public. This responsibility can be met by modifying the TCA to accommodate the volume of traffic experienced today and projected for the future. The proposed alteration is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; and (4) meet the requirements of § 61.95 of the Federal Aviation Regulations (14 CFR part 61) if the aircraft is operated by a student pilot.

Any person operating an aircraft arriving at any airport within a TCA or flying through a TCA must have the aircraft equipped with: an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine-engine-powered aircraft operating to or from a TCA-primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12 and 71.401 of part 71 (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 (14 CFR part 91).

The standard configuration of a TCA consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the FAA after obtaining public input from informal airspace meetings, written comments, and coordination with the FAA regional office. The FAA has determined that the proposed alteration of airspace for the St. Louis TCA would be consistent with TCA objectives. The proposed configuration considers the present terminal area flight operations and terrain.

The following description of the St. Louis TCA reflects public comments and represents user group inputs:

Area A. That airspace extending from the surface up to 8,000 feet mean sea level (MSL) within 6 nautical miles of Lambert-St. Louis International Airport excluding the area south of Interstate 70 and west of Interstate 270. The interstate 70/270 cutout would allow for operations at Creve Coeur and Arrowhead Airports without entering the TCA. In addition, the boundary on the west would be defined by the Missouri River from Interstate 70 on the west around the northeast side of STL to a point on the north side of STL where the Missouri River runs to the north past the 6-nautical-mile ring. The boundary formed by the river would be defined by the shore farthest from the center of the TCA. Likewise, where a highway serves as the border, the side of the highway farthest from the center of the TCA would form the border.

This airspace is necessary to contain large turbine-powered aircraft within the confines of the TCA while operating to and from the primary airport and allow for ingress/egress to secondary airports.

Area B. That airspace extending from 1,700 feet MSL to 8,000 feet MSL. This area would be formed by Interstate 270 on the east and by the 175° radial from the St. Louis VOR on the west. The north boundary would be formed by Interstate 70 on the north and by the 6-nautical-mile ring on the south.

This airspace is required to provide sufficient airspace for vectoring aircraft arriving and departing the primary airport.

Area C. That airspace extending from 2,000 feet MSL to 8,000 feet MSL, including the cutout for the Creve Coeur and Arrowhead Airports which extends beyond the area defined in Area A to 10 nautical miles from STL. The cutout boundary would be defined by Interstate 64 and would be designed to allow for reduced VFR traffic congestion and the avoidance of several high towers. The south boundary for this airspace would be changed slightly to encompass the roadway edge away from the center of the TCA for Interstate 64 (formerly Highway 40 and 61).

This airspace configuration will provide an area to contain aircraft during climb and descent maneuvers to transition between the terminal and en route structures.

Area D. That airspace extending from 3,000 feet MSL to 8,000 feet MSL from 10 to 15 nautical miles from STL.

This airspace is required to provide an area to contain aircraft during descent profile while also allowing sufficient airspace for VFR operations.

Area E. That airspace extending from 3,000 feet MSL to 8,000 feet MSL over Downtown-Parks Airport. VFR references would be defined by using the following boundaries: on the west, the Mississippi River, and on the north, Interstate 70 and 55.

This airspace is required to provide an area to contain aircraft while descending into Lambert-St. Louis International Airport and allowing sufficient airspace for VFR aircraft operations.

Area F. That airspace extending from 5,000 to 8,000 feet MSL from 15 to 20 nautical miles from STL. Area F would also include the Runway 30/12 centerline extensions out to 30 nautical miles from STL. These extensions would be 16 nautical miles wide.

This airspace is required to provide descent profile for aircraft en route to Lambert-St. Louis International Airport and to allow sufficient airspace for VFR operations in the vicinity of Scott Air Force Base.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Lambert-St. Louis International Airport for arriving and departing. ATC would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the St. Louis metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.401(b) of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify costs and benefits, to the extent practicable, to the private sector, consumers, Federal, State and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exingencies. 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, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in Executive Order 12291. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than is contained in this summary, then the reader should consult the full regulatory evaluation contained in the docket.

Costs

The FAA believes that the proposed rule would impose no costs to the agency or the aviation community. The basis for this assessment is discussed below for each of these groups.

For the FAA, the proposed rule would not impose administrative costs. Current personnel and equipment resources already in place at the St. Louis TCA

would absorb any additional operations workload generated by the proposed rule.

One of the operational rules of a TCA requires pilots to establish two-way radio contact with ATC. The proposal could adversely affect aircraft operators who currently fly in areas that would become part of the TCA since they may have to acquire two-way radios. However, aircraft operators who fly under IFR routinely operate inside TCA's and are assumed to be already equipped with the necessary avionics equipment. These operators primarily consist of large air carriers, business jets, commuters, and air taxis. Thus, they would not have to acquire additional equipment as a result of this proposal. The FAA believes that operators who fly under VFR would not have to acquire two-way radios. These aircraft are small GA airplanes (single-engine, piston). The FAA believes affected GA aircraft are already equipped with two-way radios and therefore, would not incur such a cost.

GA operators who do not routinely fly inside the TCA could be potentially inconvenienced by having to participate (contacting ATC and following TCA operational rules) in the TCA, but only if they routinely operate in the areas of proposed TCA expansion. However, the FAA believes that GA operators would not be significantly inconvenienced. They are assumed to be already participating in the TCA to the degree that they are least monitor traffic advisories. Affected GA aircraft operators also could potentially face circumnavigation costs. Still, the FAA does not believe these costs would be significant since the TCA would be expanding only 5 nautical miles and GA operators would still be able to fly above or below the TCA.

Antique airplanes, sports aviation aircraft (gliders, balloonists, parachutists), and student pilots, are prevalent within a 30-nautical-mile radius of STL and could potentially incur circumnavigation costs. This is predominantly true for those currently operating in the proposed areas of TCA expansion of Area F. However, as long as these operators fly below proposed Area F's floor at 5,000 feet MSL, the proposed rule would not affect them. If they wish to fly above 5,000 feet MSL, they would have to circumnavigate five nautical miles to remain clear to the TCA. Because of this relative short distance, the FAA estimates that the proposed rule would have a minimal, if any, cost impact on antique and sports aviation operations.

The FAA recognizes there is some uncertainty associated with this estimation of cost impacts on GA operators. Because of this uncertainty, the FAA solicits comments from the aviation community on the extent to which the proposed rule would affect them.

Benefits

The proposed rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public as a result of a lowered likelihood of midair collisions due to increased ATC services around the St. Louis TCA.

Because of the proactive nature of the proposed changes, the potential safety benefits are difficult to quantify in monetary terms. Proactive means that the FAA acts to prevent a safety problem from occurring when the earliest symptoms appear. In this case, the symptoms are increased complexity (or density) of aircraft operations within the present configuration of the St. Louis TCA. Indeed, when the FAA last modified the St. Louis TCA in 1980, annual operations were 337,000 and passenger enplanements were 5.4 million. Since then, annual operations have increased 30 percent to 436,000 and are projected to reach 508,000 by the year 2000. Similarly, annual passenger enplanements have increased 91 percent to 10.3 million and are projected to reach 15.8 million by the year 2000.

The number of operations at GA airports surrounding St. Louis is increasing as well. Currently, there are 10 public airports, 2 public heliports, 8 charted private airports, and at least 19 private heliports within the lateral boundaries of the TCA. The FAA projects that the combined total annual operations of these air facilities will be approximately 630,000 in 1990 and rise to 772,000 by the year 2000. Only a fraction of these GA operations ever enter the St. Louis TCA. Nevertheless, the FAA believes that the increase in GA operations outside the TCA translates into an increase in GA operations inside.

The current level of operations has congested the airspace to the point that ATC must now routinely vector aircraft beyond the boundaries of the existing TCA into airspace where ATC services are not provided to all aircraft. Thus far, ATC has maintained safety in and around the existing St. Louis TCA by such measures as aircraft landing procedures and metering. Although these measures have been successful thus far, as evidenced by a record of no midair collisions within the St. Louis TCA, the FAA believes that they are no longer adequate.

Without documented evidence of midair collisions in the St. Louis TCA, estimating the probability of such collisions in the absence of the proposed rule cannot be determined with a reliable degree of certainty. Despite this difficulty, the FAA believes that there is an emerging safety problem, though not yet critical. Without the proposed rule, the FAA believes that aviation safety in the St. Louis area would be reduced significantly in the future.

Another benefit feature of the proposed rule would reposition many of the TCA boundaries along surface features such as highways and rivers. This would enhance the visual means for TCA boundary identification. The proposed rule would also release TCA airspace by raising the floor of a section of the "core" to 1,700 feet MSL (Area B in the NPRM). This would provide more airspace to users who operate under VFR conditions, especially around the Creve Coeur and Arrowhead Airports.

Ordinarily, the potential safety benefits of the rule would be the incremental reduction in the likelihood of midair collisions caused by the proposed TCA modification. However, the FAA has adopted regulations requiring the use of a transponder with automatic altitude reporting capability (Mode C, 53 FR 23354, June 21, 1988) and, of certain aircraft operators, installation of a traffic alert and collision avoidance system (TCAS, 54 FR 940, January 10, 1989). The potential safety benefits of the Mode C and TCAS rules and proposed modifications to the St. Louis TCA are inextricably linked. Subsequently, an indeterminate amount of the benefits of the proposed TCA modifications must be credited to the interaction of the TCA with the Mode C and TCAS Rules.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities that the proposed rule could affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

The proposed rule would only potentially affect those unscheduled air taxi operators who are not able to operate under IFR conditions. The FAA believes that all of the potentially affected unscheduled aircraft operators are already equipped to operate under

IFR conditions. This is because such operators fly regularly in airports where the FAA has established radar approach control services. Therefore, the FAA believes the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

In view of the estimated negligible costs to some GA operators, coupled with benefits in the forms of enhanced aviation safety and increased airspace to GA aircraft operators, the FAA believes that the proposed rule to modify the St. Louis TCA is cost-beneficial. For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Proposed Amendment

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

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

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

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

§ 71.401(b) [Amended]

1. Section 71.401(b) is amended as follows:

St. Louis, MO [Revised]

Primary Airport, Lambert-St. Louis International Airport (lat. 38°44'52" N., long. 90°21'36" W.).

Boundaries.

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6-mile radius of the Lambert-St. Louis International Airport, excluding that airspace south of Interstate 70; west of Interstate 270; and west of the west bank of the Missouri River from Interstate 70 clockwise to the point where the river intersects with the 6-mile arc.

Area B. That airspace extending upward from 1,700 feet MSL to and including 8,000 feet MSL bounded by Interstate 270 on the east, Interstate 70 on the north, the 180° radial of the St. Louis VOR on the west, and the 6-mile arc on the south.

Area C. That airspace extending upward from 2,000 feet MSL to an including 8,000 feet MSL within a 10-mile radius arc of the Lambert-St. Louis International Airport, excluding the area south of Interstate 64 (formerly Highway 40).

Area D. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace bounded by Interstate 55/70 on the north and the east bank of the Mississippi River from Interstate 55/70 to the 15-mile arc on the south.

Area E. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL that was excluded from Area D.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL in 3 areas: (1) Within a 20-mile arc of the Lambert-St. Louis International Airport; (2) within 8 miles each side of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 20-mile arc to the 30-mile radius arc of the Lambert-St. Louis International Airport; and (3) within 8 miles each side of the Lambert-St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 20-mile radius arc to the 30-mile radius arc of the Lambert-St. Louis International Airport.

Issued in Washington, DC, on September 7, 1990.

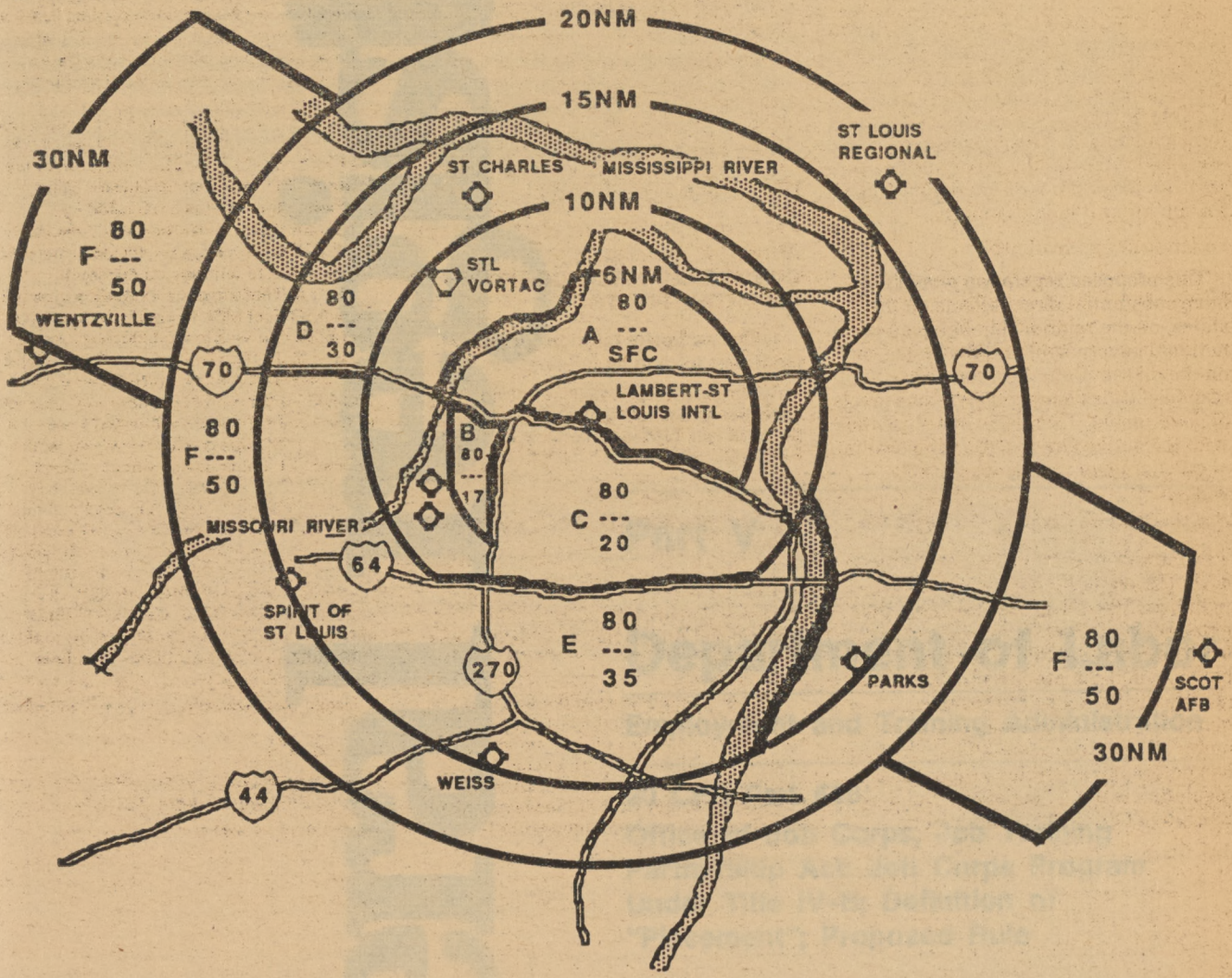
Jerry W. Ball,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910–13–M

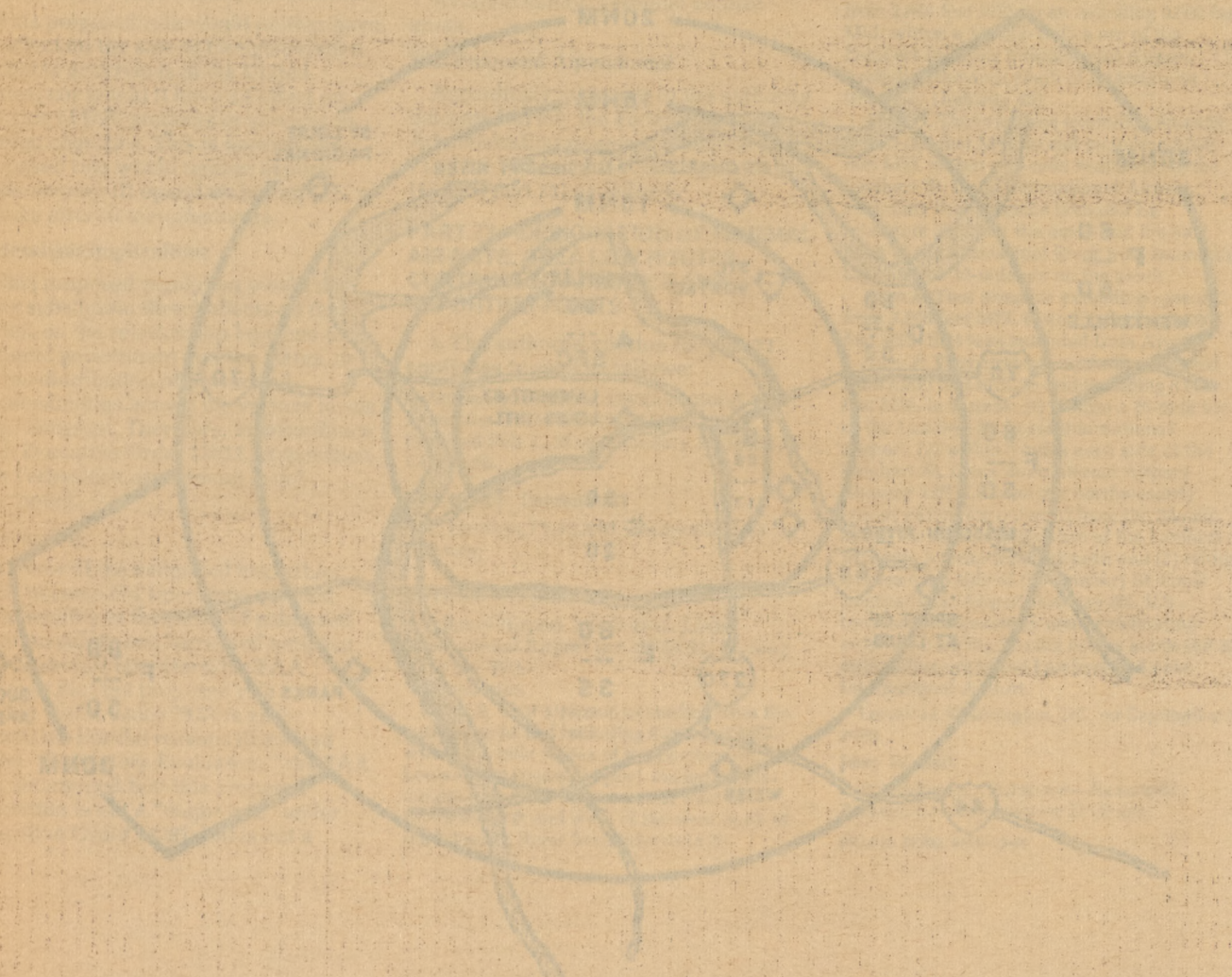
ST LOUIS, MISSOURI
TERMINAL CONTROL AREA
LAMBERT-ST LOUIS INTERNATIONAL AIRPORT
FIELD ELEVATION - 605 FEET

(not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP-220)

[FR Doc. 90-21555 Filed 9-12-90; 8:45 am]
BILLING CODE 4910-13-C



federal register

Thursday
September 13, 1990

Part V

Department of Labor

Employment and Training Administration

20 CFR Part 638

Office of Job Corps, Job Training Partnership Act: Job Corps Program Under Title IV-B; Definition of "Placement"; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 638

Office of Job Corps; Job Training Partnership Act: Job Corps Program Under Title IV-B; Definition of "Placement"

AGENCY: Office of Job Corps, Employment and Training Administration, Labor.

ACTION: Notice of request for comments.

SUMMARY: The Office of Job Corps requests comments on the appropriate definition of "placement" under the Job Corps program. Comments also are requested on the advisability of utilizing job retention as a measure of program effectiveness.

DATES: Written comments are invited from the public. Comments shall be submitted on or before October 15, 1990.

ADDRESSES: Mail written comments to Peter E. Rell, Director, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, room 4510, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Chief, Division of Program Planning and Development.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan, Chief, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, room N4510, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535-0556 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

The Office of Job Corps of the Employment and Training Administration (ETA), Department of Labor (DOL), requests comments on the appropriate definition of "placement" under the Job Corps program. Comments also are requested on the advisability of utilizing job retention as a measure of program effectiveness. This document is not itself a notice of proposed rulemaking, but poses specific questions that may then be used for making decisions on whether proposed rulemaking is appropriate.

Job Corps Program

The Job Training Partnership Act (JTPA or the Act) establishes programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment, 29 U.S.C. 1501 *et seq.*

The Job Corps, authorized under title IV-B of JTPA, is a national program for economically disadvantaged young men and women. 29 U.S.C. 1691–1709. Residential and nonresidential Job Corps centers throughout the country provide students with intensive programs of education, vocational training (including pre-apprenticeship training), work experience, and other activities. See 29 U.S.C. 1698. The Job Corps assists eligible young individuals who can benefit from an intensive program, operated in a group setting, to become more responsible, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of national, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies. 29 U.S.C. 1691.

Job Corps centers are operated by a variety of organizations, both public and private. Centers are operated by the Department of the Interior and the Department of Agriculture under interagency agreements with DOL; or by private-for-profit and private nonprofit organizations, State and local government entities, Native American entities, community-based organizations, and JTPA recipients, under contract with DOL. 29 U.S.C. 1697.

Statutory and Regulatory Language Relevant to Placement of Job Corps Students

Section 421 of JTPA states that the purpose of Job Corps is

> to assist young individuals who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsible, employable, and productive citizens * * *

[29 U.S.C. 1691.]

In addition, section 432 (b) and (c) of JTPA states that:

> (b) The Secretary shall counsel and test [Job Corps] enrollees prior to their scheduled terminations to determine their capabilities and shall make every effort to place them in jobs in the vocation for which they are trained or to assist them in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the public employment system to the fullest extent possible.
>
> (c) The Secretary shall determine the status and progress of [Job Corps] enrollees scheduled for termination and make every efforty to assure that their needs for further education, training, and counseling are met.

[29 U.S.C. 1702 (b) and (c).]

Effective on July 1, 1990, regulations for the Job Corps program are at 20 CFR part 638. 55 FR 12992 (April 6, 1990).[1] Section 638.200 of those regulations define "placement", for the purposes of the Job Corps program, as

> student employment, entry into the Armed Forces, or enrollment in other training or education programs, within six months following termination from Job Corps (or such other period as many be announced by the Job Corps Director by Notice in the Federal Register).

[20 CFR 638.200, 55 FR at 12999]

Those regulations further state that the

> overall objective of all Job Corps activities shall be to enhance each student's employability and to effect the successful placement of each student. Placement efforts shall concentrate on jobs related to a student's vocational training, or military service when this is the student's choice, or on acceptance and placement in other educational and/or training programs. The placement of students shall be performed in accordance with procedures issued by the Job Corps Director.

[20 CFR 638.409, 55 FR at 13001]

The Job Corps "Policy and Requirements Handbook", which contains detailed policies implementing the Job Corps regulations, interprets the definition of "placement" as a Job Corps student's entry into (see 20 CFR 638.100(b), 55 FR at 12997):

1. Part of full-time regular employment, or self-employment, or on-the-job training with a minimum of 20 hours per week paid employment;
2. Apprenticeship program approved by the Bureau of Apprenticeship Training or a State Apprenticeship Council, where the student is receiving a wage;
3. School or other non-wage paying institutional training program requiring full-time attendance as defined by the school or institution (readmission to Job Corps is not to be considered as a placement); or
4. Armed Forces, including Reserve Forces (full-time only; minimum of 40 hours per week); active duty must begin within 6 months after termination; pre-enlistment contracts are not placements.

Request for Comments

Pursuant to the above-quoted provision in 20 CFR 638.50, definition of "Placement", 55 FR at 12999, that placement may be for such other period as may be announced by the Job Corps Director by notice in the Federal Register, the Office of Job Corps is

[1] The Job Corps regulations at 20 CFR part 684 continue to apply to the program through June 30, 1990. The Federal Register citation is to the final rule redesignating part 684 as part 638 and revising it.

requesting public comment on the appropriate time period in which to determine placing. Considering the flexibility of the youth labor market, performance standards for JTPA training programs, and the program's interest in placement participants as soon as possible after training, Job Corps asks for comments on:

(1) The length of time after termination for which Job Corps should provide placement, and whether a shorter time period should be considered as an alternative to six months; and

(2) Whether the current definition of "placement" offers appropriate incentives to ensure that Job Corps' objectives are being met; and

(3) The length of time after termination for which Job Corps should provide placement support; and

(4) The advisability of utilizing program funds to conduct followup verification of former Job Corps students' job retention or retention in school, to demonstrate that the purposes of the program (as set forth at JTPA section 421 (29 U.S.C. 1691), and in the Job Corps regulations) are being met.

In addition, in the interest of promoting coordination between Job Corps and JTPA title II–A youth programs, and of facilitating the collection and dissemination of information regarding uniform program results, public comment is being sought on changing the definition of the Job Corps placement outcomes to parallel those associated with title II–A youth programs. This would be accomplished by establishing an "entered employment" outcome to include placement in unsubsidized employment, apprenticeship, and armed forces, and an "other positive termination" (or "employment enhancement") outcome comprised of the school/training entry component of the existing placement definition. These closely parallel the entered employment and selected youth employability enhancement definitions under title II–A, but do not alter the essential features of Job Corps program results.

Signed at Washington, DC, this 24th day of August 1990.

Peter E. Rell,

Director, Office of Job Corps.

[FR Doc. 90–21371 Filed 9–12–90; 8.45 am]

BILLING CODE 4510–30–M

federal register

Thursday
September 13, 1990

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Molecules Research; Actions Under Guidelines and Advisory Committee Meetings; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on October 16, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss the following proposed actions under the "NIH Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958):

Proposed Major Actions to the "NIH Guidelines";

Revision of Appendix K of the "NIH Guidelines" Regarding Establishment of Guidelines for Level of Containment Appropriate to Good Industrial Large Scale Practices (GILSP);

Preliminary Review of the Regional Hearings Conducted by the Recombinant DNA Advisory Committee Concerning Future Role of this Committee;

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the "Catalog of Federal Domestic Assistance." Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the "NIN Guidelines." In lieu of the individual program listing, NIH invites readers to direct questions to the information address above whether individual programs listed in the "Catalog of Federal Domestic Assistance" are affected.

Dated: September 10, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–21708 Filed 9–12–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research; Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under the "NIH Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 16, 1990. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with "NIH Guidelines".

DATES: Comments received by October 8, 1990, will be reproduced and distributed to the RAC for consideration at its October 16, 1990, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by fax to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, Room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the "NIH Guidelines for Research Involving Recombinant DNA Molecules":

I. Revision of Appendix X of the "NIH Guidelines" Regarding Establishment of Guidelines for Level of Containment Appropriate to Good Industrial Large Scale Practices (GILSP)

In a letter dated June 28, 1990, the Industrial Biotechnology Association (IBA) and the Pharmaceutical Manufacturers Association (PMA) requested that the Recombinant DNA Advisory Committee revise appendix K of the *"NIH Guidelines for Research Involving Recombinant DNA Molecules"* to reflect a formalization of suitable containment practices and facilities for the conduct of large-scale experiments involving recombinant DNA-derived industrial microorganisms. In attachments to this request, there are proposed definitions and requirements pertaining to the requested changes. The Revision of the NIH Guidelines Subcommittee will meet on October 15 to review this request and report with a recommendation to the Recombinant DNA Advisory Committee.

Proposed revision of appendix K reads as follows:

"Appendix K—Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules

"This part of the Guidelines specifies physical containment guidelines for large-scale (greater than 10 liters of culture) research or production involving viable organisms containing recombinant DNA molecules. It shall apply to large-scale research or production activities as specified in section III–B–5 of the Guidelines. It is important to note that this appendix addresses only the biological hazard associated with organisms containing recombinant DNA. Other hazards accompanying the large scale cultivation of such organisms (e.g., toxic properties of products; physical, mechanical and chemical aspects of downstream processing) are not addressed and must be considered separately, albeit in conjunction with this appendix."

[Remainder of Introduction remains unchanged]

"Appendix K–I—Selection of Physical Containment Levels

"The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in part III of the Guidelines. For purposes of large-scale research or production, four physical containment levels are established. These are referred to as GILSP, BL1–LS, BL2–LS, and BL3–LS. The GILSP (Good Industrial Large-Scale Practice) level of physical containment is recommended for large-scale research or production involving viable, non-pathogenic, and non-toxigenic recombinant strains derived from host organisms that have an extended history of safe industrial use. Likewise, the GILSP level of physical containment is recommended for organisms such as those included in appendix C that have built-in environmental limitations that permit optimum growth in the industrial setting but limited survival without adverse consequences in the environment. For those organisms that do not qualify for GILSP, the BL1–LS (Biosafety Level 1—Large-Scale) level of physical containment is recommended for large-scale research or production of viable organisms containing recombinant DNA molecules that require BL1 containment at the laboratory scale. The BL2–LS (Biosafety Level 2—Large Scale) level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules that require BL2 containment at the laboratory scale. The BL3–LS (Biosafety Level 3—Large Scale) level of physical containment is required for large-scale research or production of viable organisms containing recombinant DNA molecules that require BL3 containment at the laboratory scale. No provisions are made for large-scale research or production of viable organisms containing recombinant DNA molecules that require BL4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

"Appendix K–II—GILSP Level.

"Appendix K–II–A. Cultures of viable organisms containing recombinant DNA molecules shall be handled in facilities intended to safeguard health during work with microorganisms that do not require containment. Processes and equipment should be designed and constructed to assure the integrity of the production organism and resulting product.

"Appendix K–II–B. Addition of materials to a system, sample collection, transfer of culture fluids within/between systems, and processing of culture fluids shall be conducted in a manner that maintains employee exposure to viable organisms containing recombinant DNA molecules at a level that does not adversely affect the health and safety of employees.

"Appendix K–II–C. Written instructions and training of personnel shall be provided to assure that cultures of viable organisms containing recombinant DNA molecules are handled prudently and that the workplace is kept clean and orderly.

"Appendix K–II–D. In the interest of good personal hygiene, facilities (e.g., handwashing sink, shower, changing room) and protective clothing (e.g., uniforms, laboratory coats) shall be provided that are appropriate for the risk of exposure to viable organisms containing recombinant DNA molecules. In addition, eating, drinking, smoking, applying cosmetics and mouth pipetting shall be prohibited in the work area.

"Appendix K–II–E. The facility's emergency response plan shall include provisions for handling spills.

"Appendix K–II–F. Discharges containing viable recombinant organisms shall be handled in accordance with applicable environmental regulations.

"Appendix K–II–G. Institutional codes of practice shall be formulated and implemented to assure adequate control of health and safety matters."

[Remainder of appendix K remains unchanged with the exception of the following: renumber appendix K–II to appendix K–III; renumber appendix K–III to appendix K–IV; renumber appendix K–IV to appendix K–V]

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"Appendix K -- Comparison of GILSP and BL-LS Criteria.

CRITERION[1]	GILSP[2]	NIH-RAC		
		BL1-LS	BL2-LS	BL3-LS
1. Formulates and implement institutional codes of practice for safety of personnel and adequate control of hygiene and safety measures.	Required	Required	Required	Required
2. Provide adequate written instructions and training of personnel to keep the work-place clean and tidy and to keep exposure to biological, chemical or physical agents at a level that does not adversely affect the health and safety of employees.	Required	Required	Required	Required
3. Provide changing and handwashing facilities as well as protective clothing, appropriate to the risk, to be worn during work.	Required	Required	Required	Required
4. Prohibit eating, drinking, smoking, mouth pipetting, and applying cosmetics in the workplace.	Required	Required	Required	Required
5. Internal accident reporting.	Required	Required	Required	Required
6. Medical surveillance.	Not required	Not required	Required	Required
7. Viable organisms should be handled in a system that physically separates the process from the external environment (closed system or other primary containment equipment).	Not required	Required	Required	Required
8. Organisms inactivated prior to removal from a system.	Not required	Required	Required	Required
9. Treatment of exhaust gases from a system.	Not required	Minimize release	Prevent release	Prevent release
10. Performance of seals.	Not required	Minimize release	Prevent release	Prevent release
11. Control of aerosols during:				
a. Sampling from a system.	Minimize release through procedural controls	Minimize release through engineering controls	Prevent release	Prevent release
b. Addition of materials to a system; transfer of cultivated cells.	Minimize release through procedural controls	Minimize release through engineering controls	Prevent release	Prevent release
c. Removal of material, products and effluents from a system.	Minimize release through procedural controls	Minimize release through engineering controls	Prevent release	Prevent release

CRITERION[1]	GILSP[2]	NIH-RAC		
		BL1-LS	BL2-LS	BL3-LS
12. Penetration of a system by agitator shaft and measuring devices in a manner that minimizes/prevents release of aerosols.	Not required	Minimize release	Prevent release	Prevent release
13. Foam out control to minimize/prevent release of aerosols.	Not required	Minimize release	Prevent release	Prevent release
14. System located within a designated work site (restricted access).	Not required	Not required	Not required[3]	Required
15. Provide decontamination facilities for personnel.	Not required	Not required	Not required	Required
16. Work site should be designed to contain large losses from the system.	Not required[4]	Required	Required	Required
17. Inactivation of waste solutions and waste materials, with respect to their biohazard potential.	Not required	Required	Required	Required
18. Effluent from sinks and showers should be collected and inactivated before release.	Not required	Not required	Not required	Not required
19. Biosafety manual.	Not required	Not required	Required	Required
20. Post biohazard sign.	Not required	Not required	Required	Required
21. Devices installed to monitor integrity of containment during operation.	Not required	Not required	Required	Required
22. Test system with non-recombinant host prior to use.	Not required	Not required	Required	Required
23. Establish an airlock for controlling ingress and egress.	Not required	Not required	Not required	Required
24. Work side should be maintained under negative pressure.	Not required	Not required	Not required	Required
25. Operate system at low pressure to maintain integrity of containment.	Not required	Not required	Not required	Required
26. Work site should be sealable to permit fumigation.	Not required	Not required	Not required	Required
27. Personnel should shower before leaving work site.	Not required	Not required	Not required	Not required
28. Supply and exhaust air to the work area should be HEPA-filtered.	Not required	Not required	Not required	Not required[5]

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"Appendix K—Footnotes

"1. The criteria in this grid address only the biological hazard associated with organisms containing recombinant DNA. Other hazards accompanying the large scale cultivation of such organisms (e.g., toxic properties of products; physical, mechanical and chemical aspects of downstream processing) are not addressed and must be considered separately, albeit in conjunction with this grid.

"2. Good Industrial Large Scale Practice as recommended by the Bioprocessing Committee of the Industrial Biotechnology Association and Pharmaceutical Manufacturers Association.

"3. While not required, standard industry practice recommends restricted access at BL2–LS and higher.

"4. Contingency measures for containing significant spillage from systems is recommended.

"5. While not required, standard industry practice recommends that exhaust air from BL3–LS facilities be HEPA-filtered, subjected to thermal oxidation, or otherwise treated to prevent release of viable organisms.

"Appendix K—Definitions to Accompany Containment Grid and Proposed Modification of Appendix K

"Accidental release—The unintentional discharge of a microbiological agent (i.e., microorganism or virus) or eukaryotic cell due to a failure in the containment system.

"Biological barrier—An impediment (naturally occurring or introduced) to the infectivity and/or survival of a microbiological agent or eukaryotic cell once it has been released into the environment.

"Closed system—A system, which by its design and proper operation, prevents release of a microbiological agent or eukaryotic cell contained therein.

"Containment—The confinement of a microbiological agent or eukaryotic cell that is being cultured, stored, manipulated, transported or destroyed in order to prevent or limit its contact with people and/or the environment. Methods used to achieve this include: physical and biological barriers and inactivation using physical or chemical means.

"*de minimis* release—A release of viable microbiological agents or eukaryotic cells that does not result in the establishment of disease in healthy people, plants or animals or in uncontrolled proliferation of any microbiological agent.

"Disinfection—A process by which viable microbiological agents are reduced to a level unlikely to produce disease in healthy people, plants or animals.

"Good Industrial Large Scale Practice (GILSP) Organism—For an organism to qualify for GILSP consideration, it must meet the following criteria: [Reference: Organization for Economic Cooperation and Development," Recombinant DNA Safety Considerations", 1987, p. 34–35]

"a. The host organism should be non-pathogenic, should not contain adventitious agents and should have an extended history of safe industrial use or have built-in environmental limitations that permit optimum growth in the industrial setting but limited survival without adverse consequences in the environment.

"b. The recombinant DNA-engineered organism should be non-pathogenic, should be as safe in the industrial setting as the host organism, and without adverse consequences in the environment.

"c. The vector/insert should be well characterized and free from known harmful sequences; should be limited in size as much as possible to the DNA required to perform the intended function; should not increase the stability of the construct in the environment unless that is a requirement of the intended function; should be poorly mobilizable; and should not transfer any resistance markers to microorganisms not known to acquire them naturally if such acquisition could compromise the use of a drug to control disease agents in human or veterinary medicine or agriculture.

"Inactivation—Any process that reduces the ability of a specific microbiological agent or eukaryotic cell to self-replicate.

"Incidental release—The discharge of a microbiological agent or eukaryotic cell from a containment system that is expected when the system is appropriately designed and properly operated and maintained.

"Minimization—The design and operation of containment systems in order that any incidental release is a *de minimis* release.

"Pathogen—Any microbiological agent containing sufficient genetic information, which upon expression of such information is capable of producing disease in healthy people, plants or animals.

"Physical barrier—Equipment, facilities and devices (e.g., fermenters, factories, filters, thermal oxidizers) designed to achieve containment.

"Release—The discharge of a microbiological agent or eukaryotic cell from a containment system. Discharges can be incidental or accidental. Incidental releases are *de minimis* in nature; accidental releases may be *de minimis* in nature."

II. Preliminary Review of the Regional Hearings Conducted by the Recombinant DNA Advisory Committee

Since the seven regional hearings conclude on October 15, 1990, the Recombinant DNA Advisory Committee will have its first opportunity to review the public response to questions posed about the future role of this committee. Topics to be considered will include: A proposed new definition of recombinant DNA; possible reduction of central review of experiments with increasing responsibilities for the local Institutional Biosafety Committees; and orientation materials for review of human gene therapy experiments.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official Government programs contained in the "Catalog of Federal Domestic Assistance." Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the "NIH Guidelines." In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the "Catalog of Federal Domestic Assistance" are affected.

Dated: September 10, 1990.

Jay Moskowitz,

Associate Director for Science Policy and Legislation.

[FR Doc. 90–21709 Filed 9–12–90; 8:45 am]

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