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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-3 of October 12, 1990

Determination of FY 1991 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101 (a) (42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

a. The admission of up to 131,000 refugees to the United States during FY 1991 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1991 with Federal refugee resettlement assistance under the Amerasian admissions program, as provided in paragraph (b) below.

Ten thousand of these admissions numbers shall be set aside for private sector admissions initiatives, and may be used for any region. The admission of refugees using these numbers shall be contingent upon the availability of private sector funding sufficient to cover the reasonable costs of such admissions.

b. The 131,000 admissions shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include the number of persons admitted to the United States during FY 1991 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100-202 (Amerasians and their family members):

Africa	4,900
East Asia	52,000
Soviet Union	50,000
Eastern Europe	5,000
Near East/South Asia	6,000
Latin America/Caribbean	3,100
Not Designated	10,000*

* Funded by the private sector.

Utilization of the 121,000 federally funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admissions in FY 1991. You are hereby authorized and directed to so advise the judiciary committees of the Congress.

Unused admissions numbers allocated to a particular region within the 121,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the judiciary committees of the Congress prior to any such reallocation.

The 10,000 privately funded admissions not designated for any country or region may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. You are hereby authorized and directed to notify the judiciary committees of the Congress in advance of the intended use of these numbers.

An additional 5,000 refugee admissions numbers shall be made available during FY 1991 for the adjustment to permanent resident status under section 209(b) of the Act (8 U.S.C. 1159[b]) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), I also specify, after appropriate consultation with the Congress, that the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos who have past or present ties to the United States or who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members.

b. Present and former political prisoners, persons in imminent danger of loss of life, and other persons of compelling concern to the United States in countries of Latin America and the Caribbean, and their accompanying family members.

c. Persons in Cuba who are (1) in immediate danger of loss of life and for whom there appears to be no alternative to resettlement in the United States, or (2) are of compelling concern to the United States, such as former or present political prisoners, dissidents, or human rights and religious activists, or (3) were employed by the United States Government for at least 1 year prior to the claim for refugee status; and their accompanying family members.

d. Persons in the Soviet Union and Romania.

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

George Bush

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

THE WHITE HOUSE,
Washington, October 12, 1990.

[FR Doc. 90-24599
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-189]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the imported fire ant quarantine and regulations by designating all or portions of the following as generally infested areas: Five counties in Alabama, four counties in Arkansas, four counties in Mississippi, four counties in South Carolina, three counties in Tennessee, and seven counties in Texas. The action expanded the regulated areas and imposed certain restrictions on the interstate movement of regulated articles. The action was necessary to prevent the artificial spread of the imported fire ant.

EFFECTIVE DATE: November 16, 1990.

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

In an interim rule published in the Federal Register and effective on July 12, 1990 (55 FR 28596-28598, Docket No. 90-101), we amended the Imported Fire Ant regulations in 7 CFR 301.81-2a by designating all or portions of the following counties as generally infested areas: De Kalb, Jackson, Lauderdale, Limestone, and Madison Counties in Alabama; Desha, Grant, Jefferson, and Lincoln Counties in Arkansas; Bolivar, Leflore, Sunflower, and Tallahatchie Counties in Mississippi; Chester, Greenwood, McCormick, and Newberry Counties in South Carolina; Hardin, Hardeman, and McNairy Counties in Tennessee; and Edwards, Hamilton, Kimble, McMullen, Midland, Real, and Uvalde Counties in Texas.

Comments on the interim rule were required to be received on or before September 10, 1990. We received one comment from a State Department of Agriculture. The commenter supported the interim rule as necessary to protect against introduction of the imported fire ant. The facts in the interim rule still provide a basis for the rule.

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 action affects the interstate movement of regulated articles from specified areas in Alabama, Arkansas, Mississippi, South Carolina, Tennessee, and Texas. Thousands of small entities move these articles interstate from these States, and many more thousands of small entities move these articles interstate from other States.

However, based on information compiled by the Department, we have determined that approximately 136 small entities within the newly regulated areas move articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $14,000.

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 part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.81-2a that was published at 55 FR 28596-28598 on July 12, 1990.

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

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-24389 Filed 10-16-90; 8:45 am]
BILLING CODE 3410-34-M

7 CFR Part 301

[Docket No. 90-199]

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 portions of the quarantined area in Los Angeles County near Glendora, Pomona, and Valinda, from

the list of quarantined areas in California. We have determined that the Mediterranean fruit fly has been eradicated from the area and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the area.

DATES: Interim rule effective October 12, 1990. Consideration will be given only to comments received on or before December 17, 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 90-199. 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). We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Orange, San Bernardino, and Santa Clara Counties, California, from the list of quarantined areas. 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, June 1, August 3, September 6, September 14, and September 21, 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; 55 FR 22320-22323, Docket Number 90-081; 55 FR 32236-32238, Docket Number 90-151; 55 FR 37697-37699, Docket Number 90-175; 55 FR 38529-38530, Docket Number 90-179; and FR 39261-39262, Docket Number 90-182).

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 Glendora, Pomona, and Valinda. The last finding of the Medfly was made on Aprio 16, 1990, in the Glendora area; on April 18, 1990, in the Pomona area, and on April 25, 1990, in the area near Valinda. 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.

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 receive 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 regulated area being removed there are approximately 695 entities that could be affected, including 60 nurseries, 219 fruit/produce vendors, 3 swap meets, 24 commercial growers, 1 farmers market, 237 yard maintenance services, 150 mobile vendors, and 1 dehydrator site.

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 part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

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

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 and Orange Counties

That portion of the counties in the San Gabriel Valley, Brea, Lakewood, and Los Angeles areas bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 210 and Interstate 605; then southerly along Interstate 605 to its intersection with State Highway 60; then easterly 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 southerly and westerly along this avenue to its intersection with Beach Boulevard; then southerly along this boulevard to its intersection with Lincoln Avenue; then westerly along this avenue 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 northerly 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 La Brea 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 the point of beginning.

Done in Washington, DC, this 12th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–24460 Filed 10–16–90; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 90–092]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 13 counties in North Carolina and 3 counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective October 17, 1990. Consideration will be given only to comments received on or before December 17, 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 90–092. Comments may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 pm., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Craven, Duplin, Greene, Lenoir, Pender, and Pitt Counties in North Carolina, and areas in Florence and Horry Counties in South Carolina to the list of suppressive areas in § 301.80–2a of the regulations.

The rule portion of this document lists the suppressive areas for each county. Nonfarm areas, if any, are listed first; farms are then listed alphabetically.

Removal of Areas from List of Regulated Areas

We are also amending the list of suppressive areas by removing areas in Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender,

Richmond, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina from § 301.80–2a of the regulations. As a result of this action, there are no longer any regulated areas in Hoke and Richmond Counties, North Carolina or in Marlboro County, South Carolina.

We are taking this action because we have determined that witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are removing these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

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 publication in the **Federal Register**. 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 receive 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 estimated annual 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 action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 67 of these entities, by removing 50 entities from regulation and placing 9 new entities under regulation. We have determined that the 50 deregulated entities will realize combined annual savings of approximately $3,350, or an average of $67.00 each, in regulatory and control costs. We estimate that the 9 newly regulated entities will need to invest approximately $135 each, per year, in order to comply with our regulations.

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

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The 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 part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 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 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. Highway 76, then west along U.S. Highway 76 to its junction with State Secondary Road 1356, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of this road with State Highway 87.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Roads 1726 and 1713.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of this road with State Secondary Road 1740.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of the junction with State Secondary Road 1463 with this road and 0.3 mile off the west side of State Secondary Road 1459.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along these city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to its junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Contrell, C.T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, W.H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Melvin, Edith, farm located on the east side of State Secondary Road 1600 and 1.7 miles north of its intersection with State Secondary Road 1615.

The Pruitt, K.D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, W.E., farm located on the northwest side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

Duplin County. The Grand, Pietro, farm located 0.2 mile southwest of the end of State Secondary Road 1981.

The Hamilton, John, farm located on both sides of State Secondary Road 1921 and 1.4 miles southeast of the junction of this road and State Secondary Road 1922.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Lewis, Merle S., farm located on both sides of North Carolina Secondary Road 1508 and .25 miles east of its intersection with North Carolina State Road 1004.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of this road.

Greene County. The Applewhite, Claudia, farm located on the west side of North Carolina State Road 1419 and 0.2 mile south of the junction of this road and North Carolina State Highway 903.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Dun, Jo, Estate farm located 1 mile south of Maury on the northeast side of State Secondary Road 1441 and 0.5 mile west of its junction with State Secondary Road 1413.

The Dunn, Theodore S., farm located on the east side of North Carolina Secondary Road 1413 and in the northeast junction with this road and North Carolina Secondary Road 1417.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Nethercutt, Lawrence, farm located on the north side of State Secondary Road 1400 and 3 miles southeast of its junction with U.S. Highway 13.

The Warren, Francis, farm located on the west side of State Secondary Road 1418 and 0.3 mile north of its junction with State Secondary Road 1419.

Harnett County. The Dove, Ira, farm located on the southeast side of State Secondary Road 1105 and 0.7 mile southwest of its junction with State Highway 24/27.

The Farrel, David, farm located on the west side of State Secondary Road 1201 and 0.2 mile northwest of its junction with State Highway 27.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of this road with State Secondary Road 1139.

The Grey, Charlie, farm located on the west side of State Secondary Road 1111 and 0.6 mile south of its junction with State Highway 24.

The Hicks, Vashti, farm located on the south side of State Secondary Road 2039 and 0.4 mile west of its junction with State Secondary Road 2031.

The Hobbs, Marvin, farm located on the southwest side of State Secondary Road 2072 and 1 mile northwest of its junction with State Secondary Road 2033.

The Hobbs, R.C., farm located on the southwest side of State Secondary Road 2072 and 1.1 miles northwest of its junction with State Secondary Road 2033.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of its junction with State Secondary Road 1202.

The Pennington, Albert J., farm located on the southwest side of State Secondary Road 1110 and 0.3 mile east of its junction with State Secondary Road 1108.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of its junction with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of its junction with State Secondary Road 1117.

The Walker, N.A., farm located on the east side of State Secondary Road 2042 and 0.9 mile southwest of its junction with State Secondary Road 2026.

Lenoir County. The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Hill, Nannie T., farm located in the east junction of State Highway 55 and State Secondary Road 1161.

The Ivey, Lelland, farm located on the northeast side of North Carolina Secondary Road 1324 at its junction with North Carolina Secondary Road 1307.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1318.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161,

0.9 mile east of its junction with State Highway 55.

Pender County. The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Barnhill, Frank, farm located on the south side of State Highway 210 and 0.1 mile of the junction of this highway and State Secondary Road 1130.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Burns, T.C., farm located 0.8 mile northeast of State Secondary Road 1104 and 1 mile northwest of the junction of this road and State Secondary Road 1107.

The Corbett Farming Co., farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Corbett, Robert L., farm located on both sides of State Highway 210 and 0.5 mile northwest of its junction with State Secondary Road 1130.

The Dees, Betty, farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Flynn, B.S., farm located on the north side of State Road 1108 at its junction with State Road 1107.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Henry, Mary E., farm located 0.1 mile south of State Secondary Road 1130 and 0.2 mile east of its intersection with the Pender-Bladen County line.

The Hicks, Carol, farm located on the south side of State Highway 210 and 0.6 mile east of its intersection with U.S. Highway 117.

The Kea, Nora, farm located 0.1 mile west of the west end of State Secondary Road 1108.

The Keith, F.R., farm located on both sides of State Secondary Road 1130 and 0.7 mile west of the junction of this road and State Highway 210.

The Keith, James R., farm located on 0.8 mile northeast of State Road 1104 and 1 mile northwest of its junction of this road with State Road 1107.

The Keith, Sprunt, farm located on the southwest side of State Secondary Road 1130 and at the Pender-Bladen County line.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Larkins, C.E., farm located on the southwest side of State Secondary Road 1102 and 0.2 mile southeast with the Pender-Bladen County line.

The Larkins, Maggie, estate located on the northeast side of State Secondary Road 1102 and 0.2 mile southeast along this road to its intersection with the Pender-Bladen County line.

The Malloy, Pete, No. 1 farm located on both sides of State Highway 210 and the east side of State Secondary Road 1599.

The Malloy, Pete, No. 2 farm located on both sides of State Highway 210 and 1.3 miles east of the intersection of this highway and U.S. Highway 117.

The Manuel, George, farm located 0.1 mile south of State Highway 210 and 0.2 mile west of its junction with State Secondary Road 1103.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Nixon, Rosa, farm located on both sides of State Highway 210 and on the west side of State Secondary Road 1599.

The Peterson, Grady, farm located on the north side of a field road 0.2 mile east of State Secondary Road 1104 and northeast of its intersection with Lyon Canal.

The Pridgen, Pete, farm located on the southwest side of State Secondary Road 1103 and 0.3 mile southeast of its junction with State Highway 210.

The Taylor, Bill, farm located on the west side of State Secondary Road 1104 and 2.0 miles south of the northernmost intersection of this road with State Secondary Road 1103.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Williams, Leroy, farm located on the south side of State Secondary Road 1600 and at the south end of State Secondary Road 1599.

Pitt County. The Hodges, M.B., farm located 1.1 miles north of Grifton on the east side of State Secondary Road 1907 and 1.1 miles north of the injunction of U.S. Highway 118.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1004, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary Road 1927, then southerly along this road to the point of beginning.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 2.5 miles west of its intersection with State Secondary Road 1725.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Swain, Robert W., farm located on the northeast side of State Secondary Road 1740 and 1.0 mile northwest of its intersection with State Secondary Road 1742.

The Weeks, Glenn, farm located on the south side of State Secondary Road 1737 and 1.1 mile east of U.S. Highway 701.

Wayne County. The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of the intersection of this road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 mile south of the junction of this road and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of this road and State Secondary Road 1938.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of the junction of this road and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 mile east of the junction of this road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of the junction of this road and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913, 0.5 mile south of the junction of this road and State Highway 111.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 mile east of the junction of this road and State Secondary Road 1915.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3

mile east of its junction with State Secondary Road 1207.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Wayne County Landfill property located on the southeast side of State Secondary Road 1726 and 0.5 mile northeast of its junction with State Highway 111.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Dillon County. The entire county.

Florence County. The Isgett, Otto, Estate farm located on the southeast side of State Secondary Road 24 and 1.4 mile east of the junction of this road and State Secondary Road 57.

The Munn, F.M., farm located on the southeast side of State Secondary Road 24 at the intersection with Jeffries Creed. This intersection being 1.6 mile northeast of the junction of State Secondary Road 24 and State Secondary Road 57.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this State line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 19, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway 391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then southwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this State line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of this dirt road and State Secondary Highway 99, this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 87.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of rural paved road No. 109 with rural paved road No. 79.

The Cox, Nancy T., farm located on the northwest corner of the intersection of two dirt roads. This intersection being 0.8 mile northeast of the junction of State Secondary Road 105 and State Secondary Road 377. One of the dirt roads is an extension of State Secondary Road 105.

The Cox, Velma, farm located on the west side of a dirt road and 1.0 mile northwest of junction of this dirt road and State Primary Highway 90. This junction being 3.2 miles south of junction of State Primary Highway 90 and State Secondary Road 31.

The Harden, John, farm located on the northwest side of a dirt road and 0.4 mile northeast of junction of this dirt road with the junction of State Secondary Roads 105 and 377.

The Holmes, Marie T., farm located on the west side of dirt road and 0.7 mile northwest of this dirt road with its junction with State Primary Highway 90. This junction being 3.2 miles south of junction of State Primary Highway 90 and State Secondary Road 31.

The Livingston, W.S., farm located on the south side of a dirt road and 0.6 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this junction being 0.8 mile south of junction of State Primary Highway 90 and State Secondary Road 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Vaugh, Ruth, farm located on the east side of a dirt road and 0.7 mile northwest of this dirt road and its junction with State Primary Highway 90. This junction being 3.2 miles south of junction of this State Primary Highway 90 and State Secondary Road 31.

Marion County. The entire county.

Done in Washington, DC, this 11th day of October, 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-24387 Filed 10-16-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[Order No. 1447-90]

Withdrawal of Approval for School or School System To Enroll Foreign Students

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the procedures and authority to withdraw approval for a school to enroll foreign students. It corrects an existing procedure where an initial hearing is conducted outside the Immigration and Naturalization Service (Service) but an appeal is taken within the Service. Under the revised rule, a district director within the Service has authority to withdraw school approval, and that decision may be appealed to the Associate Commissioner, Examinations.

EFFECTIVE DATE: October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Joanna London, Senior Trial Attorney, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 514-2895.

SUPPLEMENTARY INFORMATION: On November 5, 1986, the Immigration and Naturalization Service (Service) published a notice of proposed rulemaking in the **Federal Register** (51 FR 40207). The Service received four comments in response. The commenters uniformly opposed the proposal to have the district directors of the Service make the initial determination to withdraw school approval, with an appeal to the Associate Commissioner, Examinations, although they agreed that the present procedure is anomalous and should be changed. Two commenters urged that, instead of the procedure proposed, the present hearing before an immigration judge be retained, with the appeal going to the Board of Immigration Appeals. Having considered these comments, the Service nevertheless has decided that a decision by a district director with a right to appeal to the Associate Commissioner, Examinations, satisfies the due process of law requirement in these cases.

Two commenters also urged the Service to withdraw the proposal and wait until discussions are completed with the National Association of Foreign Student Affairs on a more comprehensive revision of the regulations regarding sanctions against noncomplying schools. However, the Service believes that the anomaly in the present procedure needs to be corrected as soon as possible. Any further revision can be made at a future time. After due consideration of all the comments received, the Department has determined to publish the final rule using virtually the same language as the proposed rule.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse impact on a substantial number of small entities.

This rule contains collection requirements; however, they are exempt from the Paperwork Reduction Act requirements in accordance with 5 CFR 1320.3(c)

This is not a major rule as defined in section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Immigration, Reporting and recordkeeping requirements, Schools, Students.

For the reasons set out in the preamble, chapter I of title 5 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

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

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, paragraph (f)(2)(ix) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(ix) Decisions of district directors regarding withdrawal of approval of schools for attendance by foreign students under § 214.4 of this chapter.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187, and 8 CFR part 2.

4. In § 214.4, paragraphs (b) through (h) are revised to read as follows:

§ 214.4 Withdrawal of school approval.

* * * * *

(b) *Notice.* Whenever a district director has reason to believe that an approved school or school system in his/her district is no longer entitled to approval, a proceeding shall be commenced by service upon its designated official a notice of intention to withdraw the approval. The notice shall inform the designated official of the school or school system of the grounds upon which it is intended to withdraw its approval. The notice shall also inform the school or school system that it may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn and that the school or school system may, at the time of filing the answer, request in writing an interview before the district director in support of the written answer.

(c) *Assistance of counsel.* The school or school system shall also be informed in the notice of intent to withdraw approval that it may be assisted or represented by counsel of its choice qualified under part 292 of this chapter, at no expense to the Government, in preparation of its answer or in connection with the interview.

(d) *Allegations admitted or no answer filed.* If the school or school system admits all of the allegations in the notice of intent to withdraw approval, or if the school or school system fails to file an answer within the 30-day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30-day period.

(e) *Allegations denied.* If the school or school system denies the allegations in the notice of intent to withdraw approval, then the school or school system shall, in its answer, provide all information or evidence on which the answer is based.

(f) *Interview requested.* (1) If in its answer to the notice of intent to withdraw approval the school or school system requests an interview, the school or school system shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school or school system at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of the district director shall be in writing and shall include a discussion of the evidence and findings as to withdrawal. The decision shall contain an order either withdrawing approval or granting continued approval. The written decision shall be served upon the school or school system, together with the notice of the right to appeal pursuant to part 103 of this chapter.

(h) *Appeal.* Any appeal shall be taken within 15 days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, Form I-290B, and supported by a statement or brief specifically setting forth the grounds for contesting the withdrawal of the approval.

* * * * *

§ 214.4 [Amended]

5. Section 214.4 is further amended by removing paragraphs 214.4 (i), (j), and (k).

Dated: October 10, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-24380 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 90-071]

RIN: 0579-AA32

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Horse Protection regulations to expand and clarify the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. These amendments are necessary to better protect horses under the Horse Protection Act.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established guidelines under which show managements must, to avoid liability for any sore horses which are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition or sale. The inspection procedures include both examination by palpation of the horse's pasterns and visual examination of the horse. In response to concerns of both the horse industry and animal welfare organizations that the guidelines for preshow DQP examination of a horse were not detailed enough to ensure a uniform and adequate inspection of all horses examined by DQP's, we published in the **Federal Register** an advance notice of proposed rulemaking on May 12, 1989 (54 FR 20605-20606, Docket No. 89-057), in which we solicited comments on how best to clarify and make more specific the DQP inspection procedures, so as to detect more effectively horses that are sore. We received seven comments in response to our notice. After review of the comments, we published a proposal in the **Federal Register** on March 28, 1990 (55 FR 11385-11387, Docket No. 89-222), to expand and make more specific the regulations regarding inspection of horses.

Comments on Proposed Rule

We invited written comments on our proposed rule, requiring that they be received on or before April 27, 1990. We received eight comments on the proposed rule by that date. The comments were from State agriculture officials, representatives of horse associations, representatives of animal protection associations, and horse owners and exhibitors. One commenter supported the proposal as written. Another commenter supported the proposed provisions but recommended other changes to the regulations. The remainder of the commenters either suggested changes to the proposed provisions or suggested interpretations of the proposed provisions for enforcement purposes. We carefully considered all comments prior to finalizing the proposed rule.

Preshow Observation of Horses' Movement

We proposed to specify procedures for the DQP to follow in conducting preshow inspections. We proposed that the DQP shall direct the custodian of the horse to walk and/or turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. While watching the horse move, the DQP would determine whether the horse moves in a free and easy manner and whether it is free of any signs of soreness, such as unusual posture, distressed expression, or a reluctance to move.

Several commenters recommended that walking a horse in a serpentine or "figure-8" pattern be made mandatory. One commenter stated that indicia of soreness are very likely to appear when a horse is forced to cross over its forelegs when turning. We agree that a horse that has been sored will likely give indications of that soreness when turning, and the wording in our proposal was intended to make it clear that a DQP should require such movement when necessary to help determine if a horse is sore. To clarify that intent, we are rewording the provisions as proposed to state that the DQP shall direct the custodian of the horse to walk and turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness.

Preshow Inspection Techniques

We proposed that the DQP would be required to follow certain specified procedures in physically examining a horse. We proposed that the DQP shall digitally palpate the front limbs of the horse, with particular emphasis on the pasterns. Under our proposal, the DQP would be required to examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP would be further required to apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. The DQP would also be required to extend the foot and leg of the horse, while continuing to hold onto the pastern, to examine the front (extensor) surfaces, including the coronary band. We also proposed that the DQP may examine the rear limbs of the horse in like manner when he deems it necessary.

We proposed to specify that the DQP examine the horse to ensure that those pads, other devices, and substances prohibited by § 11.2 of the regulations are not used, that the DQP ensure that the restrictions on workouts and performances specified in § 11.2(d) are complied with, and that the DQP ensure that the "scar rule" provisions in § 11.3 of the regulations are not violated. We also proposed that the DQP may carry out additional inspection procedures as he deems necessary to determine whether a horse is sore.

One commenter suggested that the requirement that the front limbs of the horse be palpated should be expanded to state specifically that the DQP must

inspect and palpate the leg from the knee downward, with particular emphasis on the fetlock and pastern areas. The commenter's recommendation is consistent with the intent of our proposal, and we agree that making the proposed provision more specific will clarify our intent. We are therefore requiring in § 11.21(a)(2) that the DQP digitally palpate the front limbs of the horse, from knee to hoof, with particular emphasis on the pasterns and fetlocks.

One commenter recommended that DQP's be required to check for soreness from above the knee on the foreleg. We do not agree that examination above the knee is necessary. Soring between the knee and shoulder has not generally been evident and, if present, can be detected by observing the horse's movement.

One commenter recommended that the proposed requirement that the DQP inspect for violations of the "scar" rule be written more specifically to state that the DQP must look underneath any long hair on the fetlock and pastern for evidence of scarring or generalized edema violative of the scar rule. While we believe that the proposed provisions make it clear that inspections must include examinations for scar rule violations, we believe our intent can be strengthened with further clarification. We are therefore adding wording to the proposed provisions in § 11.21(a)(2) to require that the DQP shall inspect the horse to determine whether the scar rule provisions are being complied with, and particularly whether there is any evidence of inflammation, edema, or proliferating granuloma tissue.

Several commenters stated that any horse with puffy pasterns should be turned down at inspection as exhibiting evidence of soring. We do not agree that puffiness alone should be grounds for disqualification. Such a condition can be caused by a number of factors unrelated to soring, such as long-term standing, vascular problems, or insect bites.

One commenter stated that the regulations should prohibit long hair on the fetlock and pasterns, except for breeds for which "feathers" are part of the breed show standard. The commenter, stating that long hair tends to interfere with both visual examination and palpation, recommended that the hair be required to be clipped to no more than ¼ inch. We are making no changes based on this comment. Adequate inspections can be made of horses with long hair, and we do not believe that it is necessary or reasonable to prescribe a maximum hair length.

One commenter stated that enough evidence exists that soring of horses' rear limbs takes place to require that rear limbs be inspected at least from the hock downward on a routine basis, with particular emphasis given to the back of the pastern. The commenter recommended that, as a minimum, the regulations specify when inspection of the rear legs is necessary. Based on our experience conducting inspections at shows, we do not agree that the soring of horses' rear limbs is prevalent enough to warrant including their examination for every horse inspected prior to showing. However, we agree that the rear limbs of each horse that is inspected after showing should be examined. (The regulations require that all Tennessee Walking horses and racking horses tyed first in their class or event be inspected.) We are therefore requiring in this final rule that postshow examinations shall include inspection of the horse's rear limbs. The inspection required for the rear limbs will be the same as that required for the front limbs. In addition to requiring that postshow inspection include examination of a horse's rear limbs, we are also providing in this final rule that a DQP may examine the rear limbs of any horse during preshow inspection if he deems it necessary.

One commenter stated that the DQP guidelines should set forth the kinds of reactions that are symptomatic of soring. While we believe that it would be instructive to regulated parties to include general guidance on symptoms of soring, and have done so in this final rule, we do not agree that it is appropriate to attempt to include an exhaustive list of symptoms in the regulations. To adequately protect horses, a degree of discretion must be left to the inspector in detecting symptoms of soring. However, as general guidance, we are providing in this final rule that those horses that show signs of pain response on physical examination, have poor mobility, cannot move freely, or have difficulty walking or turning shall be considered sore. We are also specifying that all horses in violation of the scar rule shall be considered sore.

One commenter recommended that the regulations specify that no horse may be brought to a DQP inspection more than one class in advance. The commenter recommended further that, following inspection, the horse not be permitted to return to its stall or trailer. We agree that the possibility exists that a horse that has passed preshow inspection could, in certain situations, be sored before entering the show ring. We are therefore including in this final rule a provision that DQP's shall not inspect horses more than one class ahead of the time the inspected horses are to be shown. We are providing further that inspected horses are to be held in a designated area that is under observation by the DQP's or Department inspectors, and that the horses shall not be allowed to leave the designated area before showing.

One commenter stated that a limit should be set on the number of people permitted to enter the holding area after inspection. We agree that such a limit would reduce the possibility of soring after inspection, and are providing in this final rule that only the horse, the rider, and either a groom or trainer will be allowed in the designated areas.

One commenter stated that the regulations should require DQP's to weigh all action devices and measure all pad assemblies to determine compliance with the regulations. Proposed § 11.21(a)(3) only requires DQP's to observe and inspect horses to determine compliance with the provisions in § 11.2, including, among other things, pads and action devices. We agree with the comment that action devices, pads, and other equipment should be weighed and measured to assure compliance with the regulations. We are therefore changing our proposal based on this comment.

Several commenters recommended that the temperature, and the pulse and respiration rates, be taken of all horses suspected of being sore. The commenters stated that a sore horse will quite often have an elevated temperature, as well as an elevated pulse and respiration rate. We are making no changes based on this recommendation. We do not consider temperature, and pulse and respiration rates, valid diagnoses of sore horses. A horse that is warmed up will generally show some or all of the described conditions and, conversely, soring will not necessarily elicit such symptoms.

One commenter recommended that, when a horse is suspected of being sore, and it has not been determined that the soreness is solely in the pastern area, it be required that the horse have its shoes pulled and be checked for pressure shoeing. Another commenter recommended that shoes be pulled at the end of a show from all horses placing first or second in championship classes. We are making no changes based on these comments. Under the current regulations, inspectors already have the authority to pull shoes when they deem it necessary. We do not consider it advisable to require the removal of shoes unless there is some

reason to believe that removing the shoes will provide evidence of soring. Requiring routine pulling of shoes would not only be unnecessarily costly, it would also increase the chances of damaging the horse's hooves.

One commenter stated that when a horse displays a sore way of moving, its rear legs should be palpated for soreness, edema, or scars. We do not agree that incidence of soring in the rear legs has been prevalent enough to require preshow palpation of the rear legs on a routine basis. It is the DQP's prerogative to check the rear legs when he or she considers it necessary. Because of the danger to inspectors that can exist when palpating the rear legs of a horse, we do not consider it advisable or necessary to require such palpation prior to the horse's showing, unless some indication is given that the rear legs have been sored.

One commenter stated that when a horse is suspected of being sore, and the DQP cannot find the cause of the soreness, examination of the horse with hoof testers should be required. Hoof testers are devices for detecting pain in a horse's hoof. We do not consider it advisable to require DQP's to use hoof testers. Hoof testers, when not used by experts, can provide false readings and can be potentially harmful to a horse. Although some DQP's possess the expertise to use hoof testers, many have not had the training or experience to use them effectively, and we do not consider the use of such devices necessary in detecting soring on a routine basis.

Several commenters recommended that prior to actual inspection for soring, the horse be checked for alligator clips in the mouth, under the tail, on the vulva and on the sheath. Such clips, if used, can distract a horse from the DQP's inspection. Based on our experience inspecting horses at shows, we do not consider the use of alligator clips prevalent enough to require the DQP to look for them in every case, and are making no changes based on the commenters' recommendation. However, we do believe that DQP's should be observant for any signs of abnormal behavior in a horse.

Several commenters stated that during inspection, the horse should not be held by a trainer, groom, or exhibitor, to help prevent the practice of "stewarding." Stewarding is the training or handling of a horse in such a way that it does not react to pain during inspection. One commenter recommended that, during inspection, a handler be required to stand to the side of a horse, rather than in front of it, to guard against stewarding. We do not agree that it would be advisable to prohibit trainers, grooms, and exhibitors from holding a horse during inspection. Such persons can have a calming influence on the horse being inspected, and can therefore facilitate the inspection process and help safeguard the personnel conducting the inspection. We also do not consider it advisable to specify where the person holding the horse should stand, because the best position for holding a horse will vary from case to case. We agree with the commenters, however, that, to conduct adequate inspections, it is necessary to ensure that the person holding the horse does not interfere with the examination procedures. To this end, we are including in § 11.21(a)(4) a provision that provides that the DQP shall not inspect a horse if it is presented in any manner that might cause the horse not to react to a DQP's examination. We are providing that the DQP shall instruct the custodian of the horse to control it by holding the reins approximately 18 inches from the bit shank. Further, we are providing that a horse shall not be inspected if whips, cigarette smoke, or other actions or paraphernalia are used to distract the horse during examination.

Several commenters recommended that blood be drawn from any horse found to be sore, and be screened for chemicals used in the soring. We do not believe that it is necessary or advisable to require such a procedure. In addition to presenting the risk of infecting the horse, such a process would not be cost-effective. If a horse is determined to be sore, a violation has already occurred, and it is not necessary to determine whether specific chemicals are present in the horse's blood.

In § 11.21(a)(3) of our proposal, we provided that as part of the required inspection procedures, the DQP shall observe and inspect the horse to determine whether the provisions of § 11.2 of the regulations are complied with. In the supplementary information of our proposal, we stated that such a determination would include the DQP's ensuring that the restrictions on workouts and performances specified in § 11.2(d) are complied with. Such restrictions limit the length of workouts for 2-year-old horses. One commenter stated that it would be a practical impossibility for the DQP to monitor the workouts of these horses. The commenter stated that the inspection areas provided to the DQP are in most instances some distance from, and out of clear view of, the show ring. According to the commenter, because of this positioning it would be unworkable for the DQP, who must inspect and observe the horses preshow, to also be required to monitor the show ring. The commenter, representing a number of horse industry associations, stated that, according to current industry practice, the judge who is officiating the show enforces the time limitations set forth in § 11.2(d). Based on these concerns, the commenter requested that proposed § 11.21(a)(3) be deleted.

We do not consider it appropriate to delete § 11.21(a)(3), which we continue to believe is necessary to ensure that the DQP determines that the pads, other devices, and substances prohibited by § 11.2 are not used. We agree with the commenter, however, that it is not practical to make it the DQP's responsibility to also ensure that the time limitations on workouts for 2-year-old horses are complied with. We are therefore amending § 11.21(a)(3) of our proposal to make it clear that such monitoring of workouts will not be the DQP's responsibility.

Several commenters stated that the inspection area should be open to viewing by the general public. We are making no changes to the proposal based on this comment. While nothing in the regulations prohibits viewing of inspections by the public, how visible the inspection area is will necessarily vary from case to case. In many cases it would interfere with the efficiency of the inspection and the safety of personnel to allow unlimited access to the inspection area.

One commenter stated that some leeway should be granted the DQP in determining how detailed the inspection procedure should be. The commenter expressed the opinion that it may not be necessary for every horse in every show to be palpated and observed in motion. One of the reasons we initiated rulemaking regarding DQP inspection procedures was to help ensure uniformity in inspections at horse shows across the country. Our own experience, as well as recommendations made by the horse industry and animal welfare organizations, had indicated the need for more uniform procedures. We therefore do not agree with the commenter that a DQP should be given the discretion to "pass" certain horses without inspection, and we are not including such a provision in this final rule.

One commenter recommended that the regulations provide that the DQP be allowed to examine a horse without interference until making a decision with regard to the horse. It is unclear to us what type of interference the commenter is referring to, and we are making no changes based on this comment. However, we will examine the issue of whether DQP's are being

interfered with in conducting inspections and will take whatever action is appropriate.

Unloading and Barn Areas

We stated in the proposed rule our belief that inspection of horses in the unloading and barn areas of show or sale grounds would enable a DQP to detect soreness in horses and other violations of the regulations, such as the use of prohibited substances. In order to establish effective procedures for such inspections, we proposed to require that horse industry organizations or associations that are seeking, or that have been granted, certification of a DQP program submit to the Department for approval procedures for conducting such inspections. Under the proposal, those associations and organizations seeking DQP program certification would be required to submit the procedures for approval along with the other information required for Department approval under current § 11.7(b). Those organizations or associations with DQP programs that have already been certified will have 30 days from the publication date of this document to receive Department approval of such procedures.

Several commenters addressed the proposed provision that DQP programs have in place procedures for inspection of horses in the unloading and barn areas of show or sale grounds, prior to the horses' being shown. Two commenters recommended that the regulations not mandate mass inspection in the barn area. One of those commenters recommended that all proposed provisions regarding inspections in barn and unloading areas be deleted. The commenters stated that a major volume of barn-area inspections would deplete manpower and other resources that could be used most efficiently to ensure a high level of inspection of horses entering or leaving the show ring. Both commenters stated that any soring that would be detected in the unloading or barn areas would also be detected during the normal preshow examination. One of the commenters recommended that any requirements for inspections in barn and unloading areas allow for exemptions for small shows.

Conversely, another commenter recommended that the regulations require observation of horses being unloaded, and that the regulations require and empower the inspector to remove leg wraps at the time of unloading. The commenter recommended further that the regulations require regular inspection of barn areas during a show, in order to view horses and to examine those showing signs of soreness, and that the DQP be empowered during such inspections to check leg wrappings, tack boxes, and other equipment for illegal substances.

While we believe that in many cases DQP inspections in unloading and barn areas can be a valuable tool in detecting soring, we do not believe that it is appropriate to specify in the regulations that unloading and barn areas must be inspected at every show. Horse shows vary so greatly in size, physical layout, and duration that it would not be practical to make barn and unloading area inspections mandatory in all cases. As one commenter pointed out, many shows are for one night only, have no permanent stables, and are poorly lit outside the immediate show area. We continue to believe, however, that in many cases monitoring of barns and unloading areas can facilitate the detection of soring, and we are including in this final rule the requirement that DQP programs include procedures for monitoring of horses in the unloading and barn areas of show or sale grounds, as well as preparation and warmup areas and other such areas, prior to the horses being shown. To emphasize the authority of the DQP to conduct inspections wherever he deems necessary, we are revising § 11.7(b)(6) as proposed to provide that such procedures may include inspection of any horse that is stabled, loaded on a trailer, being prepared for show, exhibition, sale, or auction, being exercised, or that is otherwise on the grounds of, or present at, any horse show, horse exhibition, or horse sale or auction.

With regard to the recommendation of one commenter that DQP's be given the authority to check equipment for illegal substances, such authority already exists under § 11.2(b) of the current regulations.

Additional Issues

One commenter stated that, in light of the additional inspection responsibilities contemplated by the proposed rule, the regulations should require that shows with more than 100 entries have two or more DQP's. We agree that the more entries in a show, the greater the time or personnel needed to complete preshow inspections in an adequate fashion. The horse industry already recognizes this fact, and is currently voluntarily assigning two or more DQP's to large shows. Consistent with industry practice, and in recognition of the practical requirements of large shows, we are providing in this final rule that if more than 100 entries are entered in a show, the show shall have at least two DQP's employed on the grounds.

Section 11.21(c) of the proposed provisions stated that the DQP shall assess appropriate penalties for violations, as set forth in the rule book of the certified program under which the DQP is licensed, and shall report all violations, in accordance with § 11.20(b)(3). One commenter correctly noted that, under current practice, DQP's are responsible for identifying horses in violation of the regulations, and for disqualifying these horses from competition or sale, but are not responsible for assessing penalties. Under the current system, penalties are assessed by the certifying organization. The commenter stated that this system helps ensure a uniform, consistent, and equitable assessment of penalties. We agree with the commenter that it would be inappropriate to transfer the responsibility for assessing penalties to the DQP, and are providing in this final rule that the certified DQP organization shall be responsible for assessing penalties.

One commenter stated that we should consult with the American Association of Equine Practitioners for suggestions on an effective inspection procedure. In formulating the regulations, we drew on our own enforcement experience under the Act, on comments from the public, and on scientific data available to us. Among the veterinary professionals on our staff is a member of the American Association of Equine Practitioners.

A number of the issues addressed by the commenters were outside the scope of the proposal. In particular, several commenters recommended that specific provisions be included in the regulations regarding the types of penalties to be imposed for violations of the regulations. Other commenters recommended changes or additions to the regulations regarding who should be licensed as a DQP, and what sort of violations, by whom, should lead to decertification of a DQP program. Several commenters either recommended changes to the scar rule provisions in § 11.3, requested the prohibition of the use of action devices and other items or equipment, or requested restrictions on or examination of the equipment that may be taken into holding areas after inspection. As noted, these issues are outside the scope of the proposed provisions. However, we will carefully review each of these recommendations, and will take whatever action is appropriate regarding them.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and 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.

The changes to the regulations specify the procedures Designated Qualified Persons (DQP's) must follow when inspecting horses in accordance with the Horse Protection Act regulations. The changes will help ensure that the procedures that DQP's are already trained in are uniformly followed. Additionally, the regulations require that DQP programs include procedures for inspection of horses in unloading and barn areas. We expect that implementation of these regulations will cause no change in the number of shows inspected by DQP's. Although we are providing in this rule that shows with more than 100 entries must have at least two DQP's, such a practice is already being followed by the horse industry. We do not believe that the cost to show management for a DQP's services will increase as a result of these changes.

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

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR part 11 is amended as follows:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 15 U.S.C 1823, 1824, 1825, and 1828, 44 U.S.C. 3506.

2. In § 11.7, paragraphs (b) (6), (7), and (8) are redesignated as paragraphs (b) (7), (8), and (9), respectively, and a new paragraph (b)(6) is added to read as follows:

§ 11.7 Certification and licensing of designated qualified persons (DQP's).

* * * * *

(b) * * *

(6) Procedures for monitoring horses in the unloading, preparation, warmup, and barn areas, or other such areas. Such monitoring may include any horse that is stabled, loaded on a trailer, being prepared for show, exhibition, sale, or auction, or exercised, or that is otherwise on the grounds of, or present at, any horse show, horse exhibition, or horse sale or auction.

* * * * *

§ 11.7 [Amended]

3. In § 11.7, paragraph (f)(1), the first sentence is revised to read as follows: "Each horse industry organization or association having a DQP program certified by the Department shall issue a written warning to any DQP whom it has licensed who violates the rules, regulations, by-laws, or standards of conduct promulgated by such horse industry organization or association pursuant to this section, who fails to follow the procedures set forth in § 11.21 of this part, or who otherwise carries out his duties and responsibilities in a less than satisfactory manner, and shall cancel the license of any DQP after a second violation. * * *"

§ 11.7 [Amended]

4. In § 11.7, paragraph (g), the first sentence is revised to read as follows: "Any horse industry organization or association having a Department certified DQP program that has not received Department approval of the inspection procedures provided for in paragraph (b)(6) of this section, or that otherwise fails to comply with the requirements contained in this section, may have such certification of its DQP program revoked, unless, upon written notification from the Department of such failure to comply with the requirements in this section, such organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the Department notification, or otherwise adequately explains such failure to comply to the satisfaction of the Department. * * *"

§ 11.20 [Amended]

5. In § 11.20, paragraph (b)(2), the third sentence is revised to read as follows: "* * * Such physical examination shall be conducted in accordance with the inspection procedures provided for in § 11.21 of this part."

6. In § 11.20, a new paragraph (c) is added to read as follows:

§ 11.20 Responsibilities and liabilities of management.

* * * * *

(c) The management of any horse show, exhibition, sale, or auction that designates and appoints a DQP to inspect horses shall appoint and designate at least two DQP's when more than 100 horses are entered.

* * * * *

7. Sections 11.21 and 11.22 are redesignated as §§ 11.22 and 11.23 respectively, and a new § 11.21 is added to read as follows:

§ 11.21 Inspection procedures for designated qualified persons (DQP's).

(a)(1) During the preshow inspection, the DQP shall direct the custodian of the horse to walk and turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. The DQP shall determine whether the horse moves in a free and easy manner and is free of any signs of soreness.

(2) The DQP shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks. The DQP shall examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the DQP shall extend the foot and leg of the horse to examine the front (extensor) surfaces, including the coronary band. The DQP shall examine in a like manner the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horses examined preshow when he deems it necessary. While carrying out the procedures set forth in this paragraph, the DQP shall also inspect the horse to determine whether the provisions of § 11.3 of this part are being complied with, and particularly whether there is any evidence of inflammation, edema, or proliferating granuloma tissue.

(3) The DQP shall observe and inspect all horses for compliance with the

provisions set forth in § 11.2(a) through § 11.2(c) of this part. All action devices, pads and other equipment shall be weighed and/or measured to determine if they are in compliance with the regulations.

(4) The DQP shall instruct the custodian of the horse to control it by holding the reins approximately 18 inches from the bit shank. The DQP shall not be required to examine a horse if it is presented in a manner that might cause the horse not to react to a DQP's examination, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during examination. All such incidents shall be reported to the show management and the DQP licensing organization.

(b) The DQP shall inspect horses no more than one class ahead of the time the inspected horses are to be shown. Inspected horses shall be held in a designated area that is under observation by the DQP or Veterinary Services representative. Horses shall not be permitted to leave the designated area before showing. Only the horse, the rider, and either a groom or trainer shall be allowed in the designated area.

(c) The DQP may carry out additional inspection procedures as he deems necessary to determine whether the horse is sore.

(d) The certified DQP organization shall assess appropriate penalties for violations, as set forth in the rule book of the certified program under which the DQP is licensed, or as set forth by the Department, and shall report all violations, in accordance with § 11.20(b)(3) of this part.

§ 11.24 [Amended]

8. In § 11.24, paragraph (a), first sentence, the words "§ 11.21(a)(1) through § 11.21(a)(6)" are removed, and the words "§ 11.22(a) (1) through (6)" are added in their place.

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-24390 Filed 10-16-90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket 90-162]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding North Carolina to the list of validated brucellosis-free States. We have determined that North Carolina meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on moving breeding swine from North Carolina.

EFFECTIVE DATE: Interim rule effective October 17, 1990. Consideration will be given only to comments received on or before December 17, 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 90-162. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 am. and 4:30 pm., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*. The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine.

Under the swine brucellosis regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include North Carolina. Validated brucellosis-free status is based on a State having:

(1) The necessary authorities for classification as a validated brucellosis-free State for swine;

(2) No known focus of swine brucellosis at the time of validation and completion of one of several methods of surveillance; or no diagnosed case of swine brucellosis in the 12 month period preceding the classification, and a statistical analysis of the combined results of certain tests that indicate the testing is equivalent to either complete herd testing or slaughter surveillance during a period chosen by the State; and

(3) Certification by the appropriate State animal health official, the Veterinarian in Charge and the Deputy Administrator.

After reviewing its brucellosis program records, we have concluded that North Carolina meets the criteria for classification as a validated brucellosis-free State. We are therefore adding North Carolina to the list of States in § 78.43. This action relieves certain restrictions on moving breeding swine from North Carolina.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of breeding swine from North Carolina.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon publication. 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 receive and any amendments we make 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.

Herd owners in North Carolina will be affected by this action. It will allow breeding swine to be moved interstate from North Carolina without being tested for brucellosis. Approximately 1,100 sows are tested annually for brucellosis, at an average cost to the seller of $5.00 per test, in order to be eligible for interstate movement from North Carolina. Using these numbers, we estimate that removing the testing requirement would result in a potential annual savings of $5,500 for swine herd owners in North Carolina. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 92 regularly ship breeding swine interstate from North Carolina. All of these herd owners would be considered small entities.

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

This rule contains no 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 part 3015, subpart V.)

List of Subjects in 9 CFR part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding "North Carolina," immediately after "New York,".

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–24388 Filed 10–16–90; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOUSING FINANCE BOARD

12 CFR PARTS 931, 933, 936, 938, 940, 941, 942, and 944

[No. 90-105]

Federal Home Loan Bank System; Technical Amendments

AGENCY: The Federal Housing Finance Board.

ACTION: Final rule; Technical amendments.

SUMMARY: The Federal Housing Finance Board ("FHFB") is amending its regulations in eight parts by removing those provisions that were inadvertently published in the **Federal Register** on September 5, 1989 (54 FR 36757). The provisions duplicate the old Federal Home Loan Bank Board ("FHLBB") regulations retained by the Office of Thrift Supervision pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183, signed into law on August 9, 1989.

EFFECTIVE DATE: October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408–2554, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

FIRREA abolished the FHLBB and established the FHFB as an independent regulatory agency in the executive branch of the Government responsible for overseeing the Federal home loan banks.

The regulations concerning the Federal Home Loan Bank System had been issued under the authority of the former FHLBB. Section 402(h) of FIRREA preserves the authority of the FHLBB regulations unless terminated or superseded by the appropriate successor agency.

On September 5, 1989, when the FHFB established 12 CFR chapter IX and redesignated its regulations into this chapter (54 FR 36757), it noted that technical amendments would be made at a later date.

The FHFB is today publishing these changes to its regulations.

B. Administrative Procedure Act

No new substantive regulations are being adopted that are not made necessary by changes in the statutory authority pursuant to which the FHFB will operate. Since this rule contains no substantive changes, the FHFB promulgates this final rule as a matter of agency organization and management. Therefore, for good cause shown under 5 U.S.C. 553(a)(2) and (b)(3), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act and the 30-day delay in the effective date pursuant to 5 U.S.C. 553(d)(3).

C. Regulatory Flexibility Act

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

List of Subjects

12 CFR Parts 931 and 940

Federal home loan banks.

12 CFR Part 933

Federal home loan banks, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 936

Advertising, Federal home loan banks.

12 CFR Part 938

Advertising, Civil Rights, Credit, Fair housing, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements, Signs and symbols.

12 CFR Part 941

Credit, Federal home loan banks.

12 CFR Part 942

Consumer protection, Electronic funds transfers, Federal home loan banks.

12 CFR Part 944

Credit, Federal home loan banks, Intergovernmental relations, Trade practices.

Accordingly, the FHFB hereby amends chapter IX, title 12, Code of Federal Regulations, set forth below.

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

1. The authority citation for part 931 continues to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

§ 931.6 [Removed]

2. Part 931 is amended by removing § 931.6.

PART 933—MEMBERS OF THE BANKS

3. The authority citation for part 933 continues to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 503, 88 Stat. 1521, as amended (12 U.S.C. 1691, 1691a); sec. 202 (b), 87 Stat 982, as amended (42 U.S.C. 4106(b)).

§§ 933.13 and 933.31

[Removed]

4. Part 933 is amended by removing § 933.13 and the undesignated centerhead "LIQUIDITY" immediately preceding the section and by removing § 933.31 and the undesignated centerhead "FLOOD INSURANCE" immediately preceding the section.

PART 936—ADVERTISING OF ACCOUNTS

5. Part 936 is removed and reserved.

PART 938—NONDISCRIMINATION REQUIREMENTS

6. Part 938 is removed and reserved.

PART 940—STATEMENTS OF POLICY

7. The authority citation for part 940 continues to read as follows:

Authority: Sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 *et seq.*): sec. 701, as added by sec. 503, 88 Stat. 1541 (15 U.S.C 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

§ 940.4 and 940.6 [Removed]

8. Part 940 is amended by removing §§ 940.4 and 940.6.

PART 941—RULINGS OF THE FORMER FEDERAL HOME LOAN BANK BOARD OR THE BOARD OF DIRECTORS, FEDERAL HOUSING FINANCE BOARD

9. Part 941 is removed and reserved.

PART 942—ELECTRONIC FUND TRANSFERS

10. Part 942 is removed and reserved.

PART 944—PROHIBITED CONSUMER CREDIT PRACTICES

11. Part 944 is removed and reserved.

By the Federal Housing Finance Board.

Dated: October 4, 1990.

Jack Kemp,

Chairman.

[FR Doc. 90–24376 Filed 10–16–90; 8:45 am]

BILLING CODE 6725-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Direct Loans—Statutory and Administrative Limits

AGENCY: Small Business Administration (SBA).

ACTION: Technical amendment.

SUMMARY: This document corrects § 122.7–1 of SBA regulations (13 CFR 122.7–1). Such section is concerned with the statutory and administrative limits for SBA direct loans and it inadvertently dropped a sentence which has been codified in the regulations for several years. Such sentence relates to the authority of SBA regional administrators to authorize direct loans which exceed the administrative limit but not the statutory limit.

EFFECTIVE DATE: September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Harr D. Kempler, Chief Counsel for Business Loans, Small Business Administration, room 722, 1441 L Street NW., Washington, DC 20416, Tel. (202) 653–6757.

List of Subjects in 13 CFR Part 122

Business loans

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and section 302 of Public Law 100–656, SBA hereby amends part 122, chapter I, title 13, Code of Federal Regulatons, as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

§ 122.7–1 [Amended]

2. Section 122.7–1 is amended by adding a new sentence after the second sentence to read as follows: "Regional Administrators may authorize, in writing, the acceptance of an application that exceeds the administrative but not the statutory limit."

Dated: October 9, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–24359 Filed 10–16–90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM87–26–003; Order No. 527]

18 CFR Part 381

Revision of Rate Schedule Filings Under Sections 205 and 206 of the Federal Power Act

Issued October 10, 1990.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule expanding the fees schedule in § 381.502 of the regulations for electric rate schedule filings under sections 205 and 206 of the Federal Power Act from its present two classes to five classes. Under the new rule, incoming filings will be assigned to one of five fee classes based on the type of filing, ranging from the simplest rate schedule filings to the most complex. The Commission will collect reduced fees for certain small, short-term transactions, and for filings by certain small entities. For rate schedule filings supported by Period II data, the fee, although reduced 50% from the actual cost to the Commission, will be higher than the current fee ($23,930 vs. $6,120).

EFFECTIVE DATE: The final rule is effective October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Betty N. Toepfer, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, (202) 208–0464.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete

text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising § 381.502 of its regulations, which sets forth the fees for rate schedule filings under sections 205 and 206 of the Federal Power Act (FPA).

Under the new rule, incoming filings will be assigned to one of five fee classes based on the type of filing, ranging from the simplest rate schedule filings to the most complex. No fee is assessed for Class I. For Classes II, III, and IV, the fee is based on the actual cost to the Commission of processing an average filing within that class. For Class V, the fee is based on less than full cost recovery. The Commission is also granting categorical reductions in fees for small, short-term transactions and for small entities.

The Commission is issuing the Final Rule herein in substantial conformity with the Notice of Proposed Rulemaking (NOPR) in this docket.[1] Some minor changes and explanations have been made in order to clarify the proposed regulatory text.

II. Background

The Commission is authorized under the Independent Offices Appropriations Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[2] In addition, the Commission is authorized under the Omnibus Budget Reconciliation Act of 1986 (OBRA) to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." [3]

The principal administrative interpretation of the IOAA is the Office of Management and Budget's Circular A–25,[4] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which the recipient derives a special benefit.[5] The IOAA, OMB Circular A–25 and subsequent case law have established certain criteria that must be met in levying a fee. In establishing its fees, the Commission must: (1) Identify the service for which the fee is to be assessed;[6] (2) explain why the particular service benefits the identifiable recipient more that it benefits others in the industry or the general public;[7] (3) base the fee on as small a category of service as practical;[8] and (4) demonstrate calculation of the cost basis of each fee assessed.[9] This last criterion is satisfied when the Commission presents a reasonable, but not necessarily exact, relationship between its costs and the fee assessed.[10]

The Commission's present two-class fee schedule for filings under FPA sections 205 and 206 was established in a rulemaking proceeding initiated with issuance of a notice of proposed rulemaking on November 5, 1987.[11] In the NOPR which led to the present two-class fee structure, the Commission proposed consolidating all rate filings under FPA section 205 and 206 in one fee category, believing that a single filing fee category would make it easier for eletric utilities to pay, and for the Commission to collect, these fees.[12]

In Order No. 494, issued April 6, 1988, the Commission adopted a final rule that established two fee categories for rate filings under FPA sections 205 and 206. Under the final rule, all electric utility rate schedule filings, except those that have no effect on the rate the utility charges or that involve only rate decreases, were subject to a single fee. The excepted filings were not subject to any fee.[13] In Order No. 494–A, issued June 6, 1988,[14] the Commission denied a request for rehearing of its decision to consolidate the electric rate filing fees into two categories. The final rule was appealed to the U.S. Court of Appeals for the District of Columbia Circuit. In response to a motion by the Commission, the court remanded the rule for further consideration.

In the NOPR issued May 24, 1990,[15] the Commission proposed instituting a five-class filing fee system for rate schedule filings under the FPA. The five-part classification was intended to reflect more accurately the relationship between the cost to the Commission to process rate schedule fiilngs and the fees charged. In addition, categorical reductions were proposed in order to ameliorate potential unfairness or hardship, and in order not to discourage certain types of filings. The NOPR

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[1] 55 FR 22,808 (1990); 51 FERC ¶ 61,211 (1990).

[2] 31 U.S.C. 483(a) (1988). The Commission established fees applicable to rate schedule filings under FPA sections 205 and 206 in Order No. 435, 50 FR 40,347 (1985), FERC Statutes and Regulations, Regulations Preambles 1982–1985 ¶ 30,663 (1985); and in Order No. 494, 53 FR 15,374 (1988), III FERC Statutes and Regulations ¶ 30,809 (1988).

[3] 42 U.S.C. 7871 (a)(1) (1988). The Commission established annual charges in Order No. 472, 52 FR 21,263 (1987), III FERC Statutes and Regulations ¶ 30,746 (1987). All costs recovered through filing fees under the IOAA are subtracted from the costs that are otherwise to be collected by means of these annual charges.

[4] Issued as Bureau of the Budget Circular A–25 (September 23, 1959). The United States Supreme Court has expressed general approval for the interpretation of the IOAA embodied in Circular A–25. Federal Power Commission v. New England Power Co., 415 U.S. 345, 349–51 (1974).

[5] A "special benefit" accrues when a Government-rendered service "enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public, * * * [p]rovides business stability or assures public confidence in the business activity of the beneficiary, * * * or [i]s performed at the request of the recipient and is above and beyond the services regularly received by the same industry or group or [by] the general public." OMB Circular A–25 ¶ 3(a)(1).

[6] National Cable Television Association, Inc. v. FCC, 554 F.2d 1094, 1100 (D.C. Cir. 1976) (the agency "must identify the activity which justifies each particular fee it assesses"). See also Federal Power Commission v. New England Power Co., 415 U.S. at 349–351.

[7] Electronic Industries Association v. FCC, 554 F.2d 1109, 1114 (D.C. Cir. 1976).

[8] *Id.* at 1116 ("we interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical.").

[9] *Id.* at 1117 ("This involves (a) an allocation of specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude particular terms.").

[10] National Cable Television Association, Inc. v. FCC, 554 F.2d at 1105–06 ("Any computation * * * must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits. It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member thereby received.").

[11] 52 FR 43, 612 (1987), FERC Statutes and Regulations, Proposed Regulations 1982–1987 ¶ 32,454 (1987). The two-class system replaced the three-class system that had been promulgated in Order No. 435. The three-class system consisted of: Class 1, "Filings having no effect on the rate the utility charges or involving only rate decreases;" Class 2, "Filings that have an effect on the rate the utility charges and that are not supported by Period II data;" and Class 3, "Filings that involve the submission of Period II cost of service data." See 18 CFR 381.502–381.504 (1988).

[12] Under the then-existing three-class fee classification system, the Commission had found it administratively difficult to make a prompt and accurate determination of the appropriate fees because of ambiguous, multiple and misclassified filings.

[13] The Commission decided that administrative convenience supported eliminating fees for filings that would have no effect on rates or would involve only rate decreases.

[14] 43 FERC ¶ 61,464 (1988).

[15] 55 FR 22,808 (1990); 51 FERC ¶ 61,211 (1990).

granted a thirty-day period for the filing of comments which ended July 5, 1990.

III. Discussion

A. Number of Fee Categories, General Comments

The Commission received comments on the NOPR from ten entities. Allegheny Power System (Allegheny) and Marshall Lancaster filed comments on June 20, 1990. Consumers Power Company (Consumers) filed comments on June 29, 1990. Wisconsin Public Power Incorporated System (WPPI) filed comments on July 2, 1990. Union Electric Company (Union), the Yadkin Group,[16] Public System,[17] and the CIPS Group [18] each filed comments on July 5, 1990. On August 10, 1990, the CIPS Group also filed a motion for separate resolution. Untimely comments were received from Detroit Edison Company on July 6, 1990, and the United States Small Business Administration (SBA) on July 13, 1990.[19]

All entities that filed comments generally supported the proposed rule. According to one typical comment, "[i]n general the NOPR proposes a reasonable and easily applied classification of electric rate schedule filings." [20] All commenters, except the SBA, disagreed with at least one aspect of the rule or with the application of the rule to their filings.

Detroit Edison asserted that four classes would suffice, and recommended combining Classes III and IV. According to Detroit Edison, these classes are "very similar in nature, price and requirements." [21] In response, the Commission notes that no one will be injured if the Commission has two filing fee categories for the filings assigned to Classes III and IV. Moreover, Class III and Class IV filings require different analyses. Rate increase filings supported by abbreviated cost of service data typically require less review than those supported by Period I historical data. In any event, the fee for each class will be based on the cost to the Commission of processing the filings in that class. If the Commission combined Class III and Class IV, as requested by Detroit Edison, and if the filings presently included in Class II resulted in significantly different processing costs from those required by the filings presently included in Class IV, one category of filings would inadvertently subsidize the other category.

Detroit Edison also proposed the creation of a new class for "the filing of mergers." [22] As Detroit Edison points out, merger filings can be very complex and time consuming. The principal merger filing is, of course, a corporate application under section 203 of the FPA. The fee for a corporate application is established by § 381.509 of the Commission's regulations and is beyond the scope of this rulemaking.[23] Nevertheless, an approved merger of jurisdictional entities can often result in various rate schedule filings. The number and type of such rate schedule filings varies with each merger. Thus, the Commission will analyze and assess fees for rate schedule filings made pursuant to sections 205 and 206 of the FPA on the basis of each separate filing, even when such filings result from a merger.

B. Recommendations for Fee Reductions

A number of commenters state that the Commission should assess a lower fee for certain types of filings. Allegheny, for example, notes that although the amount of FERC staff analysis required for a Period II rate filing "will not necessarily vary with the amount of the increase requested, the amount of the fee seems excessive for small, fairly infrequent rate increases.[24] Allegheny suggests either a graduated fee, related to the amount of the proposed increase, or a lower fee for filings proposing increases below a specific cap, *e.g.*, $1 million or less. Allegheny's comments fail to take into account the Commission's obligation to act in accordance with the IOAA, in particular the requirement that the fee be based on the cost to the government of providing the service or benefit. The IOAA does not recognize, as a basis for a permissible fee, the amount of monetary benefit to the recipient.[25]

Union also proposes that the Commission expand Class I filings to include rate increases which are "minor in nature." [26] Union suggests a categorical reduction for all energy transactions that are one year or less in duration, and for capacity transactions of 100 MW or less.[27] If the Commission were to adopt the first part of Union's proposal, jurisdictional entities could avoid full filing fees simply by judiciously drafting their contracts. For example, to avoid paying a fee, an entity could make numerous separate contracts of less than a year's duration. Union's comments also fail to consider the Commission's obligation to act in accordance with the IOAA, basing fees on the cost to the government of providing the service or benefit.

The Commission has recognized the problem that is at the heart of Allegheny's and Union's requests for fee reductions. The Commission has proposed categorical reductions in fees for certain transactions. Allegheny's proposal for a graduated fee and Union's suggestion concerning certain capacity and energy transactions would simply change the threshold for categorical reductions proposed by the Commission. Allegheny and Union have not advanced a compelling reason for replacing the thresholds for categorical reductions in the proposed rule.

Detroit Edison also proposes a reduced fee (*e.g.*, 25% of the standard fee) for Class V filings arising from settlements to which the concurrence of all affected parties has been obtained. Adoption of such a reduction would fail to take into account the IOAA requirement that fees be directly related to the amount of work performed by the Commission in order to confer a benefit on the recipient. There is no factual basis upon which Commission can find that a filing to which all affected parties have agreed requires less review time.

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[16] The Yadkin Group consists of Yadkin Inc., Tapoco, Inc., Long Sault, Inc. and Alcoa Generating Corporation.

[17] Public System consists of the American Public Power Association (APPA); the National Rural Electric Cooperative Association (NRECA); the Flordia Municipal Power Agency (FMPA); the Michigan Municipal Electric Association (MMEA); the City of Azusa, California; the City of Colton, California Electric Department; the Braintree, Massachusetts Electric Light Department; the Chicopee, Massachusetts Municipal Lighting Plant; the Holyoke, Massachusetts Gas & Electric Department; the North Attleborough, Massachusetts Electric Department; the South Hadley, Massachusetts Electric Light Department; and the Burlington, Vermont Electric Department.

[18] The CIPS Groups consists of Central Illinois Public Service Company, Central Power and Light Company, Commonwealth Edison Company, Southwestern Electric Power Company and West Texas Utilities Company.

[19] Neither Detroit Edison nor the SBA has moved for an extension of the time to file comments, as provided by Rule 2008 of the Commission's Rules of Practice and Procedure, 18 CFR 2008 (1990). Nevertheless, the Commission, in its discretion, has considered the arguments asserted in these late comments.

[20] Comments of Consumers Power Company (Consumers' Comments) at 2.

[21] Comments of Detroit Edison Company (Detroit Edison's Comments) at 1.

[22] Detroit Edison's Comments at 3.

[23] 18 CFR 381.509 (1990).

[24] Comments of Allegheny Power System (Allegheny's Comments) at 1.

[25] See, *e.g.*, Order No. 494, Filing Fees under the Independent Offices Appropriations Act of 1952, 53 FR 15,374 (1988).

[26] Comments of Union Electric Company (Union's Comments) at 1. Union proposes that minor rate changes include increases of less than $10,000 per year or less than 2%, and cases where all parties have agreed to a formula-based rate, and the inputs to that formula are uncontested and current.

[27] Union contends that filing fees, "even as currently proposed, will act as a disincentive for creating schedules to fulfill short-term needs for both major and non-major utilities." Union's Comments at 1.

Thus, the Commission has no basis for granting a reduced fee for such filings.

C. Categorical Reductions [28]

None of the commenters opposed the Commission's proposed 60 percent reduction below the Commission's costs for Class V filings. Although WPPI and SBA strongly supported the Commission's proposal for a reduction in fees for utilities other than major utilities, most commenters addressing the subject objected to the Commission's proposed 60 percent categorical reduction in fees for those entities. Most commenters objecting to categorical reductions claimed that the reductions are underinclusive.

Union, for example, opposed categorical reductions because,

> [i]t is not fair or reasonable to charge the major utilities higher fees simply because they supposedly have the funds to pay. If the fees are to be based at least partially on costs [incurred by the Commission], they should be based on costs with few, if any, exceptions.[29]

Detroit Edison commented that the distinction between major and other than major utilities, which results in some reduced filing fees for other than major utilities, "is unduly discriminatory, and completely ignores the fact that major utilities can also have minor filings." [30]

The commenters who opposed categorical reductions appear to share a misconception. Under the final rule, the Commission will not charge major utilities fees that are any higher than the actual cost to the Commission of processing their filings. Thus, major utilites will not substitute other utilities through filing fees. As noted above, the Commission is granting categorical reductions, in a limited set of circumstances, to relieve the burden imposed by filing fees on certian small entities and certain small transactions.

Public Systems concurs with the Commission's proposal for a 60 percent categorical reduction for filings made by utilities other than major utilities. However, Public Systems does not believe that the reduction goes far enough to relieve smaller entities from the burdens imposed by filing fees. According to Public Systems, filing fees are often borne by the customer rather than the filing utility.[31] Thus, Public Systems claims, for rate filings that pertain to only a single customer, the customer, often a utility other than a major utility, pays a substantial fee. To reduce the burden on small customers, Public Systems proposes that the Commission extend a categorical reduction in fee to filing utilities for transactions involving customers whose electrical load is 25 MW or less.

The Commission declines to adopt the proposal of Public Systems. The Commission imposes fees on filing utilities. The Commission cannot reduce its fees simply because some utilities shift the burden of paying the Commission's fee to other parties. Apportionment of fees between parties prior to filing, if any, is not the responsibility of the Commission other than as may become an issue involving rate case expenses in a rate proceeding. The final rule reflects the Commission's determination not to make any changes in the proposed categorical reductions.

D. Proposals for Changes in Fee Classes

Several commenters advanced specific proposals for placing certain filings in classes other than those assigned by the proposed rule. The CIPS Group, for example, proposes that certain filings assigned by the proposed rule to Class III be included instead in Class II. The proposed rule assigns all rate increase filings supported by abbreviated cost-of-service data to Class III. The CIPS Group concedes that this classification is appropriate "the *first* time that the Commission examines a rate for a given electric service supported by abbreviated cost-of-service data." [32] However, the CIPS Group argues that "once the Commission examines the underlying cost-of-service data and has approved or accepted the rate" the Commission should charge a lower fee "when the utility proposes to extend the same rate for the same service to other similarly situated customers." [33] The CIPS Group claims that "it is counterintuitive that the Commission would continually undertake the same analysis [when] the utility proposes to extend the same rate for the same service to other similarly situated customers." [34] The CIPS Group maintains that the Commission's costs are minimal in reviewing such filings and that the fee should reflect those minimal costs. The CIPS Group suggests "a bright line, easily administered." [35] According to the CIPS Group, "filings supported by abbreviated cost of service data that have not been previously reviewed by the Commission [should be] Class III filings; filings to place new customers on a utility's existing rate schedule or to increase a customer's rate to a level that has already been accepted for other customers [should be] Class II filings." In proposing this demarcation, the CIPS Group also argues the filings to place new customers on an existing rate schedule require the same staff analysis of a filing to increase a customer's rate to a preapproved level.

The Commission rejects the CIPS Group's contention. The filings identified in the CIPS Group's comments will be retained in Class III. Whenever an applicant submits cost-of-service data in support of a rate, staff analysis is required. Even when that data has been recently reviewed in connection with the same rate to a similarly situated customer, the Commission must determine whether the customer is a member of the proposed customer class and whether the existing rate level continues to be appropriate for the customer group, as modified.

Consumers also argues for changes in Class II. Although Consumers does not object to classifying initial rate schedules in Class II, Consumers urges that the Commission separate "for fee determination purposes" filings to add customers to existing rate schedules. In Consumers' view, adding customers to an existing rate schedule should require less staff review time and should cost less than reviewing initial rate schedules.

The Commission gave considerable thought to the formation of the categories set forth in the proposed rule. Although the Commission acknowledges that there may be minor differences in the amount of time needed to analyze various filings, the Commission does not deem those differences to be significant. No two idividual filings will require exactly the same amount of time to analyze. Only implementation of a direct billing system would eliminate those differences. In the judgment of the Commission, the costs of a direct billing system would far outweigh its benefits.

It is well settled that the Commission may include "adminstrative efficiency" as one of its goals in creating a filing fee system. The Comission's purpose in this rule is to establish general classes for filings that are reasonably comparable. the Commission cannot, however, eliminate every difference that may

[28] The proposed rule provides that the filing fees due from utilities other than major utilities and the filing fees due in connection with certain small transactions will be reduced by 60 percent. These categorical reductions are intended to relieve the burden imposed by filing fees on those entities and transactions.

[29] Union's Comment's at 2.

[30] Detroit Edison's Comments at 1.

[31] Comments of Public Systems at 3.

[32] Comments of Central Illinois Public Service Comany, Central Power and Light Company, Commonwealth Edison Company, Southwestern Electric Power Company and West Texas Utilities Company (CIPS Groups' Comments) at 16.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 18.

exist between filings without imposing substantial and unjustifiable costs. Although individual rate increases may well vary in the complexity and length of analysis required by the Commission staff, this variation does not necessarily require that the Commission establish additional filing fee classes.

E. Cost and Work-Month Data

The CIPS Group requests that the Commission "place in the public record the work-months and cost per work-month underlying the proposed fees," and calls some of the amounts cited "questionable." [36] The CIPS Groups requests that the Commission "demonstrate a calculation of the cost basis of each fee assessed." [37]

In *Electronic Industries*, the court set forth the general rule for disclosing the basis for fees:

[W]e interpret the statute [IOAA] and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical * * *. Classification is always a difficult problem, involving as it does the drawing of lines, but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[38]

In accordance with this rule, the Commission will amplify the discussion of the cost basis of the fees. As in previous rulemakings, the fee schedule proposed by the Commission is designed to account for all types of recoverable costs attributable to a particular Commission service, and not merely the salaries of the employees who review the notices, applications, and requests. The costs used to calculate the fees include: Salaries and benefits, travel, rents, communications and utilities, printing, other services, supplies and equipment.

The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time that the Commission spends providing each of the services. The fees are based on information obtained through the Commission's Payroll Utilization Reporting System (PURS) and Key Indicator Case Tracking System (KICTS) which provide information on staff time and caseload. This information represents the best available record in the agency. Time is reported in work-months. A work-month is defined in the Commission's regulations [39] as the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.

In accordance with Commission practice, filings are generally assigned docket numbers and are referred to as "docketed activities". First, the work-months reported for a specific type of docketed activity are added to a *pro-rata* share of the work-months reported for the relevant support activities. These support activities are essential to the completion of any docketed activity. Direct work-months plus support work-months represent the total number of work-months dedicated to a class of docketed activity for a year. This total is divided by the number of completions in the class of docketed activities for that year. The resulting figure represents the average number of work-months required to complete one proceeding in that class of docketed activities. Second, the Commission uses figures provided by its Associate Executive Director, Financial Management, to derive the average cost of a work-month. For purposes of this rule, the average cost of a work-month is based upon the Commission's average yearly cost per employee for Fiscal Years 1987, 1988, and 1989. This average yearly cost is divided by 12 to yield an average employee cost per work-month. Third, in order to determine the cost of the activity, the Commission multiplies the average cost per work-month by the average number of work-months required to complete the activity.

The following table summarizes, for Classes II through V, the total number of work-months and completions, the average cost per completion, the item cost, and the actual fee. This table reflects completions and work-month data for Fiscal Year 1987.[40]

[36] CIPS Group's Comments at 19.

[37] *Id.*

[38] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976).

[39] 18 CFR 381.102 (1990).

[40] In Fy 87, the Commission employed a three-class fee system that is roughly comparable to the five-class system outlined in the proposed rule. Thus, FY 87 is the most recent year for which roughly comparable work-month and completion data are available. Consequently, the Commission has chosen not to employ work-month and completion data from FY 88, FY 89 or FY 90, years in which the two-class fee system was in effect.

Class	Compl.	Total Wms	Wm/Compl.	Avg. Emp. Cost	Item cost	Fee
Class I	N/A	N/A	N/A	N/A	N/A	N/A
Class II	349	177.7	0.509	$5,836	$2,971.51	$2,970
Class III	373	278.8	0.747	5,836	4,362.14	4,360
Class IV	373	278.8	0.747	5,836	4,362.14	4,360
Class V	15	123.0	8.200	5,836	47,856.20	[41] 23,920

F. Requests for Clarification

Commenters [41] asked the Commission to clarify several aspects of the proposed rule. Commenter Marshall Lancaster suggested an amendment to the regulatory language to make clear that filings by customers, as well as those by filing utilities, may qualify as Class I items.[42] These regulations apply to customers as well as utilities. The proposed regulatory text defines each of the five filing Classes by reference to "filings under sections 205 and 206 of the Federal Power Act." Section 206(a) of the FPA clearly contemplates filings by customers.[43] There is therefore no need to change the text of the final rule to address Mr. Lancaster's concern.[44]

Consumers object to the inclusion of electric facilities charges in Class II. Consumers claims that electric facilities charges should not be treated any differently than any other charges. According to Consumers, to the extent that filings related to electric facilities charges involve increases or decreases in rates, they are already included in the other classes.

The Commission agrees with Consumers that any filing that includes an electric facilities charge and will result in a rate increase or decrease will be assessed a fee for Class I, Class III, Class IV or Class V, as appropriate. Only filings for new facilities charges to new customers (*i.e.*, initial rate filings involving facilities charges) will be included in Class II.

The CIPS Group and the Yadkin Group ask the Commission to clarify the

[41] Note that the Fee for Class V ($23,920) is reduced by 50% from actual Commission costs ($47,856).

[42] Comments of Marshall Lancaster at 1.

[43] 16. U.S.C. 824e(a) (1988).

[44] We will, however, clarify that no fee will be due for any filing initiated by a customer under section 206 of the FPA.

filing class to which the Commission will assign certificates of concurrence when the concurring party proposes no rate change of its own. The Commission has given jurisdictional entities the option of filing certificates of concurrence, "where two or more public utilities are parties to the same rate schedule." [45] The Commission has required that a certificate of concurrence be accompanied by a filing fee equal in amount to the fee required from the utility making the full rate schedule filing. This requirement has two bases. First, if the Commission did not provide for the filing of a certificate of concurrence, the concurring utility would be required to make a complete filing. In that event, the concurring utility would be assessed an identical filing fee. Second, where it is necessary to review cost data for both the filing utility and the concurring utility, the Commission incurs significant costs attributable both to the filing and the certificate of concurrence.

The CIPS Group argues that "where one utility files a certificate of concurrence simply to signify its concurrence in a rate change by another party [or] to an interconnection or other agreement between utilities," no additional filing fee should be required.[46] The yadkin Group makes the same argument.[47]

The Commission agrees with the contention of the CIPS Group and the Yadkin Group that a certificate of concurrence which is filed by a utility solely for the purpose of signifying its assent to a rate increase, an interconnection, or other agreement filed by another utility should not be assessed a fee. In such instances, the certificate of conncurrence is not considered a rate schedule filing because the party filing the concurrence is not proposing to provide service. Utilities must recognize, however, that if both the filing utility and the concurring utility are proposing to provide service or change rates for such service, the Commission must examine each utility's costs and will assess the appropriate fee to each utility.

WPPI asks the Commission to clarify the category to which certain filings involving formula rates will be assigned. WPPI asks specifically about fees that will be imposed for filings necessitated by one transmission service agreement that it has with a major utility. According to WPPI, that agreement includes an agreed-upon rate that will be adjusted annually to reflect changes in the embedded cost of the major utility's transmission system.[48] An element of that cost, by agreement, will reflect the Commission's generic rate of return on equity for the average electric utility. By prior order, the Commission ordered the major utility to specify the initial rate of return on equity to be utilized and commit to file any subsequent charges thereto under part 35 of the Commission's regulations.[49] WPPI argues that this filing "will simply notice the fact that a rate is being adjusted pursuant to a formula in an approved contract [and will not] modify the rate as between the supplier and the customer." [50] WPPI believes that filings which implement formula rates in approved contracts in accordance with the terms of an agreement and which do not modify the formula should be treated as Class I filings.

In general, filings which implement formula rates and which do not modify the formula will not be assessed a fee. However, consistent with its prior practice, the Commission will consider changes in the rate of return on equity to be a change in the formula and will require a fee under the rule for filings reflecting such change if such change results in a rate increase. If the change results in a rate decrease the filing will be a Class I filing and no fee will be charged.

G. Impact of the Final Rule on Prior Proceedings

As indicated above, the Commission's prior rules on filing fees have been the subject of significant litigation.[51] In addition, pending before the Commission are a number of appeals of staff action relating to filing fees.[52] The CIPS Group requests, both in its comments and in a motion for separate resolution of remanded cases filed in this proceeding, that the Commission resolve the remanded proceedings and the appeals of staff action apart from its issuance of the final rule here.

Public Systems also notes that it is party to several pending proceedings related to fees. Public Systems asks that the matters at issue in those proceedings be resolved here.

The Commission will not resolve the remanded proceedings and the pending appeals of staff action here. The final rule is intended to apply prospectively only. The Commission will resolve the remanded proceedings and all appeals from staff action relating to filing fees in separate orders.

IV. Summary

Following is a summary of the electric rate filing fee categories and fees authorized by this rule.

Class I Rate Filings

Definition—filings that involve only rate decreases or that have no effect on the rate the utility charges.

Fee—there is no fee.

Class II Rate Filings

Definition—filings that have an effect on the rate the utility charges but do not involve rate decreases or rate increases.

Fee—the fee is $2,970; the fee with a 60 percent categorical reduction is $1,180.

Class III Rate Filings

Definition—rate increase filings that qualify for the abbreviated cost-of-service information filing requirements as defined in § 35.13(a)(2) of the Commission's regulations.

Fee—the fee is $4,360; the fee with a 60 percent categorical reduction is $1,740.

Class IV Rate Filings

Definition—rate increase filings that qualify for the submission of only Period I cost-of-service information (or Period I and abbreviated cost-of-service information) as defined in § 35.13(d)(1) of the Commission's regulations.

Fee—the fee is $4,360; the fee with a 60 percent categorical reduction is $1,740.

Class V Rate Filings

Definition—rate increase filings that require the submission of Period II cost-of-service information (either alone or in conjunction with either Period I or abbreviated cost-of-service information)

[45] 18 CFR 35.1(a) (1990).

[46] CIPS Group's Comments at 10.

[47] Comments on Behalf of Yadkin, Inc., Tapoco Inc., Long Sault, Inc. and Alcoa Generating Corporation (Yadkin Group's Comments) at 2.

[48] Comments of Wisconsin Public Power Incorporated System (WPPI's Comments) at 2–3.

[49] Northern States Power Company (Minnesota), 51 FERC ¶ 61,072 (1990).

[50] WPPI's Comments at 3.

[51] See, e.g., Southwestern Electric Power Company v. FERC, Nos. 88–1507, 1218 and 1546 (D.C. Cir., remanded Aug. 11, 1989) (Challenge of fees imposed under the Commission's Order No. 435, effective Nov. 4, 1985 through May 30, 1988); Central Illinois Public Service Company v. FERC, No. 88–1545 (D.C. Cir., remanded Aug. 11, 1989) (Challenge of fees imposed under the Commission's Order Nos. 494 and 494–A, effective May 31, 1988).

[52] See, e.g., Central Illinois Public Service Company, Docket No. ER88–439–001; Union Electric Company, Docket No. ER88–527–001; Southwestern Electric Power Company, ER89–571–001; Southwestern Electric Power Company, ER90–127–001; and Arizona Public Service Company, ER90–142–001.

See also appeals of staff action of the annual notices of update of filing fees in Docket Nos. RM82–25–003, RM83–2–004, RM82–30–004, RM82–35–002, RM82–31–008, RM82–38–010, RM86–14–002, RM87–26–002 and RM88–28–001.

as defined in § 35.13 (d)(2) of the Commission's regulations.

Fee—the fee is $23,930; the fee with a 60 percent categorical reduction is $9,570.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[53] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. The categorical reductions authorized for certain filings by specific types of small entities will have a favorable financial impact on small entities. In addition, the revised classification of filing fee schedules as a whole may lessen the economic impact of certain filing fees that might otherwise fluctuate too high. The Commission believes, therefore, that issuance of this rule will have in the aggregate a beneficial impact on small entities rather than a negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that issuance of this rule will not have a "significant economic impact on a substantial number of small entities".

VI. Environmental Statement

The Commission concludes that issuance of this rule will not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[54] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment are required.[55]

VII. Information Collection Statement

The Office of Management and Budget (OMB)[56] requires that OMB approve certain information collection requirements imposed by agency rule. The regulations in this proceeding will not impose any information collection requirements. Therefore the Commission will not submit these regulations to OMB for review and approval.

VIII. Effective Date

Generally, a rule becomes effective not less than 30 days after publication in the Federal Register. A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner.[57]

As noted above, this final rule replaces a rule that was the subject of litigation and that was remanded to the Commission, upon its own motion, from the United States Court of Appeals for the D.C. Circuit. Having reconsidered its prior rules regarding fees, and having devised a schedule of fees that provided for fee reductions for filings in classes II, III, and IV, the Commission finds good cause to make this final rule effective one day after issuance.

List of Subjects in 18 CFR Part 381

Reporting and recordkeeping requirements, Utilities.

In consideration of the foregoing, the Commission amends part 381, chapter I, title 18 of the *Code of Federal Regulations* as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 381—FEES

1. The authority citation for part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 C.F.R. 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1988); Federal Power Act, 16 U.S.C. 791–828c (1988); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1988); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, Title III, Subtitle E, Sec. 3401 (October 21, 1986).

2. Section 381.502 is revised to read as follows:

§ 381.502 Rate Schedule Filings under sections 205 and 206 of the Federal Power Act.

(a) Unless the Commission orders direct billing under § 381.107 or otherwise, the fees established for rate schedule filings under sections 205 and 206 of the Federal Power Act will be determined within one of five filing classes, as provided in paragraphs (b), (c), (d), (e) and (f) of this section. Fees filed under this paragraph must be submitted in accordance with subpart A of this part and part 35 of this chapter.

(b) Class I rate schedule filing. (1) *Definition.* For purposes of this section, "Class I rate schedule filings" are those filings under sections 205 and 206 of the Federal Power Act that involve only rate decreases or that have no effect on the rate the utility charges.

(2) *Fee.* There is no fee for a Class I rate schedule filing.

(c) Class II rate schedule filing. (1) *Definition.* For purposes of this section, "Class II rate schedule filings" are those filings under sections 205 and 206 of the Federal Power Act that have an effect on the rate the utility charges but do not involve rate decreases or rate increases.

(2) *Fee.* (i) Except as provided in paragraph (c)(2)(ii) and (iii) of this section, the fee is $2,970.

(ii) For transactions involving fewer than 10 megawatts of capacity or 10 megawatts per hour of energy for periods of six months or less, the fee is $1,180.

(iii) For utilities other than major utilities, as defined in part 101, General Instructions, of this chapter, the fee is $1,180.

(d) Class III rate schedule filing. (1) *Definition.* For purposes of this section, "Class III rate schedule filings" are those rate increase filings under sections 205 and 206 of the Federal Power Act that qualify for the abbreviated cost-of-service information filing requirements as defined in § 35.13(a)(2) of this chapter.

(2) *Fee.* (i) Except as provided in paragraph (d)(2) (ii) and (iii) of this section, the fee is $4,360.

(ii) For transactions involving fewer than 10 megawatts of capacity or 10 megawatts per hour of energy for periods of six months or less, the fee is $1,740.

(iii) For utilities other than major utilities, as defined in part 101, General Instructions, of this chapter, the fee is $1,740.

(e) Class IV rate schedule filing. (1) *Definition.* For purposes of this section, "Class IV rate schedule filings" are those rate increase filings under sections 205 and 206 of the Federal Power Act that qualify for the submission of only Period I cost-of-service information (or Period I and abbreviated cost-of-service information) as defined in § 35.13(d)(1) of this chapter.

(2) *Fee.* (i) Except as provided in paragraph (e)(2)(ii) of this section, the fee is $4,360.

(ii) For utilities other than major utilities, as defined in part 101, General Instructions, of this chapter, the fee is $1,740.

(f) Class V rate schedule filing. (1) *Definition.* For purposes of this section, "Class V rate schedule filings" are those rate increase filings under sections 205 and 206 of the Federal Power Act that require the submission of Period II cost-of-service information (either alone or in

[53] 5 U.S.C. 601–612 (1988).

[54] 18 CFR 380.1–380.11 (1990).

[55] See 18 CFR 380.4(a)(1) (1989).

[56] 5 CFR 1320.13 (1989).

[57] 5 U.S.C. 553(d) (1988).

conjunction with either Period I or abbreviated cost-of-service information) as defined in § 35.13(d)(2) of this chapter.

(2) *Fee.* (i) Except as provided in paragraph (f)(2)(ii) of this section, the fee is $23,930.

(ii) For utilities other than major utilities, as defined in part 101, General Instructions, of this chapter, the fee is $9,570.

[FR Doc. 90-24366 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8316]

RIN 1545-AJ98

Cooperative housing corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the Income Tax Regulations under section 216 of the Internal Revenue Code of 1986, relating to cooperative housing corporations. Section 216 of the Code was amended by the Tax Reform Act of 1986. The regulations provide cooperative housing corporations and tenant-stockholders with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Lisa J. Shuman, 202-566-4840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

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 1545-1041. The estimated annual burden per respondent or recordkeeper varies from 15 minutes to 1 hour, depending on individual circumstances.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the above named contact person at the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Internal Revenue Service, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On Friday, May 27, 1988, the **Federal Register** published (53 FR 19,312) proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 216 of the Internal Revenue Code. These amendments were proposed to conform the regulations to section 644 of the Tax Reform Act of 1986 (100 Stat. 2285). A public hearing was not requested and none was held. Several comments were received. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

The Act expanded the definition of a tenant-stockholder under section 216(b)(2) to include persons other than individuals. Prior to its amendment by the Act, section 216(b)(2) restricted the definition of tenant-stockholders generally to individuals.

Section 216(b)(3)(B) provides an elective alternative to the proportionate share rule contained in section 216(b)(3)(A) for determining the amount a tenant-stockholder may deduct on account of real estate taxes and interest. Previously, the proportionate share rule required that a tenant-stockholder's share of the cooperative housing corporation's interest and real estate taxes bear the same ratio to the total amount of the corporation's interest and real estate taxes that the amount of stock held by the tenant-stockholder bore to the total outstanding amount of stock of the corporation.

Under the elective alternative, for taxable years beginning after 1986, if the corporation allocates to each tenant-stockholder a portion of the interest or real estate taxes or both that reasonably reflects the cost of these items to the corporation attributable to each tenant-stockholder's dwelling unit (and each unit's share of the common areas), the corporation may make an election under which the tenant-stockholder's proportionate share of the corporation's interest or real estate taxes will equal the amount or amounts separately allocated. The regulations incorporate the procedure for making this election that was prescribed in the temporary regulations under § 5h.5 (relating to elections under the Tax Reform Act of 1986). Those temporary regulations relating to this election will be superseded by these regulations.

In order to make the election under section 216(b)(3)(B), the regulations provide that the cooperative housing corporation must furnish to each tenant-stockholder a written statement showing the amount of real estate taxes or interest (or both) allocated to the tenant-stockholder by January 31 of the year following the first calendar year that includes any period to which the election applies. The January 31 deadline for making the election coincides with the deadline under section 6050H(d) and (g) imposed upon the cooperative for furnishing a statement to each tenant-stockholder of the total mortgage interest received from each tenant-stockholder. One comment suggested deletion of the January 31 deadline in the proposed regulation and stated that the cooperative's failure to distribute a statement of the reasonable allocation to one shareholder by January 31 should not preclude the corporation from making the election. This suggestion was not adopted. The January 31 deadline provides a reasonable time period for the corporation to furnish the requisite information on the allocation to its tenant-stockholders and is consistent with the policy underlying section 6050H(d) of furnishing information to the tenant-stockholders on a timely basis.

The proposed regulations provided several examples of circumstances whereby an allocation of the cooperative housing corporation's interest and taxes would meet the requirement that the allocation reasonably reflect the cost to the corporation of the interest and taxes attributable to the tenant-stockholder's unit. One of the comments received suggested that an additional example be provided to illustrate that an allocation of taxes to the tenant-stockholders may take into account the reduction of real estate taxes under local law for senior citizen tenant-stockholders. An additional example has been provided to accommodate this suggestion.

Section 216(b)(5) as amended provides that in certain circumstances a person may be eligible for tenant-stockholder status despite an agreement with the cooperative housing corporation that the person or the person's nominee may not occupy the house or apartment without

the prior approval of the cooperative housing corporation. The regulations reflect this change for taxable years beginning after 1986, but no inference is to be drawn as to the effect of such agreements in prior years on the eligibility of a person as a tenant-stockholder.

For taxable years beginning after 1986, section 216(c) was amended by the Act to provide for a carry forward to the succeeding taxable year of any amount disallowed as a deduction for depreciation because it exceeded the tenant-stockholder's adjusted basis in his or her stock in the cooperative housing corporation at the end of the taxable year.

Section 216(d) was added by the Act to clarify that amounts paid or incurred by a cooperative housing corporation which are chargeable to the corporation's capital account may not be deducted by a stockholder. Such amounts, however, are to be added to the adjusted basis of the stockholder's stock in the cooperative housing corporation. The regulations reflect this clarification. No inference is to be drawn, however, as to the treatment of such amounts in taxable years beginning prior to 1987. In response to a comment, the regulations have been revised to include additional examples of expenditures that are chargeable to a corporation's capital account.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David L. Click, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I, parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * section 1.216–2 also issued under 26 U.S.C. 216(d).

Par. 2. Section 1.216–1 is amended as follows:

1. In paragraph (a) introductory text, the first sentence is amended by removing the words "An individual who qualifies as a" and by adding in their place the word "A".

2. In paragraph (c)(1), the second sentence is amended by removing the language "paragraph (f)" and adding in its place the language "paragraph (g)". Paragraph (c)(2) is redesignated as paragraph (c)(3) and is amended by adding at the end thereof three new examples to read as set forth below.

3. New paragraph (c)(2) is added immediately preceding newly redesignated paragraph (c)(3) to read as set forth below.

4. In paragraph (d)(1), the last sentence is amended by removing the language "paragraph (f)" and by adding in its place the language "paragraph (g)". Paragraph (d)(2) is revised to read as set forth below.

5. Paragraph (e) is revised to read as set forth below.

6. Paragraphs (c), (d), (e), (f), and (g) are redesignated as paragraphs (d), (e), (f), (g) and (h), respectively.

7. New paragraph (c) is added immediately preceding newly redesignated paragraph (d) to read as set forth below.

1.216–1 Amounts representing taxes and interest paid to cooperative housing corporations.

* * * * *

(c) *Disallowance of deduction for certain payments to the corporation.* For taxable years beginning after December 31, 1986, no deduction shall be allowed to a stockholder during any taxable year for any amount paid or accrued to a cooperative housing corporation (in excess of the stockholder's proportionate share of the items described in paragraphs (a) (1) and (2) of this section) which is allocable to amounts that are paid or incurred at any time by the cooperative housing corporation and which is chargeable to the corporation's capital account. Examples of expenditures chargeable to the corporation's capital account include the cost of paving a community parking lot, the purchase of a new boiler or roof, and the payment of the principal of the corporation's building mortgage. The adjusted basis of the stockholder's stock in such corporation shall be increased by the amount of such disallowance. This paragraph may be illustrated by the following example:

Example. The X corporation is a cooperative housing corporation within the meaning of section 216. In 1988 X uses $275,000 that it received from its shareholders in such year to purchase and place in service a new boiler. The $275,000 will be chargeable to the corporation's capital account. A owns 10% of the shares of X and uses in a trade or business the dwelling unit appurtenant to A's shares and was responsible for paying 10% of the cost of the boiler. A is thus responsible for $27,500 of the cost of the boiler, which amount A will not be able to deduct currently. A will, however, add the $27,500 to A's basis for A's shares in X.

(d) *Tenant-stockholder's proportionate share.* * * *

(2) *Special rule*—(i) *In general.* For taxable years beginning after December 31, 1986, if a cooperative housing corporation allocates to each tenant-stockholder a portion of the real estate taxes or interest (or both) that reasonably reflects the cost to the corporation of the taxes or interest attributable to each tenant-stockholder's dwelling unit (and the unit's share of the common areas), the cooperative housing corporation may elect to treat the amounts so allocated as the tenant-stockholders' proportionate shares.

(ii) *Time and manner of making election.* The election referred to in paragraph (d)(2)(i) of this section is effective only if, by January 31 of the year following the first calendar year that includes any period to which the election applies, the cooperative housing corporation furnishes to each person that is a tenant-stockholder during that period a written statement showing the amount of real estate taxes or interest (or both) allocated to the tenant-stockholder with respect to the tenant-stockholder's dwelling unit or units and share of common areas for that period. The election must be made by attaching a statement to the corporation's timely filed tax return (taking extensions into account) for the first taxable year for which the election is to be effective. The statement must contain the name, address, and taxpayer identification number of the cooperative housing corporation, identify the election as an election under section 216(b)(3)(B)(ii) of

the Code, indicate whether the election is being made with respect to the allocation of real estate taxes or interest (or both), and include a description of the method of allocation being elected. The election applies for the taxable year and succeeding taxable years. It is revocable only with the consent of the Commissioner and will be binding on all tenant-stockholders.

(iii) *Reasonable allocation.* It is reasonable to allocate to each tenant-stockholder a portion of the real estate taxes or interest (or both) that bears the same ratio to the cooperative housing corporation's total interest or real estate taxes as the fair market value of each dwelling unit (including the unit's share of the common areas) bears to the fair market value of all the dwelling units with respect to which stock is outstanding (including stock held by the corporation) at the time of allocation. If real estate taxes are separately assessed on each dwelling unit by the relevant taxing authority, an allocation of real estates taxes to tenant-stockholders based on separate assessments is a reasonable allocation. If one or more of the tenant-stockholders prepays any portion of the principal of the indebtedness and gives rise to interest, an allocation of interest to those tenant-stockholders will be a reasonable allocation of interest if the allocation is reduced to reflect the reduction in the debt service attributable to the prepayment. In addition, similar kinds of allocations may also be reasonable, depending on the facts and circumstances.

(3) *Examples.* * * *

Example (3). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1987, it acquires for $1,000,000 a building containing 10 category A apartments, 10 category B apartments, and 10 category C apartments. The value of each category A apartment is $20,000, of each category B apartment is $30,000 and of each category C apartment is $50,000. X issues 1 share of stock to each of the 30 tenant-stockholders, each share carrying the right to occupy one of the apartments. X allocates the real estate taxes and interest to the tenant-stockholders on the basis of the fair market value of their respective apartments. Since the total fair market value of all of the apartments is $1,000,000, the allocation of taxes and interest to each tenant-stockholder that has the right to occupy a category A apartment is 2/100 ($20,000/$1,000,000). Similarly, the allocation of taxes and interest to each tenant-stockholder who has a right to occupy a category B apartment is 3/100 ($30,000/$1,000,000) and of a category C apartment is 5/100 ($50,000/$1,000,000). X may elect in accordance with the rules described in paragraph (d)(2) of this section to treat the amounts so allocated as each tenant-stockholder's proportionate share of real estate taxes and interest.

Example (4). The Y Corporation is a cooperative housing corporation within the meaning of section 216. In 1987, it acquires a housing development containing 5 detached houses for $1,500,000, incurring an indebtedness of $1,000,000 for the purchase of the property. Each house is valued at $300,000, although the shares appurtenant to those houses have been sold to tenant-stockholders for $100,000. Y issues one share of stock to each of the five tenant-stockholders, each share carrying the right to occupy one of the houses. A, a tenant-stockholder, prepays all of the corporation's indebtedness allocable to A's house. The periodic charges payable to Y by A are reduced commensurately with the reduction in Y's debt service. Because no part of the indebtedness remains outstanding with respect to A's house, A's share of the interest expense is $0. The other four tenant-stockholders do not prepay their share of the indebtedness. Accordingly, 1/4 of the interest is allocated to each of the tenant-stockholders other than A. Y may elect in accordance with the rules described in paragraph (d)(2) of this section to treat the amounts so allocated as each tenant-stockholder's proportionate share of interest.

Example (5). The Z Corporation is a cooperative housing corporation within the meaning of section 216. In 1987, it acquires a building containing 10 apartments. One of the apartments is occupied by a senior citizen. Under local law, a senior citizen who owns and occupies a residential apartment is entitled to a $500 reduction in local property taxes assessed upon the apartment. As a result, Z corporation is eligible under local law for a reduction in local property taxes assessed upon the building. Z's real estate tax assessment for the year would have been $10,000, however, with the senior citizen reduction, the assessment is $9,500. The proprietary lease provides for a reduced maintenance fee to the senior citizen tenant-stockholder in accordance with the real estate tax reduction. Accordingly, each apartment owner is assessed $1,000 for local real estate taxes, except the senior citizen tenant-stockholder, who is assessed $500. Z may elect in accordance with the rules described in paragraph (d)(2) of this section to treat the amounts so allocated as each tenant-stockholder's proportionate share of taxes.

(e) *Cooperative housing corporation.* * * *

(2) *Right of occupancy.* Each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under section 216(b)(2) and paragraph (f) of this section, must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reasons of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial. For taxable years beginning after December 31, 1986, the fact that, by agreement with the cooperative housing corporation, a person or his nominee may not occupy the house or apartment without the prior approval of such corporation will not be taken into account for purposes of this paragraph in the following cases.

(i) In any case where a person acquires stock of the cooperative housing corporation by operation of law, by inheritance, or by foreclosure (or by instrument in lieu of foreclosure),

(ii) In any case where a person other than an individual acquires stock in the cooperative housing corporation, and

(iii) In any case where the person from whom the corporation has acquired the apartments or houses (or leaseholds therein) acquires any stock of the cooperative housing corporation from the corporation not later than one year after the date on which the apartments or houses (or leaseholds therein) are transferred to the corporation by such person. For purposes of the preceding sentence, paragraphs (e)(2) (i) and (ii) of this section will not apply to acquisitions of stock by foreclosure by the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

* * * * *

(f) *Tenant-stockholder.* The term "tenant-stockholder" means a person that is a stockholder in a cooperative housing corporation, as defined in section 216(b)(1) and paragraph (e) of this section, and whose stock is fully paid up in an amount at least equal to an amount shown to the satisfaction of the district director as bearing a reasonable relationship to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the building and the land on which it is situated that is attributable to the apartment or housing unit which such person is entitled to occupy (within the meaning of paragraph (e)(2) of this section).

Notwithstanding the preceding sentence, for taxable years beginning before January 1, 1987, tenant-stockholders include only individuals, certain lending institutions, and certain persons from whom the cooperative housing corporation has acquired the apartments or houses (or leaseholds thereon).

* * * * *

Par. 3. Section 1.216–2 is amended by revising paragraph (c) to read as follows:

§ 1.216–2 Treatment as property subject to depreciation.

* * * * *

(c) *Limitation.* If the allowance for depreciation for the taxable year determined in accordance with the provisions of paragraph (b) of this section exceeds the adjusted basis (provided in section 1011) of the stock described in paragraph (a) of this section allocable to the tenant-stockholder's proprietary lease or right of tenancy used in a trade or business or for the production of income, such excess is not allowable as a deduction. For taxable years beginning after December 31, 1986, such excess, subject to the provisions of this paragraph (c), is allowable as a deduction for depreciation in the succeeding taxable year. To determine the portion of the adjusted basis of such stock which is allocable to such proprietary lease or right of tenancy, the adjusted basis is reduced by taking into account the same factors as are taken into account under paragraph (b)(1) of this section in determining the allowance for depreciation.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate phrase in table "1.216–1(d)(2) . . . 1545–1041".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: September 24, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–24341 Filed 10–16–90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Reg. 90–12]

Security Zone Regulations; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in the Port of Los Angeles, California, around any vessels, including Lighter Aboard Ship (LASH) barges, moored at, or transiting between LA Berths 107, 108, 109, 219, 220, 221, 222, and 223 during the effective period of these regulations. The zone is needed to safeguard vessels and LASH barges involved in military equipment outloads at LA Berths 107, 108, 109, 219, 220, 221, 222, and 223 against destruction, loss, or injury from sabotage or other subversive acts, accidents, or causes of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective at 00:01 a.m., October 6, 1990. It terminates at 12:00 midnight, October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Lt. R. F. Shields at (213) 499–5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, or injury to vessels and LASH barges involved in military equipment outloads at, or transiting between, LA Berths 107, 108, 109, 219, 220, 221, 222, and 223.

Drafting Information

The drafters of this regulation are Lt. R. F. Shields, project officer for the captain of the port, and LCdr. J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin 00:01 a.m., on October 6, 1990. This security zone is necessary to ensure the security of vessels and LASH barges involved in military equipment outloads at, or transiting between LA Berths 107, 108, 109, 219, 220, 221, 222, and 223.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart D of 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 33 CFR 160.5.

2. A new § 165.T1113 is added to read as follows:

§ 165.T1113 Security zone: vessels and LASH barges moored at, or transiting between, berths 107, 108, 109, 219, 220, 221, 222, and 223, Port of Los Angeles, California

(a) *Location.* The following area is a security zone: The waters of Los Angeles Harbor within 100 yards of any vessels moored at, or transiting between, LA Berths 107, 108, 109, 219, 220, 221, 222, and 223.

(b) *Effective date.* This regulation becomes effective at 00:01 a.m., October 6, 1990. It terminates at 12:00 midnight, October 31, 1990.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

Dated: October 4, 1990.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 90–24428 Filed 10–16–90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L.90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Garland County (unincorporated areas) FEMA Docket No. 6990)	
Mazarn Creek:	
At confluence with Ouachita River	*405
Approximately 400 feet upstream of State Route 227	*438
Ouachita River:	
Approximately 3.3 miles downstream of confluence of Spencer Bay (Gulpha Creek)	*315
At the upstream side of Carpenter Dam (Shoreline of Lake Hamilton)	*403
At the downstream side of Blakely Mountain Dam	*406
Gulpha Creek:	
At U.S. Route 270	*318
Approximately 1,400 feet upstream of U.S. Route 70C	*600
Gulpha Creek Tributary No. 1:	
Approximately 50 feet upstream of U.S. Route 70C	*581
Approximately 800 feet upstream of U.S. Route 70C	*597
Middle Branch Gulpha Creek:	
Approximately 200 feet downstream of Mill Creek Road	*449
Approximately 100 feet upstream of Mill Creek Road	*452
Molly Creek:	
At the confluence with Ouachita River	*404
Approximately 125 feet downstream of Raven Drive	*408
Maps available for inspection at the County Courthouse, Ouachita Avenue, Hot Springs, Arkansas.	
IOWA	
Columbus Junction (city), Louisa County (FEMA Docket No. 6990)	
Iowa River:	
About 0.40 mile downstream of State Highway 92	*587
About 500 feet upstream of State Highway 70	*588
Maps available for inspection at the City Hall, 119 Walnut, Columbus Junction, Iowa.	
Fredonia (city), Louisa County (FEMA Docket No. 6990)	
Iowa River: Within community	*588
Maps available for inspection at the City Hall, Columbus Junction, Iowa.	
Louisa County (unincorporated areas) (FEMA Docket No. 6990)	
Iowa River:	
At mouth	*549
At northwest county boundary	*610
Mississippi River:	
At southeast county boundary	*543
At northeast county boundary	*554
Cedar River:	
At mouth	*588
At north county boundary	*590
Muscatine Slough: One mile east of City of Grandview	*538
Maps available for inspection at the County Zoning Administration Office, County Courthouse, Wapello, Iowa.	
Wapello (city), Louisa County (FEMA Docket No. 6990)	
Iowa River:	
About 1.0 mile downstream of State Highway 99	*567
About 1.0 mile downstream of State Highway 99	*573
Maps available for inspection at the City Hall, 337 North Second Street, Wapello, Iowa.	
KENTUCKY	
Grayson County, (unincorporated areas) (FEMA Docket No. 6990)	
Taylor Fork:	
About 800 feet upstream of mouth	*507
About 1900 feet upstream of Bloomington Church Road	*560
Caney Creek:	
About 1700 feet downstream of State Route 736	*462
About 1000 feet downstream of State Route 79	*471
North Fork:	
About 1100 feet upstream of mouth	*472
About 1.95 miles upstream of State Route 79	*476
Maps available for inspection at the County Courthouse, Litchfield, Kentucky.	
Henderson County (unincorporeated areas) (FEMA Docket No. 6990)	
Green River:	
At mouth	*380
At county boundary	*386
Ohio River:	
At western county boundary	*371
About 5.5 miles upstream of eastern county boundary	*366
Wilson Creek:	
At mouth	*376
About 2000 feet upstream of Wilson Station Road	*385
East Fork Canoe Creek:	
At mouth	*381
Just downstream of Pennyrile Parkway	*401
Just upstream of Pennyrile Parkway	406
Just upstream of Cox Road	*408
Canoe Creek:	
At divergence with Sellers Ditch	*379
About 3800 feet upstream of confluence of East Fork Canoe Creek	*382
Sellers Ditch:	
At confluence with Canoe Creek	*377
At divergence with Canoe Creek	*379
Maps available for inspection at the County Courthouse, Henderson, Kentucky.	
McLean County (unincorporated areas) (FEMA Docket No. 6991)	
Buck Creek:	
About 1400 feet downstream of State Highway 1080	*395
About 1300 feet upstream of U.S. Route 431	*409
Buck Creek Tributary:	
At mouth	*401
About 2400 feet upstream of U.S. Route 431	*405
Myer Creek:	
At mouth	*389
Just upstream of State Route 81	*403
Green River:	
About 9.2 miles downstream of State Route 56	*386
About 3600 feet upstream of Southern County Boundary	*394
Overflow Ditch:	
At confluence with Buck Creek Tributary	*405
At divergence with Buck Creek	*409
Maps available for inspection at the County Courthouse, Calhoun, Kentucky.	

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Meade County (unincorporated areas) (FEMA Docket No. 6990)	
Ohio River:	
At downstream county boundary	*418
At upstream county boundary	*442
Otter Creek:	
At mouth	*440
About 500 feet upstream of State Route 1816	*592
Dry Branch:	
At mouth	*565
At confluence of Gander Branch	*580
Gander Branch:	
At confluence with Dry Branch	*580
About 1950 feet upstream of State Route 1500	*667
Maps available for inspection at the County Courthouse, Brandenburg, Kentucky.	
Muhlenberg County (unincorporated areas) (FEMA Docket No 6990)	
Caney Creek:	
About 1500 feet downstream of Powderly Cutoff Road	*403
About 0.86 mile upstream of State Route 189	*444
Little Cypress Creek:	
At mouth	*392
About 2000 feet upstream of Bethel Morgan Road	*423
Sandlick Creek:	
At mouth	*421
About 1.74 miles upstream of Opposum Run	*453
Green River:	
About 2.75 miles downstream of CSX railroad	*394
Just upstream of Lock and Dam No. 3	*403
Maps available for inspection at the County Courthouse, Greenville, Kentucky.	
Taylor County (unincorporated areas) (FEMA Docket No. 6990)	
Robinson Creek:	
About 0.8 mile downstream of State Route 70	*723
About 2,480 feet upstream of Merrimac Road	*805
Tallow Creek:	
At mouth	*755
About 2.65 miles upstream of Merrimac Road	*869
Maps available for inspection at the County Courthouse, Campbellsville, Kentucky.	
MINNESOTA	
Fort Ripley (city), Crow Wing County (FEMA Docket No. 6991)	
Mississippi River:	
At southern county boundary	*1149
About 2300 feet upstream of confluence of Nokasippi River	*1152
Maps available for inspection at the City Clerk's Home, Route 1, Box 3AA, Fort Ripley, Minnesota.	
Litchfield (city), Meeker County (FEMA Docket No. 6991)	
Jewett Creek:	
About 1000 feet downstream of North Armstrong Avenue	*1105
Just upstream of North Sibley Avenue	*1110
About 1050 feet upstream of West 4th Street	*1113
Lake Ripley: Along shoreline	*1128
Maps available for inspection at the Zoning Administrator's Office, City Hall, 126 North Marshall Avenue, Litchfield, Minnesota.	
Pipestone (city), Pipestone County (FEMA) Docket No. 6991)	
Main Ditch:	
About 500 feet downstream of Hiawatha Avenue	*1718
Just downstream of County Highway 69	*1726
Maps available for inspection at the City Administrator's Office, City Hall, 119 2nd Avenue, SW., Pipestone, Minnesota.	

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MISSISSIPPI	
Alcorn County (unincorporated areas) (FEMA Docket No. 6987)	
Cane Creek:	
Just upstream of U.S Highway 72	*430
Just downstream of Wenasoga Road	*429
Turner Creek:	
About 1500 feet downstream of Norfolk Southern Railway	*446
Just downstream of Norfolk Southern Railway	*450
Just upstream of Norfolk Southern Railway	*445
Just downstream of Wenasoga Road	*464
Just upstream of Wenasoga Road	*470
About 900 feet upstream of Wenasoga Road	*472
Bridge Creek:	
About 1100 feet downstream of Whitmore Levee Road	*406
About 0.7 mile upstream of Illinois Central Railroad	*422
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Corinth, Mississippi.	
Burnsville (city), Tishomingo County (FEMA Docket No. 6987)	
Tennessee Tombigbee River: Within community	*420
Maps available for inspection at the City Clerk's Office, City Hall, Burnsville, Mississippi.	
Lafayette County (unincorporated areas) (FEMA Docket No. 6987)	
Hudson Creek:	
At mouth	*286
About 1.3 miles upstream of county road	*353
Clear Creek:	
About 400 feet downstream of confluence of Hudson Creek	*286
About 0.9 mile upstream of county road	*315
West Goose Valley Creek:	
At Mouth	*306
About 1.0 mile upstream of State Highway 6	*354
East Goose Valley Creek:	
About 500 feet downstream of confluence of West Goose Valley Creek	*305
About 1800 feet upstream of State Highway 6 Bypass	*370
Davidson Creek:	
About 2.5 miles upstream of mouth	*318
About 1500 feet downstream of State Highway 314	*355
Burney Branch:	
About 1800 feet upstream of mouth	*299
Just downstream of Grade Control Structure No. 3	*317
Just upstream of Grade Control Structure No. 3	*322
Just downstream of Grade Control Structure No. 4	*338
About 400 feet upstream of Grade Control Structure No. 4	*350
Sardis Lake: Within community	
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Oxford, Mississippi.	
Marshall County (unincorporated areas) (FEMA Docket No. 6987)	
Byhalia Creek:	
About 1.2 miles downstream of State Highway 309	*305
About 2.2 miles upstream of Burlington Northern Railroad	*357
Nonconnah Creek Lateral B:	
About 1300 feet downstream of northern county boundary	*333
About 1.4 miles upstream of Quinn Road	*373
Sardis Lake: Within community	*266
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Holly Springs, Mississippi.	

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEBRASKA	
Omaha (city), and Extraterritorial Jurisdiction, Douglas County (FEMA Docket No. 6990)	
Big Papillion Creek:	
About 750 feet downstream of Harrison Street	*1003
Just downstream of Union Pacific Railroad	*1018
Just upstream of Union Pacific Railroad	*1023
About 1.12 miles upstream of State Street	*1082
West Papillion Creek:	
Just downstream of Harrison Street	*1042
About 0.56 mile upstream of Old Lincoln Highway	*1133
Cole Creek:	
At mouth	*1041
About 350 feet downstream of Maple Street	*1076
Just upstream of Maple Street	*1084
Just downstream of Military Avenue	*1094
Just upstream of Military Avenue	*1103
Just downstream of Redick Avenue	*1143
Hell Creek:	
Just upstream of Harrison Street	*1054
Just downstream of Interstate 80	*1071
Just upstream of Interstate 80	*1080
Just downstream of L Street	*1086
Just upstream of L Street	*1099
Just downstream of Union Pacific Railroad	*1107
Just upstream of Union Pacific Railroad	*1116
Just downstream of West Center Road	*1128
Just upstream of West Center Road	*1135
Just downstream of Pacific Street	*1161
North Branch West Papillion Creek: At mouth	*1108
Little Papillion Creek: At mouth	*1008
Boxelder Creek Reservoir: Within community	*1118
Maps available for inspection at the Planning Department, Omaha-Douglas Civic Center, 1819 Farnham Street, Omaha, Nebraska.	
NEW JERSEY	
Andover (borough), Sussex County (FEMA Docket No. 6987)	
Kymers Brook:	
Approximately 240 feet downstream of the downstream corporate limits	*575
Approximately 50 feet upstream of U.S. Route 206	*581
Maps are available for inspection at the Borough Municipal Building, Andover, New Jersey.	
Green (township), Sussex County (FEMA Docket 6987)	
Pequest River:	
Downstream corporate limits	*544
Upstream corporate limits	*568
Kymers Brook:	
At the confluence with the Pequest River	*566
Upstream corporate limits	*571
Maps available for inspection at the Green Township Municipal Building, Tranquility, New Jersey.	
NEW MEXICO	
Eddy County (unincorporated areas) (FEMA Docket No. 6990)	
Hackberry Draw:	
At confluence with Southern Canal	*3,139
Approximately 1,250 feet upstream of Jones Street	*3,202
Maps available for inspection at the County Courthouse, Carlsbad, New Mexico.	
NEW YORK	
Alden (town) Erie County (FEMA Docket No. 6990)	
Ellicott Creek:	
Approximately 100 feet upstream of Crittenden Street	*817
At County Line Road	*834
Maps available for inspection at the Town Hall, 11901 Broadway, Alden, New York.	

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Newport (town), Herkimer County (FEMA Docket No. 6990)	
West Canada Creek:	
Approximately 1,420 feet upstream of Newport Hydroelectric Dam	*649
Approximately 4,290 feet upstream of Newport Hydroelectric Dam	*649
Maps available for inspection at the Town Barn, West Street, Newport, New York.	
North Castle (town), Westchester County (FEMA Docket No. 6987)	
Bear Gutter Creek:	
Approximately 25' downstream of State Route 120	*358
Approximately 0.4 mile upstream of State Route 22	*369
Byram River:	
Approximately 75' downstream of Interstate Route 684 South	*368
Approximately 0.2 mile upstream of Byram Lake Road	*430
Wampus River:	
Confluence with Byram River	*370
Approximately 440' upstream of Wampus Lakes Road	*451
Tributary 1 to Wampus River:	
Confluence with Wampus River	*372
Approximately 1.540' upstream of Orchard Drive	*470
Tributary 2 to Wampus River:	
Confluence with Wampus River	*389
Approximately 0.7 mile upstream of Faraway Road	*523
Tributary 3 to Wampus River:	
Confluence with Wampus River	*419
Approximately 0.4 mile upstream of Wayne Valley Road	*486
Maps available for inspection at the Building Department, 17 Bedford Road, Armonk, New York.	
Pound Ridge (town), Westchester County (FEMA Docket No. 6990)	
Mill River:	
Approximately 60 feet downstream of corporate limits	*332
Confluence of Tributary to Mill River	*374
Tributary to Mill River:	
At confluence with Mill River	*374
Approximately 650 feet upstream of South Bedford Road	*413
Tributary to Laurel Reservoir:	
At downstream corporate limits	*344
Approximately 1,120 feet upstream of State Route 394	*381
Maps available for inspection at the Town House, Pound Ridge, New York.	
Rochester (town), Ulster County (FEMA Docket No. 6990)	
Rondout Creek:	
Downstream corporate limits	*195
Approximately 0.75 mile downstream of Main Street	*236
Rochester Creek:	
Approximately 0.6 mile upstream of State Route 209	*244
Approximately 0.95 mile upstream of Mettacahonts Road	*308
Tributary 1 to Rochester Creek:	
Confluence with Rochester Creek	*244
Approximately 1,450 feet upstream of Mill Hill Road	*298
Mill Brook:	
Confluence with Rochester Creek	*267
Approximately 600 feet upstream of Queens Highway	*279
Tributary 1 to Mill Brook:	
Confluence with Mill Brook	*276
Approximately 1,800 feet upstream of Queens Highway	*281
Maps available for inspection at the Building Department, Town Hall-Annex, Accord, New York.	
Thompson (town), Sullivan County (FEMA Docket No. 6991)	
Neversink River:	
Approximately 150 feet downstream of the downstream corporate limits	*980
At the upstream corporate limits	*1,096
East Mongaup River:	
At confluence with Mongaup River	*1,143
Approximately 1 mile downstream of Harris road	*1,176
Tributary to Neversink River:	
At confluence with Neversink River	*1,045
At Wolf Lake Dam	*1,290
Mongaup River:	
At confluence with Swinging Bridge Reservoir	*1,076
At confluence of East Mongaup River and Middle Mongaup River	*1,143
Middle Mongaup River:	
At confluence with Mongaup River	*1,143
At upstream corporate limits	*1,224
Sackett Lake Outlet:	
Approximately 1,000 feet downstream of County Route 45	*1,298
At confluence of Sackett Lake	*1,331
Swinging Bridge Reservoir: Entire shoreline within community	*1,076
Maps available for inspection at the Town Hall, Route 42 N, Monticello, New York.	
OHIO	
Madison County (unincorporated areas) (FEMA Docket No. 6990)	
Oak Run:	
About 500 feet upstream of Old Springfield Road	*1041
About 0.8 mile upstream of Old Springfield Road	*1051
Glade Run:	
Just downstream of U.S. Route 40	*979
About 1.16 miles upstream of U.S. Route 40	*988
Little Darby Creek:	
About 3.0 miles downstream of U.S. Route 40	*866
About 0.56 mile upstream of Middle Pike	*899
Big Darby Creek:	
About 1.65 miles downstream of U.S. Route 40	*857
About 0.73 miles upstream of Cemetery Pike	*916
Maps available for inspection at the County Courthouse, London, Ohio.	
Roseville (village), Muskingum and Perry Counties (FEMA Docket No. 6987)	
Moxahala Creek:	
About 1300 feet downstream of Main Street	*734
About 600 feet upstream of Athens Road	*742
Maps available for inspection at the City Hall, 241 North Main Street, Roseville, Ohio.	
OKLAHOMA	
Dover (town), Kingfisher County (FEMA Docket No. 6990)	
Turkey Creek—West Overflow:	
Downstream corporate limits	*1,035
0.3 mile north along Oklahoma-Kansas-Texas Railroad from intersection with Red Fork Drive	*1,039
Turkey Creek—East Overflow:	
Approximately 470 feet south of Boundary Street	*1,032
At intersection of Vine Street and Chisolm Avenue	*1,034
Maps available for inspection at the City Hall, 101 North Chisolm, Dover, Oklahoma.	
Sequoyah County (unincorporated areas) (FEMA Docket No. 6987)	
Arkansas River:	
Approximately 840 feet downstream of U.S. Route 64	*418
Approximately 1.25 mile upstream of U.S. Route 64	*421
At Interstate Route 40	*477
At a point approximately 1,900 feet upstream of U.S. Route 64 and State Route 100	*482
Illinois River:	
At confluence with Arkansas River	*478
At Tenkiller Ferry Dam	*519
Sallisaw Creek:	
Approximately 1.73 miles downstream of Interstate Route 40	*477
Approximately 4 miles upstream of Union Pacific Railroad bridge	*540
Approximately 0.78 mile downstream of Kansas City Southern Railway bridge	*573
Approximately 0.61 mile upstream of Kansas City Southern Railway bridge	*616
Little Sallisaw Creek:	
Approximately 1.3 miles upstream of confluence with Sallisaw Creek	*467
At U.S. Route 64	*495
Little Skin Bayou:	
Approximately 0.6 mile upstream of confluence with Big Skin Bayou	*448
Approximately 0.71 mile upstream of Flat Rock Road	*555
Hog Creek:	
At confluence with Little Sallisaw Creek	*494
Approximately 0.94 mile upstream of State Route 101	*620
Camp Creek:	
Approximately 3.4 miles upstream of confluence with Arkansas River	*419
Approximately 1.06 miles upstream of Section Line Road	*605
Shiloh Creek:	
At Interstate 40	*495
Approximately 50 feet upstream of Kansas City Southern Railway	*537
Stream A:	
Approximately 1,150 feet downstream of Roland Road	*429
Approximately 50 feet downstream of U.S. Route 64	*433
Poague Branch:	
At confluence with Little Skin Bayou	*452
At Interstate Route 40	*466
Onion Creek:	
Approximately 1,850 feet downstream of Section Line Road	*496
Approximately 1,300 feet upstream of Kansas City Southern Railway bridge	*535
Old Possum Branch:	
At confluence with Camp Creek	*479
Approximately 1,050 feet upstream of Section Line Road	*568
Tributary 1:	
At confluence with Little Sallisaw Creek	*483
Approximately 900 feet downstream of Interstate Route 40	*497
Stream B:	
Approximately 1,600 feet upstream of confluence with Stream A	*450
Approximately 460 feet upstream of Dorcus Street	*497
Tributary 3:	
At confluence with Little Sallisaw Creek	*478
Downstream side of Cedar Street	*516
Onion Creek Tributary:	
Approximately 600 feet upstream of confluence with Onion Creek	*524
Approximately 1,100 feet upstream of confluence with Onion Creek	*526
West Branch of Tributary 3:	
Approximately 300 feet upstream of confluence with Tributary 3	*501
Approximately .4 mile upstream of Cedar Street	*520
Maps available for inspection at the ASCS Board, 101 McGee Drive, Sallisaw, Oklahoma.	
PENNSYLVANIA	
Canal (township), Venango County (FEMA Docket No. 6990)	
French Creek:	
Approximately 120 feet downstream of downstream corporate limits	*1,027

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 800 feet downstream of T-320 (extended)	*1,040
Maps available for inspection at the Township Secretary's home, R.D. 1, Box 93A, Carlton, Pennsylvania.	
Cooperstown (borough), Venango County (FEMA Docket No. 6990)	
Sugar Creek:	
Approximately 230 feet downstream of downstream corporate limits	*1,121
Approximately 250 feet upstream of upstream corporate limits	*1,134
Lake Creek:	
At confluence with Sugar Creek	*1,123
Approximately 120 feet upstream of upstream corporate limits	*1,146
Maps available for inspection at the Borough Secretary's home, West Riverside Drive, Cooperstown, Pennsylvania.	
Davidson (township), Sullivan County (FEMA Docket No. 6975)	
Muncy Creek:	
At downstream corporate limits	*787
Approximately 1.5 miles upstream to T-309 (Peck Road)	*990
Maps available for inspection at the Township Building, Muncy Valley, Pennsylvania.	
Hempfield (township), Mercer County (FEMA Docket No. 6990)	
Shenango River:	
At downstream corporate limits	*930
At upstream corporate limits	*952
Little Shenango River:	
At downstream corporate limits	*958
At upstream corporate limits	*969
Maps available for inspection at the Township Building, 278 South Mercer Street, Greenville, Pennsylvania.	
Pine Creek (township), Jefferson County (FEMA Docket No. 6969)	
Sandy Lick Creek:	
At Pittsburgh and Shawmut Railroad	*1,222
Approximately 300 feet upstream of CONRAIL	*1,241
Mill Creek:	
At the confluence with Sandy Lick Creek	*1,236
Approximately 0.8 mile upstream of confluence with Sandy Lick Creek	*1,246
Fivemile Run:	
At the confluence with Sandy Lick Creek	*1,222
Upstream corporate limits	*1,231
Maps available for inspection at the Township Building, Route 332, Brookville, Pennsylvania.	
President (township), Venango County (FEMA) Docket No. 6990)	
Allegheny River:	
At downstream corporate limits	*1,007
At upstream corporate limits	*1,041
Maps available for inspection at the Township Building, Green Oaks, Pennsylvania.	
SOUTH CAROLINA	
Williamsburg County (unincorporated areas) (FEMA Docket No. 6990)	
Black River:	
About 1000 feet downstream of State Route 41	*13
About 4.3 miles upstream of U.S. Route 52	*48
Maps available for inspection at the County Complex, Kingstree, South Carolina.	
TEXAS	
Blanco County (unincorporated areas) (FEMA Docket No. 6987)	
Pedernales River:	
Approximately 40 miles above confluence with Colorado River (Lake Travis)	*1,038
Approximately 2,900 feet upstream of U.S. Route 281	*1,138
Town Creek:	
At confluence with Pedernales River	*1,128
At City of Johnson City corporate limits	*1,151
Deer Creek:	
At confluence with Pedernales River	*1,125
At private road approximately 1,640 feet upstream of Bratendale Road	*1,265
Maps available for inspection at the Blanco County Courthouse, Johnson City, Texas.	
Bowie (city), Montague County (FEMA Docket No. 6990)	
Brushy Creek:	
Approximately 0.63 mile upstream of Jakarta Street	*1,040
Approximately 0.7 mile downstream of State Route 59	*1,046
Brushy Creek Tributary A:	
Approximately 0.36 mile upstream of confluence with Brushy Creek	*1,033
Approximately 65 feet downstream of Gallia Street	*1,058
Maps available for inspection at the City Hall, Bowie, Texas.	
Diboll (city), Angelina County (FEMA Docket No. 6990)	
White Oak Creek:	
At U.S. Route 59, downstream corporate limits	*174
Approximately 1.2 miles upstream of Harris Street	*224
Maps available for inspection at the City Hall, 400 Kenley, Diboll, Texas.	
Johnson City (city), Blanco County (FEMA Docket No. 6987)	
Town Creek:	
Downstream corporate limits	*1,151
Approximately 68 feet upstream of U.S. Route 281	*1,160
Deer Creek:	
At the upstream side of old U.S. Route 290	*1,194
Approximately 450 feet upstream of old U.S. Route 290	*1,196
Maps available for inspection at the City Hall, Johnson City, Texas.	
Lampasas County (unincorporated areas) (FEMA Docket No. 6987)	
Clark Creek:	
Approximately 1,875 feet downstream of FM 2657	*1,033
Approximately 0.65 mile upstream of FM 2657 or at County Route 134	*1,095
Stream BC-1:	
Approximately 510 feet downstream of U.S. Route 190	*978
Approximately 940 feet upstream of Apache Trail	*1,034
Stream CC-1:	
At the downstream County boundary	*977
Approximately 130 feet upstream of FM 2657	*1,044
Colorado River:	
At the downstream County boundary	*1,061
Approximately 900 feet upstream of downstream County boundary	*1,070
Maps available for inspection at the Lampasas County Courthouse, Judges Office, Lampasas, Texas.	
Montague County (unincorporated areas) (FEMA Docket No. 6990)	
Brushy Creek:	
At Jakarta Street	*1,030
At the upstream side of FM Route 1816	*1,095
Brushy Creek Tributary A:	
At the confluence with Brushy Creek	*1,030
At the upstream side of Gallia Street	*1,059
Big Sandy Creek:	
Approximately 0.95 mile upstream of confluence with Lake Amon G. Carter	*934
Approximately 400 feet upstream of County Road	*952
Herring Branch:	
At the confluence with Lake Amon G. Carter	*934
Approximately 1.64 miles upstream of the confluence with Lake Amon G. Carter	*956
Lake Nocona: Entire shoreline within community	*838
Lake Amon G. Carter: Entire shoreline within community	*934
Maps available for inspection at the Montague County Courthouse, Montague, Texas.	
Stephens County (unincorporated areas) (FEMA Docket No. 6987)	
Hubbard Creek Lake:	
Damon Hubbard Creek	*1,194
Approximately 500 feet upstream of State Route 576	*1,208
Gunsolus Creek:	
Approximately 0.6 mile downstream of FM 287	*1,170
Approximately 465 feet upstream of Valley Street	*1,191
Stream BK-2: Approximately 0.8 mile upstream of Live Oak Avenue	*1,214
Stream BK-3: Approximately 1,620 feet upstream of confluence with Gunsolus Creek	*1,191
Maps available for inspection at the Stephens County Courthouse, Breckenridge, Texas.	
Young County (unincorporated areas) FEMA Docket No. 6987)	
Mud Creek:	
At confluence with Salt Creek	*1,173
At Camp Road	*1,203
Salt Creek:	
Approximately 0.5 mile upstream of confluence with Brazos River	*1,036
At County boundary	*1,196
Dry Creek:	
At confluence with Salt Creek	*1,036
Approximately 3 miles upstream of FM Route 2179	*1,097
Salt Creek West Branch:	
At confluence with Salt Creek	*1,187
Just downstream of FM Route 2178	*1,220
Stream GR-1:	
At confluence with Farmers Branch	*1,063
Approximately 1,450 feet upstream of confluence with Farmers Branch	*1,070
Farmers Branch:	
Approximately 2 miles upstream of confluence with Salt Creek	*1,047
Approximately 1,100 feet upstream of confluence of Stream GR-1	*1,069
Stream GR-2:	
At confluence with Dry Creek	*1,063
Approximately 150 feet downstream of City of Graham corporate limits	*1,082
Maps available for inspection at the Young County Courthouse, Graham, Texas.	
VIRGINIA	
Clintwood (town), Dickenson County (FEMA Docket No. 6990)	
Holly Creek:	
Approximately 0.7 mile downstream of Long Street	*1,620
Approximately 312 feet upstream of T-1000 (Fairground Hollow Road)	*1,781
Maps available for inspection at the Town Hall, Main Street, Clintwood, Virginia.	
Dickenson County (unincorporated areas) (FEMA Docket No. 6990)	
McClure River:	
At confluence with Russell Fork	*1,264
Approximately 1,550 feet upstream of State Route 652	*1,522
Holly Creek:	
Approximately .7 mile downstream of Long Street	*1,620
Approximately 312 feet upstream of T-1000 (Fairground Hollow Road)	*1,781

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Russell Prater Creek:	
At confluence with Russell Fork	*1,266
Approximately 1.1 miles upstream of confluence with Russell Fork	*1,322
Russell Fork:	
Approximately .6 mile downstream of State Route 63	*1,257
Approximately 1,450 feet upstream of State Route 83	*1,271
Maps available for inspection at the Board of Supervisor's Room, County Courthouse, Clintwood, Virginia.	
James City County (unincorporated areas) (FEMA Docket No. 6990)	
York River:	
Shoreline at State Route 605 (extended)	*7
At confluence of Ware Creek	*8
James River: Entire length within community	*8.5
Chickahominy River: Entire length within community	*8.5
Powhatan Creek:	
At confluence with James River	*8.5
At confluence of Long Hill Swamp and Chisel Run	*30
Long Hill Swamp:	
At confluence with Powhatan Creek	*30
Approximately 1.2 miles upstream of State Route 612 Bridge	*53
Chisel Run:	
At confluence with Powhatan Creek	*30
Approximately .6 mile upstream of State Route 612 Bridge	*53
West Tributary to Long Hill Swamp:	
At confluence with Long Hill Swamp	*35
Approximately 1.3 miles upstream of State route 612 Bridge	*56
East Tributary to Chisel Run:	
At confluence with Chisel Run	*36
Approximately 2,350 feet upstream of confluence with Chisel Run	*42
Maps available for inspection at Building E, Department of Code Compliance, 101-E Mounts Bay Road, Williamsburg, Virginia.	
King William County (unincorporated areas) (FEMA Docket No. 6990)	
Pamunkey River and adjoining estuaries: Entire shoreline within community	*8.0
Mattaponi River:	
At downstream corporate limits	*8.0
At upstream corporate limits	*57
Moncuin Creek:	
Approximately 1.4 miles downstream of State Route 618	*17
Approximately 700 feet upstream of U.S. Route 360	*40
Maps available for inspection at the County Planning Office, Courthouse, King William, Virginia.	
WEST VIRGINIA	
Elizabeth (town), Wirt County (FEMA Docket No. 6987)	
Little Kanawha River:	
Downstream corporate limits	*624
Upstream corporate limits	*626
Maps available for inspection at the Town Office, Elizabeth, West Virginia.	
Meadow Bridge (town), Fayette County (FEMA Docket No. 6987)	
Meadow Creek:	
Downstream corporate limits	*2,355
Upstream corporate limits	*2,430
Laurel Branch:	
Confluence with Meadow Creek	*2,430
Upstream corporate limits	*2,432
Maps available for inspection at the Town Hall, Meadow Bridge, West Virginia.	
WISCONSIN	
Amherst (village), Portage County (FEMA Docket No. 6987)	
Tomorrow River:	
About 0.59 mile downstream of Wilson Street	*1036
About 2300 feet upstream of Amherst Dam	*1044
Maps available for inspection at the Village Hall, 161 Mill Street, Amherst, Wisconsin.	
Sun Prairie (city), Dane County (FEMA Docket No. 6990)	
Koshkonong Creek:	
About 1450 feet upstream of Bird Street	*922
Just upstream of Musket Ridge	*961
Token Creek: Within community	*896
Maps available for inspection at the City Hall, 124 Columbus Street, Sun Prairie, Wisconsin.	
Westfield (village), Marquette County (FEMA Docket No. 6987)	
Westfield Creek:	
About 380 feet downstream of U.S. Highway 51	*839
Just downstream of Spring Street Bridge/Dam	*840
About 0.54 mile upstream of West Fourth Street	*855
Maps available for inspection at the Village Hall, 109 East Third Street, Westfield, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Shade (township), Somerset County (FEMA Docket No. 6975)	
Dark Shade Creek:	
Approximately 500 feet downstream of S.R. 6448	*2,149
Approximately 120 feet upstream of confluence of Little Dark Shade Creek	*2,154
Little Dark Shade Creek:	
Approximately 0.4 mile downstream of S.R. 160	*2,158
Approximately .38 mile upstream of S.R. 160	*2,193
Laurel Run:	
At the confluence with Dark Shade Creek	*2,154
Approximately 1.2 miles upstream of the downstream crossing of T-720	*2,376
Maps available for inspection at the Shade Township Building, Route 160, Calmbrook, Pennsylvania.	
VIRGINIA	
Brunswick County (unincorporated areas) (FEMA Docket No. 6968)	
Great Creek:	
Approximately .4 mile downstream of confluence of Sandy Branch	
At Great Creek Dam	*165
	*195
Roses Creek:	
At confluence with Great Creek	*171
Approximately 1.4 miles upstream of confluence of Rocky Run	*194
Maps available for inspection at the County Administrator's Office, 102 Tobacco Street, Lawrenceville, Virginia.	

Issued: October 9, 1990.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-24482 Filed 10-16-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-491; RM-6945]

Radio Broadcasting Services; Brantley, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 262A to Brantley, Alabama, as that community's second local FM broadcast service, in response to a petition for rule making filed on behalf of Crenshaw Broadcasting Company. See 54 FR 48283, November 22, 1989. Coordinates used for Channel 262A at Brantley are 31-36-00 86-17-44. (See Supplementary Information, *infra.*) With this action, the proceeding is terminated.

DATES: Effective November 26, 1990; the window period for filing applications on Channel 262A at Brantley, Alabama, will open on November 27, 1990, and close on December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-491, adopted September 24, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

2100 M Street, NW., Suite 140, Washington, DC. 20037.

Interested parties should note that the petition for rule making in this proceeding was filed prior to October 2, 1989, and therefore, applicants for Channel 262A at Brantley may avail themselves of the provisions of 73.213(c) of the Commission's Rules. See 47 CFR 73.213(c).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 262A at Brantley.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24349 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-453; RM-6851]

Radio Broadcasting Services; Hampton, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C3 for Channel 296A at Hampton, Arkansas, and modifies the license of Southern Arkansas Radio for Station KKOL(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. See 54 FR 43088, October 20, 1989. Coordinates used for Channel 293C3 at Hampton are 33-35-00 and 92-16-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 26, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-453, adopted September 21, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 296A and adding Channel 293C3 at Hampton.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24415 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-200; RM-7143]

Radio Broadcasting Services; Newberry, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Newberry Broadcasting Corporation, substitutes Channel 263C3 for Channel 263A at Newberry, Florida, and modifies its construction permit for Station WNFQ(FM) to specify operation on the higher powered channel. See 55 FR 17463, April 25, 1990. Channel 263C3 can be allotted to Newberry, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.4 miles) west, in order to avoid a short-spacing to Station WYGC, Channel 265A, Gainesville, Florida. The coordinates for Channel 263C3 at Newberry are North Latitude 29-39-21 and West Longtitude 82-44-49. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-200, adopted September 24, 1990, and released October 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[Amended]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 263A and adding Channel 263C3 at Newberry.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24346 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-612; RM-7103]

Radio Broadcasting Services; Key Colony Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Richard L. Silva, substitutes Channel 288C2 for Channel 288A at Key Colony Beach, Florida, and modifies the construction permit of Station WKKB(FM) to specify the higher class channel. See, 55 FR 02254, January 23, 1990. Channel 288C2 can be allotted to Key Colony Beach in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction of 16.1 kilometers (10.0 miles) west of the community. The coordinates are North Latitude 24-42-28 and West Longitude 81-06-13. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-612.

adopted September 24, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 288A and adding Channel 288C2 at Key Colony Beach.

Kathleen B. Levitz,

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

[FR Doc. 90-24348 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-523; RM-6929]

Radio Broadcasting Services; Royston, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 279C3 for Channel 279A at Royston, Georgia, and modifies the license of Station WPUP(FM) to specify operation on the higher class channel. See 54 FR 48774, November 28, 1989. Channel 279C3 can be allotted to Royston in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) northwest in order to avoid a short-spacing to the licensed site of Station WLWZ, Channel 280A, Easley, South Carolina. The coordinates are North Latitude 34-19-59 and West Longitude 83-12-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-523, adopted September 21, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 279A and adding Channel 279C3 at Royston.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24350 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-310; RM-7190]

Radio Broadcasting Services; Tennille, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Tennille, Georgia, as that community's first local broadcast service at the request of Michael K. Garner. See 55 FR 26222, June 27, 1990. Channel 260A can be allotted to Tennille, Georgia, in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 32-56-24 and West Longitude 82-48-06. With this action, this proceeding is terminated.

DATES: Effective November 26, 1990; The window period for filing applications will open on November 27, 1990, and close on December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-310, adopted September 21, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 260A at Tennille.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24351 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-198; RM-7135]

Radio Broadcasting Services; LeRoy, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281B for Channel 281B1 at LeRoy, Illinois, and modifies its construction permit for Station WRXZ(FM) to specify operation on the higher powered channel at the request of McLean County Broadcasters, Inc. See 55 FR 17462, April 25, 1990. Channel 281B can be allotted to LeRoy, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 29.0 kilometers (18 miles) northeast, in order to avoid a short-spacing to a construction permit for Station WCBH, Channel 282B1, Casey, Illinois, and the licensed sites of Station WJMK(FM), Channel 282B, Chicago, Illinois, and Station WKKX(FM) Channel 281C2, Jerseyville, Illinois. the coordinates for

this allotment are North Latitude 40-30-10 and West Longitude 88-28-59. With this action, this proceeding is terminated.

EFFECTIVE DATES: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-198, adopted September 25, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 281B1 and adding Channel 281B at LeRoy.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24417 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-197; RM-7132]

Radio Broadcasting Services; Arcola, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300A to Arcola, Illinois, as that community's first local broadcast service at the request of Walnut Point Broadcasters. See 55 FR 17462, April 25, 1990. Channel 300A can be allotted to Arcola, Illinois, in compliance with the minimum distance separation requirements of the Commission's Rules without a site restriction. The coordinates for this allotment are North Latitude 39-41-00 and West Longitude 88-18-30. With this action, this proceeding is terminated.

DATES: Effective November 26, 1990; The window period for filing applications will open on November 17, 1990, and close on December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-197, adopted September 21, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 300A at Arcola.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24418 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-210; RM-7153]

Radio Broadcasting Services; Glasgow, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of WOVO Broadcasting, Inc., substitutes Channel 287C3 for Channel 288A at Glasgow, Kentucky, and modifies the license for Station WOVO(FM) to specify operation on Channel 287C3. See 55 FR 17770, April 27, 1990. Channel 287C3 can be allotted to Glasgow, Kentucky, in compliance with the Commission's miminum distance separation requirements with a site restriction of 18.9 kilometers (11.8 miles) southeast, in order to avoid a short-spacing to Station WYNG(FM), Channel 287B, Evansville, Indiana and Station WCLC(FM), Channel 286A, Jamestown, Tennessee. The coordinates for this allotment are North Latitude 36-53-33 and West Longitude 85-44-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-210, adopted September 24, 1990, and released October 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 288A and adding Channel 287C3 at Glasgow.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24345 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-414; RM-6923]

Radio Broadcasting Services; Indianola, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 245C3 for Channel 245A at Indianola, Mississippi, in response to a petition filed by Walter Gray Gilbert. We shall also modify the construction permit for Channel 245A to specify

operation on Channel 245C3. The coordinates for Channel 2453C are 33-31-41 and 90-39-15.

EFFECTIVE DATE: November 26, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-414, adopted September 24, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 245A and adding Channel 245C3 at Indianola.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24347 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-519; RM-6856]

Radio Broadcasting Services; West Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C3 for Channel 298A at West Rutland, Vermont, and modifies the construction permit for Station WVNH(FM) to specify the higher class channel in response to a petition filed by Brian Dodge. See 54 FR 49780, December 1, 1989. Canadian concurrence has been obtained at coordinates 43-39-40 and 72-53-25.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-519, adopted September 21, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 298A and adding Channel 298C3 at West Rutland.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24416 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Docket No. 40047]

Revision to Minimum Rule for Railroads' Property Units

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This decision increases the minimum rule for capitalization of a railroad's property units from $2,000 to $5,000. That is, when the acquisition cost for new road property (or additions to existing units) is less than $5,000, the cost may be charged to operating expenses. Additionally, the minimum capitalization level (rounded to the nearest $100) will be adjusted by the June Producer Price Index for all commodities when the aggregate adjustment is $500 or more. The adjusted capitalization level will be effective on January 1 of the following year. The reason for and intended effect of the change is to reduce recordkeeping costs for railroads. A Notice of Proposed Rulemaking (NPR) was published in the **Federal Register** on July 20, 1988 at 53 FR 27374-75. The revised rules are set forth below.

EFFECTIVE DATE: The revision is effective as of January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275-7510 (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: The Commission is amending its regulations to increase the minimum rule for capitalization of railroad property units from $2,000 to $5,000, and to adjust this amount annually by increments of at least $500 after applying the Producer Price Index for all commodities. The purpose of the revision is to reduce the burden associated with the accounting for minor items of property. The applicable index and adjusted minimum capitalization level will be published in the **Federal Register** annually. This revision is effective for the reporting year beginning January 1, 1991.

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

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that no additional burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Interstate Commerce Commission, Commission Service Section, room 2203, Washington, DC 20423, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This revision for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the regulation and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275-7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2121, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Decided: October 5, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Lamboley did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1201 of the Code of Federal Regulations is amended as follows:

PART 1201—RAILROAD COMPANIES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

Subpart A [Amended]

2. In subpart A, the Instructions for Property Accounts is amended by revising Instruction 2-2, and in Instruction 2-9, by revising paragraph (a), removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

INSTRUCTIONS FOR PROPERTY ACCOUNTS

* * * * *

2-2 *Minimum rule applicable to additions to property.* An exception to the rule in Instruction 2-1 is that when the cost of acquisition of units of road property and of additions to existing units of road property (other than land and tracks) is less than $5,000, such costs may be charged to operating expenses. This amount (rounded to the nearest $100) will be adjusted by the June Producer Price Index for all commodities when an aggregate adjustment is $500 or more. The revision will be published in the Federal Register and be effective as of January 1 of the following year. The carrier shall not parcel expenditures under a general plan bringing the accounting for such expenditures within this minimum rule. An amount of less than the current minimum capitalization level, for the railroad as a whole or for individual property accounts may be adopted for purposes of this rule provided the carrier first notifies the Commission of the amount it proposes to adopt and thereafter makes no change in the amount unless authorized by the Commission. An amount adopted shall be adhered to in reporting property changes for valuation purposes.

* * * * *

2-9 *Additions and retirements of other than units of property.* (a) When an item of road or equipment property, other than a complete unit, is added to the plant and the addition is not a replacement, the cost thereof shall be accounted for in the same manner as an addition of a complete unit of property, subject to the minimum rule applicable to road property (see Instruction 2-2). When an item of property other than a complete unit (minor item) is replaced, independent of the complete unit of which it is a part, the cost of replacement shall be treated as maintenance and charged to operating expenses. If the replacement constitutes an improvement then the cost of replacement should be accounted for as a rebuilding expenditure under Instruction 2-12.

* * * * *

[FR Doc. 90-24468 Filed 10-16-90; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 55, No. 201
Wednesday, October 17, 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

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 90-18]

Risk-Based Capital Guidelines Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend the risk-based capital guidelines applicable to national banks. These amendments would make a variety of changes in the provisions relating to (1) The definition of central government, (2) the unused portion of commitments, (3) the calculation of the amount of the allowance for loan and lease losses included in Tier 2 capital, (4) the calculation of the limitationi on subordinated debt and intermediate term preferred stock in Tier 2 capital, (5) the redemption of capital instruments, (6) the authority of the OCC to permit supervisory goodwill as capital, (7) the 25% limitation on qualifying intangibles, (8) local currency claims guaranteed by non-OECD central governments, (9) claims on non-OECD central banks, (10) assets sold with recourse, and (11) the definition of credit card lines.

The purposes of these proposed amendments is to clarify certain questions of interpretation and implementation that have arisen since the guidelines were adopted and to make a limited number of technical changes for greater consistency with the risk-based capital guidelines of the other Federal bank regulatory agencies, the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement), other OCC regulations, and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 (FIRREA). While the proposed amendments are clarifying and/or technical in nature, some of the changes may have a substantive effect on national banks. The OCC invites comments on all aspects of the proposed amendments.

DATES: Comments must be submitted on or before December 17, 1990.

ADDRESSES: Interested persons are invited to submit written comments to Docket No. [90-18], Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Kelly, National Bank Examiner, Supervision Policy/Research Division, (202) 447-1164; Mark Winer, Associate Director, Economic and Policy Analysis, (202) 447-1924; C. Stewart Goddin, Senior International Economic Advisor, Multinational and Regional Bank Analysis, (202) 447-1747; Eugene W. Green, Deputy Director, Bank Accounting, (202) 287-4723; or Richard H. Cleva, Senior Attorney, or Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division, (202) 447-1883.

SUPPLEMENTARY INFORMATION:

Background

The OCC's final risk-based capital guidelines were published in the Federal Register on January 27, 1989 (54 FR 4168) (codified at 12 CFR part 3 appendix A). The risk-based capital guidelines impose capital requirements that are sensitive to the risk profiles of financial institutions. The guidelines implement the Basle Agreement and were developed in cooperation with the Federal Deposit Insurance Corporation and the Federal Reserve Board.

The purpose of this proposal is to clarify certain questions which have arisen regarding implementation of the guidelines and to make technical changes to achieve greater consistency with the risk-based capital guidelines of the other banking agencies, other OCC regulations, the Basle Agreement, and FIRREA. While the action taken in this proposal and its proposed amendments is clarifying or technical in nature, some aspects may have a substantive impact on national banks. The OCC invites comments on all aspects of this proposal. A description of the proposed amendments follows:

Discussion of Proposed Amendments

(1) Definition of Central Government—Section 1(c)(5)

The OCC is proposing to amend the definition of central government to clarify that the term central government includes the central bank of the central government. To eliminate redundancy, the OCC is also proposing to amend the provision relating to local currency claims on or guaranteed by the central government or the central bank in non-OECD countries, by deleting the phrase "central bank." As a further clarification, the definition of central government will specify that the United States central bank includes the 12 Federal Reserve Banks.

(2) Unused Portion of Commitments—Sections 1(c)(16), 1(c)(26), and 3(b)(4)(ii)

The OCC is proposing to amend the provisions relating to the unused portion of commitments. Under the current risk-based capital guidelines, an unused commitment with an original maturity of one year or less qualifies for the zero percent conversion factor. An unused commitment with an original maturity beyond one year also may qualify for the zero percent conversion factor provided that the commitment is both unconditionally cancelable at any time and subject to a separate credit review before each drawing under the commitment.

The OCC recognizes that, in certain instances, there are commitments with an expiration date longer than one year for which the requirement of a separate credit review before each drawing is not practical. For example, this is the case with home equity lines of credit which are accessed by the writing of a check. In these arrangements, the OCC believes that a separate credit review, conducted at periodic intervals, would serve the same purpose of monitoring and reassessing the bank's exposure. If the review is conducted and the credit fully reevaluated at least annually, and the bank then determines to continue the commitment rather than to exercise its unconditional right to cancel, then the commitment would be similar, in terms

of the bank's exposure to the borrower, to one that expired in one year.

The OCC proposes to include commitments with such an annual review as qualifying for the zero percent conversion factor.

To accomplish this change, the OCC is proposing to amend the listing in section 3(b)(4)(ii) of those unused commitments with an original maturity of greater than one year which can qualify for the zero percent conversion factor to include those with at least an annual credit review, as well as those with a credit review before each draw; provided in either case that the commitment is unconditionally cancelable, with or without cause, at the option of the issuing bank at any time. (The OCC's definition of "unconditionally cancelable" includes the requirements that the commitment be cancelable "with or without cause" and "at any time.")

While this proposed amendment would permit home equity lines of credit and other commitments which are subject to at least an annual review to qualify for the zero percent conversion factor, the OCC emphasizes that the review must be a normal practice of the bank, and must actually be performed and documented. The review must provide a sufficiently detailed analysis of the borrower's current financial capacity to support the continuation of the line of credit.

In addition, the OCC proposes to amend the definition of "original maturity." First, the definition is amended so that it addresses only the scheduled expiration date of a commitment. This is a conforming change, since the portion of the current definition that addresses unconditionally cancelable commitments is superseded by the amemdment to section 3(b)(4)(ii) discussed above. Second, the OCC also proposes to amend the discussion of the scheduled expiration date of a commitment in order to clarify the treatment of a commitment that can be renewed or extended beyond its stated expiration date. Commitments often contain provisions for their renewal or extension beyond the original stated expiration date. General renewal of a commitment with a short-term stated expiration date can result in a commitment which is long-term in effect. The proposed amendment clarifies that a short-term commitment that can be renewed or extended will qualify for the zero percent conversion factor as a commitment with an original maturity of one year or less only if the bank conducts a thorough reconsideration of the commitment, including its terms and conditions, and a thorough review of the customer's creditworthiness, at the time of the renewal or extension.

Additionally, the OCC proposes to amend the definition of "unconditionally cancelable" in section 1(c)(26) by moving the text of footnote 18 from section 3(b)(4)(ii) to the end of section 1(c)(26) and incorporating it as part of the definition. The proposed transfer is purely technical. It consolidates the explanation of the term "unconditionally cancelable" in one place (*i.e.*, in the definition).

(3) Amount of Allowance for Loan and Lease Losses in Tier 2 Capital—Section 2(b)(1)(footnote 3)

The OCC is proposing to amend footnote 3 in order to clarify the method for calculating the amount of the allowance for loan and lease losses (ALLL) that may be included in Tier 2 capital. Subject to the transition rules and to the overall limiations on Tier 2 capital, the ALLL may be included in Tier 2 capital only up to a maximum of 1.24% of risk-weighted assets. Assets that are required to be deducted from capital should also not be included in establishing the amount of risk-weighted assets from which to derive the 1.25% figure for includable ALLL.

Generally, any asset deducted from a bank's capital in computing the numerator of the risk-based capital ratio is not included as part of the bank's risk-weighted assets, and thus is not part of the denominator of the bank's risk-based capital ratio. *See* 12 CFR part 3 appendix A, Section 3 (last sentence of first paragraph). For example, goodwill other non-qualifying intangibles, and qualifying intangibles in excess of the 25% limit would be deducted in determining both capital and risk-weighted assets. Thus, these items are deducted in establishing the "gross sum" of risk-weighted assets used for computing the 1.25% figure for includable ALLL.

In addition, under footnote 3 certain other items (*e.g.*, excess ALLL, allocated transfer risk reserves, reserves against other real estate owned, and other special reserves) may also be deducted from risk-weighted assets in computing the denominator of the capital ratio, even though they continue to be included in the "gross sum" of risk-weighted assets used in calculating the 1.25% amount of includable ALLL. In footnote 3, "gross sum" is intended to mean initial risk-weighted assets less the required deductions corresponding to capital deductions but prior to the deductions for reserves which are allowed for final risk-weighted assets (for inclusion in the denominator of the capital ratio).

(4) Calculation of the Limitation on Subordinated Debt and Intermediate Term Preferred Stock—Section 2(b)(4)

The OCC is proposing to amend the language in section 2(b)(4). The new language is intended to clarify that, in calculating capital, the 50% limitation on term subordinated debt and intermediate-term preferred stock and any related surplus must be based on Tier 1 capital after the required deductions have been made under section 2(c). This proposed change in language is simply a clarification and does not represent any change in method of calculating the qualifying amount of term subordinated debt and intermediate-term preferred stock.

(5) Redemption of Capital Instruments—Section 2(b)(4)

The OCC proposes to amend footnote 5 to clarify that prior OCC approval is required for the redemption of capital instruments. Footnote 5 permits the redemption of certain capital instruments prior to maturity under the risk-based capital guidelines, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of similar or higher quality capital instruments. As presently worded, the footnote states that such redemptions may occur without the prior approval of the OCC. This is inconsistent with 12 CFR 3.100(f)(1)(vii) and 5.47(f)(3)(i) which require prior OCC approval before the redemption of capital instruments in general.

The OCC also proposes to amend footnote 5 to clarify that, although replacement by similar capital instruments may be the typical reason for allowing redemption, the OCC retains the authority to allow redemption in other circumstances in which the bank would continue to have adequate capital after redemption. The amendment also clarifies that the OCC may disallow redemption even in cases of proposed replacement by other capital instruments. The OCC's determinations regarding requests for redemption of capital instruments are made on a case-by-case basis, taking into account all the circumstances and an overall assessment of the bank's capital. This is similar to the scope of OCC discretion under 12 CFR 3.100(f)(1)(vii) and 5.47(f)(3)(i).

(6) Authority of OCC To Permit Supervisory Goodwill as Capital—Section 2(c)(1)(i) (footnote 6)

The OCC proposes to delete footnote 6 concerning the capital treatment of certain goodwill. The risk-based capital guidelines require all goodwill to be deducted from Tier 1 capital. In footnote 6 the OCC retained the discretionary authority not to require the deduction of goodwill acquired in connection with a supervisory merger with a problem or failed depository institution in the calculation of capital. The OCC proposes to delete footnote 6. This proposal implements section 18(n) of the Federal Deposit Insurance Act (12 CFR 1828(n)), as added by section 221 of FIRREA. In relevant part, section 221 provides:

> No appropriate Federal banking agency shall allow any insured depository institutions to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners' Loan Act.

The exceptions referred to in section 5(t) of the Home Owners' Loan Act, as amended by section 301 of FIRREA, relate to thrift institutions. Moreover, since 1985, the OCC has required national banks to deduct unidentified intangibles from capital. Therefore, since it would not be a change from current OCC practice, the removal of this footnote will not have a significant effect on national banks.

(7) 25% Limitation on Qualifying Intangibles Includable in Tier 1 Capital—Section 2(c)(2)(ii)

Under the OCC's current risk-based capital guidelines, intangible assets are generally deducted from Tier 1 capital in calculating a bank's risk-based capital ratio. However, certain intangible assets which meet specified criteria ("qualifying intangibles") need not be deducted. Purchased mortgage servicing rights are the archetypical example of qualifying intangibles under the current risk-based capital guidelines. In the OCC's guidelines, the amount of such qualifying intangibles that may be included in Tier 1 capital is strictly limited to a maximum of 25% of total Tier 1 capital.

On the other hand, in the Federal Reserve Board's guidelines, all intangible assets will be monitored and amounts in excess of 25% of Tier 1 capital (which is defined as net of goodwill) will be subject to particularly close scrutiny. The Board also reserves the right to deduct all intangible assets, on a case-by-case basis, in making an overall assessment of capital adequacy. Under the Federal Deposit Insurance Corporation's (FDIC) guidelines, all intangible assets other than mortgage servicing rights are deducted from Tier 1 capital, bu the FDIC may allow other intangible assets to be included upon explicit approval in specific cases. In the FDIC's current guidelines, there is no express limit on the amount of intangible assets that may be included. Recently, however, the FDIC proposed substantial revisions in its capital treatment for purchased mortgage servicing rights. See 55 FR 4616 (February 9, 1990).

There has been growing concern regarding the treatment of purchased mortgage servicing rights for risk-based capital and other bank supervisory purposes. Questions have also arisen regarding what other intangible assets, if any, might be appropriately includable in Tier 1 capital. To address these issues, the OCC has decided to seek more extensive information and comment and to evaluate its overall regulatory treatment of purchased mortgage servicing rights and other intangibles. As a result, the OCC has issued an advanced notice of proposed rulemaking on the risk-based capital treatment of purchased mortgage servicing rights and other intangibles. See 55 FR 40843 (October 5, 1990).

At the present time, the OCC is retaining the provisions in its current risk-based capital guidelines. Those provisons would remain in effect while the broader evaluation process is underway. That process eventually may result in proposed revisions to the guidelines. However, the OCC does propose immediately to consider two narrower changes within its current guidelines. The OCC requests comment on (1) Whether the OCC should add provisions for some degree of case-by-case discretion to its current strict 25% limitation and (2) whether the OCC should continue to use total Tier 1 capital as the base for the 25% limit or use Tier 1 net of goodwill and other disallowed intangibles.

(8) Local Currency Claims Guaranteed by Non-OECD Central Governments—Section 3(a)(1)(v) and Section 3(a)(2)

The OCC is proposing to clarify that only those local currency claims that are unconditionally guaranteed by the central governments of non-OECD countires would qualify for the zero risk weight category to the extent that the bank has local currency liabilities in that country. Local currency claims which are conditionally guaranteed by the central governments of non-OECD countries are assigned to the 20% risk weight category to the extent that the bank has local currency liaiblities in that country. This proposed amendment would provide the same distinction among conditional and unconditional guarantees by non-OECD central governments afforded guarantees by OECD central governments.

(9) Claims on Non-OECD Central Banks—Section 3(a)(1)(v) and Section 3(a)(2)(ii)

In order to provide comparable treatment for all central government entities within a non-OECD country, the OCC proposes that claims on non-OECD central banks, other than local currency claims offset by local currency liabilities, should be assigned to the 100% risk weight category . This realignment would be accomplished by removing claims on non-OECD central banks with a residual maturity of one year or less from the 20% risk weight.

(10) Scope of Provision on Assets Sold with Recourse—Section 3(b)(1)(iii) (footnote 14)

The OCC proposes to amend footnote 14 (regarding assets sold with recourse) to clarify the original meaning of the footnote and to provide certain exceptions. Assets sold with recourse (but not reported on the balance sheet) are included in the risk-based capital provisions for off-balance sheet activities. Such asset sales are included for capital purposes even though the sale with recourse qualifies for sales treatment under the Call Report. Given current Call Report rules, this category encompasses mortgage sales into certain government-sponsored programs and also certain sales in private residential mortgage loan pools in which less than significant recourse is retained. The OCC proposes to add language to make the intent of this provision clearer. The OCC also proposes to create an exception for mortgage sales in which the bank retains insignificant recourse and meets certain other conditions.

The risk-based capital guidelines contain provisions for risk weighing off-balance sheet activities. Among the off-balance sheet activities listed in the guidelines are assets sold under an agreement to repurchase and "assets sold with recourse," to the extent that these assets are not reported on a national bank's statement of condition. These items carry a 100% credit conversion factor. Under the current risk-based capital guidelines, the entire outstanding amount of the asset sold with recourse (and not only the amount of recourse) is converted at the 100%

conversion factor in determining the on-balance sheet credit equivalent.

The meaning of "assets sold with recourse" was explained by a reference to the Call Report instructions in footnote 14:

> For risk-based capital purposes, the definition of the sale of assets with recourse, including one-to-four family residential mortgage loans, is the same as the definition contained in the Instructions for the preparation of the Consolidated Reports of Condition and Income (the Call Report).

The OCC has become aware of potential misunderstanding of the treatment of assets sold with recourse under these provisions in the risk-based capital guidelines. Footnote 14 refers to the Call Report instructions. The Call Report instructions regarding asset sales with recourse (both for residential mortgages and for other assets) contain lengthy explanations of the required reporting treatment for the sale of assets, including: (1) A general rule that assets sold with recourse remain on the selling bank's blance sheet; (2) a general implicit definition of what constitutes recourse (essentially, the retention of any risk of loss); (3) various exceptions whereby certain types of risk retention do not constitute recourse; (4) exceptions for reporting purposes whereby certain residential mortgage loan sales may be treated as sales for reporting purposes, even though recourse is technically retained, because the amount of recourse is not significant and certain other coditions are met; and (5) exceptions for reporting purposes whereby residential or agricultural mortgage loan sales in certain government-sponsored programs may be treated as sales for reporting purposes, even though significant or even full recourse was retained. For example, an exception is provided for residential mortgage loan sales with recourse under programs of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). Another exception (which allows treatment as a sale for Call Report purposes to the same extent that the transaction is reported as a sale under generally accepted accounting principles) is provided for agricultural mortgage loan sales with recourse under programs of the Federal Agricultural Mortgage Corporation (Farmer Mac).

The reference to the Call Report instructions in footnote 14 is meant to refer to the discussion of what constitutes recourse, what forms of risk retention do not constitute recourse, and thus in general what would be an asset sold with recourse (items 2 and 3 above). It is not intended to incorporate for risk-based capital purposes the Call Report exceptions under which a transfer may be reported as a sale even though recourse was retained (items 4 and 5 above; but item 4 is discussed further below). The Call Report exceptions pertain only to how certain transactions are to be reported on the Call Report (as either on or off the balance sheet) and have no applicability for risk-based capital purposes. If the same reporting exceptions that caused an asset sold with recourse to go into the class of off-balance sheet activities would also exempt the asset from the capital charge for off-balance sheet activities, then the off-balance sheet capital provisions for assets sold with recourse would not apply to anything. In this regard, it should also be noted that the Basle Agreement specifically provides that asset sales with recourse, where the credit risk remains with the bank, are off-balance sheet items with a 100% credit conversion factor.

The OCC intends that this risk-based capital provision for off-balance sheet activities covers assets sold with recourse, but which are not reported on the bank's balance sheet (except as discussed below), irrespective of the fact that such assets are treated as sales for balance sheet reporting purposes in the Call Report. It is proposed to modify the language in footnote 14 to clarify this intention. Under current Call Report rules for sales treatment, the category of assets sold with recourse that are off the balance sheet includes mortgages sold with recourse under FNMA, FHLMC, and Farmer Mac programs. Therefore, such assets are covered by this risk-based capital provision. If the Call Report rules were to change to allow other assets sold with recourse to no longer be reported on the balance sheet, then the coverage of this off-balance sheet item would increase correspondingly.

However, the OCC does not intend that mortgage sales with less than significant risk of loss that meet certain criteria should be included in "assets sold with recourse" under risk-based capital. The OCC proposes that mortgage sales in which the bank has retained only minimal risk and has already provided for all potential loss would not be considered assets sold with recourse for risk-based capital purposes, as long as the following three conditions are met: (1) The bank has not retained more than a minimal risk of loss; (2) the maximum amount of exposure to loss which the bank has retained at the time of the transfer is equal to or less than the amount of probable loss that the bank has reasonably estimated that it will incur on the transferred mortgages; and (3) the bank has created a liability account or other special reserve in an amount equal to its maximum exposure. The amount of this reserve may not be included in capital for the purpose of determining compliance with either the risk-based capital requirement or the leverage ratio; nor may it be included in the allowance for loan and lease losses.

This proposed treatment under the risk-based capital guidelines generally corresponds to the current Call Report treatment for certain private residential mortgage sales (item 4 above). But it would also include sales under the government programs (FNMA, FHLMC, Farmer Mac), if the sales met the criteria. The OCC believes this treatment is warranted for risk-based capital because in the circumstances of these transactions, while there is retention of some risk, it has already been provided for in the special reserve and therefore there is no longer "recourse" such that capital must be required for the whole asset sold.

The OCC believes that the present proposed changes are necessary in order to clarify the requirements under the current risk-based capital guidelines which become effective on December 31, 1990. However, the overall treatment of asset sales that involve retained risk or recourse is being reviewed by the OCC, along with the other members of the Federal Financial Institutions Examination Council (FFIEC). This review has resulted in the issuance of a request for comments by the FFIEC published on June 29, 1990, in the **Federal Register**. See 55 FR 26766 (June 29, 1990).

(11) Credit Card Lines and Other Related Plans—Section 3(b)(4)(iii)

The OCC is proposing to revise the definition of credit card lines to include other related plans. As explained in the preamble to the original risk-based capital guidelines (54 FR 4174), the OCC intended to expand the definition of credit card lines to include other related plans, as defined in the Call Report. This would include overdraft checking plans and credit advances under a credit card plan accessed by check.

The OCC invites comments on all aspects of the proposed amendments to appendix A of 12 CFR part 3.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes, if adopted, will not have a significant economic impact on a

substantial number of small entities. These changes are technical in nature and should have a minimal effect on national banks regardless of size.

Executive Order 12291

The OCC has determined that this proposal does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this revision (1) Would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of bank operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity, or innovation.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Capital Risk.

Authority and Issuance

For the reasons set forth in the preamble, appendix A of title 12, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—[AMENDED]

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

Authority: 12 U.S.C. 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

Appendix A [Amended]

2. Section 1 of appendix A is amended by revising paragraphs (c)(5), (c)(16), and (c)(26) to read as follows:

Section 1. Purposes, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(5) *Central government* means the national governing authority of a country; it includes the departments of ministries and agencies of the central government and the central bank. The U.S. Central Bank includes the 12 Federal Reserve Banks. The definition does not include the following: State, provincial or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

* * * * *

(16) *Original maturity* means, with respect to a commitment, the earliest date after a commitment is made on which the commitment is scheduled to expire (*i.e.*, it will reach its stated maturity and cease to be binding on either party), *provided that either:*

(i) the commitment is not subject to extension or renewal and will actually expire on its stated expiration date, or

(ii) if the commitment is subject to extension or renewal beyond its stated expiration date, the stated expiration date will be deemed the original maturity only if the extension or renewal must be based upon terms and conditions independently negotiated in good faith with the customer at the time of the extension or renewal and upon a new, *bona fide* credit analysis utilizing current information on financial condition and trends.

* * * * *

(26) *Unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the bank may, at any time, with or without cause, refuse to advance funds or extend credit under the facility. In the case of home equity lines of credit, the bank is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

* * * * *

Appendix A [Amended]

3. Footnote 3 of paragraph (b)(1) of section 2 of appendix A is amended by inserting the following sentence after the first sentence in the footnote:

[3] The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of the assets required to be deducted under section 3 in establishing risk-weighted assets (*i.e.*, the assets required to be deducted from capital under section 2(c)).* * *

Appendix A [Amended]

4. Paragraph (b)(4) of section 2 of appendix A is amended by inserting before the period in the first sentence the phrase "as calculated after deductions pursuant to section 2(c) of this appendix".

Appendix A [Amended]

5. Footnote 5 of paragraph (b)(4) of section 2 of appendix A is revised to read as follows:

[5] Capital instruments may be redeemed prior to maturity with the prior approval of the OCC. The OCC typically will consider requests for the redemption of capital instruments when the instruments are to be redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the OCC reserves the authority to deny redemption in such circumstances or to allow redemption in other circumstances, based upon its evaluation of the circumstances of each case. The OCC must be notified in writing of any request for redemption at least 30 days in advance of such redemption pursuant to the procedures in 12 CFR 5.46.

Appendix A [Amended]

6. The footnote designator 6 in the text is removed and footnote 6 of paragraph (c)(1)(i) of section 2 of appendix A is removed and reserved.

Appendix A [Amended]

7. Section 3 of appendix A is amended by revising paragraphs (a)(1)(v) and (a)(2)(ii) and adding paragraph (a)(2)(xiii).

Section 3. Risk Categories/Weights for on-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(1) * * *

(v) Local currency claims on or unconditionally guaranteed by central governments of non-OECD countries, to the extent the bank has local currency liabilities in that country. Any amount of such claims that exceed the amount of the bank's local currency liabilities is assigned to the 100% risk category of section 3(a)(4) of this appendix A.

* * * * *

(2) * * *

(ii) Claims on, or guaranteed by depository institutions, other than the central bank, incorporated in a non-OECD country, with a residual maturity of one year or less.

* * * * *

(xiii) That portion of local currency claims conditionally guaranteed by central governments of non-OECD countries, to the extent the bank has local currency liabilities in that country.

* * * * *

Appendix A [Amended]

8. Footnote 14 of paragraph (b)(1)(iii) of section 3 of appendix A is revised to read as follows:

[14] For risk-based capital purposes, the definition of the sale of assets with recourse, including one-to-four family residential mortgages, is generally the same as the definition contained in the Instructions for the Preparation of the Consolidated Reports of Condition and Income (the Call Report). Assets which are sold in transactions in which the bank retains risk in a manner which constitutes recourse under the Call Report instructions, but which are not reported on the bank's statement of condition, are included in this section 3(b)(1)(iii), even though the Call Report allows such transfers to be reported as sales. However, mortgage loans sold in transactions in which the bank retains only an insignificant amount of risk and makes concurrent provision for that risk will not be considered assets sold with

recourse under section 3. In order to qualify, such transactions must meet three conditions: (1) The bank has not retained more than a minimal risk of loss; (2) the maximum amount of exposure to loss which the bank has retained is equal to or less than the amount of probable loss that the bank has reasonably estimated that it will incur on the transferred mortgages; and (3) the bank has created a liability account or other special reserve in an amount equal to its maximum exposure. The amount of this reserve may not be included in capital for the purpose of determining compliance with either the risk-based capital requirement or the leverage ratio; nor may it be included in the allowance for loan and lease losses.

Appendix A [Amended]

9. Section 3 of appendix A amended by revising paragraphs (b)(4)(ii) and (b)(4)(iii) to read as follows:

(b) * * *

(4) * * *

(ii) Unused commitments with an original maturity of greater than one year, if they are unconditionally cancelable [18] at any time at the option of the bank and the bank has the contractual right to make, and in fact does make, either—

(A) A separate credit decision based upon the borrower's current financial condition, before each drawing under the lending facility, or

(B) An annual (or more frequent) credit review based upon the borrower's current financial condition to determine whether or not the lending facility should be continued; and

(iii) The unused portion of retail credit card lines or other related plans that are unconditionally cancelable by the bank in accordance with applicable law.

* * * * *

Dated: September 19, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-24447 Filed 10-16-90; 8:45 am]

BILLING CODE 4810-33-M

[18] See paragraph (c)(26) of section 1 of appendix A to this part.

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0709]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Reserve Board is proposing several modifications, clarifications, and technical changes to the risk-based capital guidelines. The modifications and technical changes relate to the: (1) Treatment of certain assets sold with recourse; (2) redemption of perpetual preferred stock; (3) treatment of supervisory goodwill in the definition of capital; and (4) treatment of claims on non-OECD central banks.

The purpose of these modifications, clarifications, and technical changes is to make the Board's risk-based capital framework consistent with recent international interpretations of the risk-based capital accord (Basel Accord) and with the current or proposed treatment of certain items by the other federal banking agencies. In addition, certain of the proposed modifications to the language of the Board's risk-based capital guidelines are intended to bring the guidelines into closer conformity with current Federal Reserve supervisory practices. In light of the importance of the modifications and clarifications described in this Notice, their overall consistency with the spirit and intent of the risk-based capital framework and the Basel Accord, and the need to ensure that risks are backed by an appropriate level of capital, it is intended that the modifications and clarifications be incorporated into the guidelines by the end of 1990, or as soon as possible thereafter. Year-end 1990 is the date upon which the interim risk-based capital ratios first take effect; the final guidelines take effect at the end of 1992. Because the modifications and clarifications require adjustments in the language of the risk-based capital guidelines, the Board will accept and consider comments from the public for a 60-day comment period.

DATES: Comments on the modifications, clarifications, and technical changes should be submitted on or before December 17, 1990.

ADDRESSES: Comments, which should refer to docket No. R-0709, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Rhoger H. Pugh, Manager (202/728-5883), Norah Barger, Senior Financial Analyst (202/452-2402), Thomas R. Boemio, Senior Financial Analyst (202/452-2982), Division of Banking Supervision and Regulation; Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Background

Since the Board initially published its risk-based capital guidelines, some questions have arisen concerning how certain recourse transactions involving credit risk are to be captured by the framework. In addition, certain interpretations and clarifications have emerged from international and domestic discussions among supervisory authorities. Finally, the enactment of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989 (FIRREA) affects the treatment of goodwill for capital purposes. Accordingly, the Board has proposed the following modifications and clarifications in order to address these developments.

The modifications and clarifications outlined in this notice will: (1) Ensure that certain off-balance sheet credit exposures, particularly sales of residential mortgages with recourse, are adequately captured in the risk-based capital framework; (2) implement interpretations agreed to by supervisory authorities represented on the Basle Committee on Supervision; and (3) foster consistency between the Federal Reserve's treatment of certain transactions for risk-based capital purposes and the current or proposed treatment of such transactions by the other federal banking agencies.

II. Modifications, Clarifications, and Technical Changes

1. Treatment of Sales of Assets (Including Residential Mortgages) With Recourse

It is a basic tenet of the Basle Accord, and of the risk-based capital guidelines of the three federal banking agencies, that all forms of credit risk, whether on- or off-balance sheet, are to be taken into account in calculating an institution's risk-based capital ratio.[1] In view of this

[1] In order to conform to the principles established in the Basle Accord, the Board's risk-based capital guidelines cover credit risks retained when an institution sells an asset, obtained in the issuance of a financial guarantee, or acquired in any other manner. This could be done directly through the issuance of any form of direct credit enhancement or indirectly through the acquisition of an asset or obligation.

principle and in light of questions that have arisen regarding the application of the risk-based guidelines to the sale of certain assets with recourse, the Federal Reserve Board believes that it is necessary to modify the language of the guidelines in order to clarify that credit risks stemming from residential mortgage recourse sales are subject to an appropriate capital charge.

In general, so-called recourse "sales" allow the buyer of a loan or pools of loans to put back to the seller, that is, require the seller to repurchase, loans that are not performing as agreed. This, in effect, means that the credit risk associated with the loans remains with the "seller." The modifications and clarifications to the language of the risk-based capital guidelines could clarify the treatment for risk-based capital purposes of the sale of certain assets with recourse, primarily the sale of residential mortgages with recourse.

In defining assets sold with recourse for risk-based capital purposes, the U.S. banking agencies incorporated the longstanding "general rule" definition contained in the commercial bank Call Report instructions. This general rule states that a transfer of assets is to be reported as a true sale, and, therefore, taken off the balance sheet, only if the transferring (that is, selling) institution (i) Retains no risk of loss from the assets transferred resulting from any cause, including a recourse provision, and (ii) has no obligation to any party for the payment of principal or interest on the assets transferred.

Under the longstanding general rule, a transfer involving any retention by the seller of recourse or risk of loss, even if limited under the terms of the transfer agreement, is considered a borrowing transaction, as opposed to a sale, and the entire amount of the assets "transferred" must remain on the books of the "selling" institution. The general rule was intentionally adopted by the banking agencies for supervisory policy reasons and has been in effect for reporting and primary capital (leverage) ratio purposes for many years. The principal reason for adopting the rule was to ensure that institutions retaining any credit risk through recourse provisions would be required under capital-to-total assets (leverage) ratios to maintain capital against these transactions.

In 1985, the banking agencies considered adopting FASB 77 for regulatory reporting purposes in lieu of the general Call Report rule.[2] However, given capital adequacy considerations and other supervisory concerns, the banking agencies expressly decided not to adopt FASB 77. Rather, the agencies, under the auspices of the Examination Council, chose to reaffirm the general Call Report rule for bank reporting and leverage ratio purposes.

The regulatory (Call Report) definition of sales of assets with recourse in the special case of pools of residential mortgages differs from the general rule just described. In particular, the Call Report instructions state that for regulatory reporting purposes, any transfers of residential mortgage loan pools under government programs, such as the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), will be treated as sales. It should be noted that such treatment is related to the reporting of these items and was never intended to preclude taking account of the risks associated with the transactions in assessing a banking organization's overall capital adequacy. In addition, the Call Report instructions state that transfers of pools of residential mortgages to private obligors (not under the government programs) are to be reported as sales when the selling bank does not retain any significant risk of loss.[3]

These regulatory reporting definitions were developed at a time when the disposition or transfer of residential mortgages under the government programs involved little or no recourse and the amount of possible loss under the private transactions was considered to be insignificant. Thus, no major policy concerns existed regarding the possibility that the "selling" party in these transactions could retain a significant measure of credit risk that was not adequately backed by capital. As discussed below, however, this situation has changed over time.

The Board's risk-based capital guidelines incorporated the general Call Report definition of sales of assets with recourse and also made specific reference to the Call Report treatment of the sale of 1-to-4 family residential mortgages with recourse. The intent of the guidelines was to incorporate into the risk-based capital framework the supervisory principle implicit in the general Call Report rule, that is, if the seller retains any risk of loss, the transaction would require capital support. Despite this, the reference to the Call Report treatment of the sale of 1-to-4 family residential mortgages has apparently led some to believe that such transactions could be excluded entirely from the risk-based capital framework, regardless of the amount of credit risk involved in these transactions.

The exclusion from capital requirements of transactions with a significant amount of credit risk would be inconsistent with the principles of risk-based capital and was not intended when the Board issued its risk-based capital guidelines. In this regard, it should be noted that the Federal Reserve's risk-based capital guidelines contain the statement that "* * * asset sales with recourse (to the extent not included on the balance sheet) * * * are converted at 100 percent." This would have the effect of applying a capital charge to such transactions.

The treatment of asset sales with recourse, including the transfer of residential mortgages with recourse, is of particular importance since it has become apparent that the "sales" of residential mortgages under the government programs can involve either no recourse, or recourse of up to 100 percent to the "seller"—a distinct departure from the situation that existed when the regulatory reporting definition of "residential mortgages sold with recourse" was initially adopted. Thus, the incorporation in the risk-based capital guidelines of the Call Report definition of residential mortgages sold with recourse has been interpreted by some as allowing sales of residential mortgages under the government programs with up to 100 percent recourse to escape a capital charge.

If such treatment were permitted, banking organizations would not have to maintain any capital to support the credit risks associated with recourse arrangements, even though these risks associated with recourse arrangements, even though these risks would be the same as if they continued to hold the assets directly on their books. For this reason, the Federal Reserve is clarifying the language in the risk-based capital guidelines to ensure that 1-to-4 family residential mortgage sales with recourse are not exempt from an appropriate capital charge.

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[2] GAAP, as set forth in Financial Accounting Standards Board Statement No. 77 (FASB 77), permits a transfer of assets with recourse to be treated as a sale if: (a) Control of the future economic benefits is surrendered; (b) the amount of the seller's obligation under the recourse provisions can be reasonably estimated; and (c) the assets cannot be returned to the seller except pursuant to the recourse provisions. When sales treatment is accorded, the seller's estimated liability for any loss under the recourse provisions must be provided for.

[3] The Call Report instructions state that in a private transaction, recourse is considered significant if at the time of the transfer the maximum contractual exposure under the recourse provision (or through retention of a subordinated interest in the mortgages) is greater than the amount of probable loss that the bank has reasonably estimated it will incur on the transferred mortgages.

To achieve this objective, the modified language would provide for risk-based capital purposes that assets sold with recourse (that are not already on the balance sheet), including residential mortgages, are to be treated by the selling institution like any other direct credit substitute or financial guarantee. Thus, such off-balance sheet obligations would be converted at 100 percent to an on-balance sheet credit equivalent amount and assigned to the appropriate risk category, typically 50 percent in the case of residential mortgages. In general, this would have the effect of putting a 4 percent capital charge on the entire amount of residential mortgage loans sold with recourse.

An exception under this proposal would be allowed where the maximum possible recourse obligation, at the time of the transfer, is less than the expected loss on the transferred assets and the banking organization establishes and maintains a liability or specifically identified (non-capital) reserve for an amount equal to the maximum loss possible under the recourse provision. Such a liability or reserve would mean that the maximum possible loss under the recourse arrangement would in effect be deducted from capital "up front," and the originating or selling institution would not suffer any further loss under the recourse obligation. Under such conditions, no additional capital would be required and the amount of the liability created to cover the maximum possible loss under the recourse agreement would not be included in capital.

Clarifying in the proposed manner that residential mortgage sales with recourse incur a capital charge is desirable for several reasons.

First, it would ensure that the Federal Reserve's treatment for risk-based capital purposes of residential mortgage sale with recourse is consistent with (i) The general regulatory rule on asset sales with recourse long employed by the Federal banking agencies and (ii) the existing or proposed treatment of the other Federal banking agencies.

Second, addressing the residential mortgage issue will ensure consistency with the intent of the Basle Accord, which requires capital backing for all on- and off-balance sheet credit risks.

Third, addressing the mortgage exception will enable the depository institution regulatory agencies to deal with a number of broad issues pertaining to recourse in a consistent fashion going forward.[4]

With reference to the second point above regarding the consistency with the Accord, it should be noted that the terms and provisions of the Basle Accord apply to commercial banks on a consolidated basis. In this regard, under the approach described above, commercial banks will be required to back their recourse transactions with capital when the interim risk-based capital ratios become effective at year-end 1990, or upon the effective date of the clarification, whichever is later. While the Basle Accord does not apply to companies that own banks, the Accord does caution that bank ownership structures or affiliations with other firms not be allowed to weaken the capital position of the bank or expose the bank to undue risks. The Board has chosen to apply risk-based capital requirements similar to those in the Basle Accord to bank holding companies. In this regard, there are certain limited differences between the risk-based capital guidelines for banks and bank holding companies. In view of this, the Board invites comments on whether it might be appropriate in the case of bank holding companies, as distinct from commercial banks, to consider a brief transition or phase-in arrangement for the full risk-based capital requirements with respect to the sale of residential mortgages with recourse completed prior to the publication of this Notice. Such treatment would only be contemplated in the case of assets sold with recourse by bank holding companies or their nonbank subsidiaries. In considering this point, commenters are asked to address whether the credit risks of the recourse arrangements to the bank holding company selling the assets are any different from the risks to the holding company if the assets were held directly on the holding company's books.

In general, under the Board's recommended approach, 4 percent capital would normally be required against the entire amount of residential mortgages sold with recourse. However, this approach would not mean that banking organizations would be unable to sell or securitize residential mortgages, or that they would be unable to provide limited recourse or certain other credit enhancements to support sales of mortgage pools. For example, banking organizations always have the clear option to sell assets outright, without any recourse, thereby avoiding a capital charge altogther. Moreover, there are several ways banking organizations can provide credit enhancements and still sell assets without recourse, or with limited recourse, and either incur no capital charge or a reduced capital charge.

First, banking organizations can establish a spread account that provides a cushion of protection to the purchasers of securitized assets, while at the same time insulating the selling banking organization from losses arising from the transaction. Funds can be placed in the account directly by the selling institution through a charge against earnings or capital, or can accumulate in the account based upon the difference between the rate paid to the purchasers of the securities and the higher yield earned on the underlying assets. Under these arrangements, any losses on the underlying assets would be charged against the spread account. So long as such losses can only be charged against the spread account and cannot adversely affect the originating bank's capital or future earnings, no additional capital would be charged for transactions employing this technique. Indeed, the banking agencies do not view such arrangements as recourse transactions and these spread accounts have been used successfully to securitize credit card and automobile receivables. Moreover, these arrangements can be supplemented or enhanced by the originating or selling bank's purchase of a standby letter of credit from a third party guarantor in order to protect the purchasers from losses on the securitized assets.

Second, transactions can be structured in such a way that the seller and the buyer proportionately share in any losses, that is, on a *pro rata* basis. For example, if a bank sells assets of $1,000,000 and the buyer agrees to absorb 90 percent of any losses while the seller will absorb the other 10 percent, the selling bank would only have to maintain capital against $100,000, as opposed to the entire amount of the asset transferred.

Third, as noted above, with respect to the sale of mortgages either under the government programs or in private transactions, banking organizations can avoid a capital charge by (1) limiting their maximum recourse obligation to an amount that is less than the expected loss on the transferred pool of mortgages at the time of the transfer and (2) establishing and maintaining a liability or a specifically identified non-capital reserve for the maximum amount

[4] As explained more fully below, a project under the auspices of the Federal Financial Institutions Examination Council (FFIEC) is focusing on the types of recourse arrangements employed by banking organizations, the incorporation of recourse transactions into lending limitations, the supervisory and capital treatment of limited recourse, and regulatory reporting implications.

of possible loss under the recourse provision. This provision would give banking organizations engaged in recourse transactions an incentive to limit recourse and take a charge against capital for their maximum possible loss under the recourse arrangement. Given the uncertainties that can surround recourse obligations, such incentives would appear to have a sound prudential and supervisory justification.

As a general rule, this treatment should not result in extraordinary or unwarranted new capital requirements for most banking organizations. This is because prudently run institutions have always had the responsibility to monitor off-balance sheet risk-taking and back such activities with adequate capital, regardless of how the transactions have been treated for regulatory reporting or regulatory capital purposes.

FFIEC Study on Recourse

In light of the matters discussed in this notice, as well as other emerging concerns relating to recourse transactions, the staffs of the banking agencies recognize the need to address in a comprehensive fashion the reporting, supervisory, and capital adequacy issues stemming from the sale of assets with recourse. In this regard, the federal depository institution regulatory agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have requested public comment on how to define recourse and how to treat various types of recourse for purposes of regulatory reporting, capital adequacy, and lending limits. This interagency effort is also focusing on a number of related issues, including cases where assets are sold with limited recourse.

2. Redemption of Perpetual Preferred Stock

The Board's risk-based capital guidelines currently indicate that banking organizations should consult with the Federal Reserve before redeeming permanent equity instruments or debt capital instruments prior to their stated maturity. A limited exception to this rule is provided for instruments redeemed with the proceeds of a higher form of capital, if the capital position of the banking organization is deemed fully adequate by the Federal Reserve. As a practical matter, it has long been expected that banking organizations would consult with the Federal Reserve when contemplating redemptions of core capital in order to give the Federal Reserve an opportunity to determine the impact of the redemption on the organization's financial condition.

The Basle Committee on Supervision has arrived at a consensus that the redemption of perpetual preferred stock should only be permitted at the issuer's option and only with the prior approval of the supervisory authority. This approach is not inconsistent with the Federal Reserve's current practice as set forth above, and is consistent with requirements contained in letters sent by the Board in connection with the review of capital plans submitted by bank holding companies seeking to engage in Section 20 securities underwriting activities. These letters stipulated that any redemption of perpetual preferred stock could be only at the bank holding companies' option and only with prior approval from the Federal Reserve.

As a result of the Basle interpretation, the Federal Reserve Board is proposing to amend the language of its risk-based capital guidelines to clarify that the approval of the Board is necessary prior to the redemption of any perpetual preferred stock.

3. Treatment of Supervisory Goodwill

Currently, the Board's risk-based capital guidelines, consistent with the Basle Accord, require that goodwill be deducted from Teir 1 capital. However, the guidelines contain a footnote that was intended to give the Federal Reserve the option to make an exception in those very limited situtations in which banking organizations acquired goodwill in the past in connection with supervisory mergers with troubled or failed depository institutions. The wording of the footnote could also be interpreted as accommodating the possible future inclusion in capital of goodwill stemming from the merger of troubled or failed institutions. As a matter of policy, the Federal Reserve does not give credit for goodwill in assessing the capital of institutions involved in supervisory mergers. Indeed, institutions making acquisitions are normally required to exceed minimum capital levels without undue reliance on intangible assets, particularly goodwill. In addition, FIRREA prohibits the regulatory agencies from allowing goodwill to be included in the calculation of capital if the goodwill was acquired after April 12, 1989. Thus, the Board is proposing to delete the footnote that appears to suggest the possibility that supervisory goodwill acquired in the future could be included in the definition of capital for risk-based capital purposes.

4. Claims on Central Banks

The Basle Accord assigns all claims on OECD commercial banks and short-term claims on non-OECD commercial banks to the 20 percent risk category. On the other hand, long-term claims on non-OECD commercial banks, and all claims on non-OECD central governments are assigned to the 100 percent risk category. Claims on OECD governments and central banks are assigned to the zero percent risk category.

In promulgating their risk-based capital guidelines, the U.S. banking agencies' allowed claims on non-OECD central banks to be in the same risk category as short-term claims on non-OECD commercial banks on the assumption that claims on central banks should not be in a higher category than claims on commercial banks. However, further discussions among international supervisors have led to a consensus that claims on central banks should be in the same risk category as claims on the corresponding central governments. This will have little impact on OECD central banks since claims on OECD central banks and governments are already assigned to the zero percent risk category. On the other hand, the Basle Committee on Supervision has held that claims on non-OECD central banks, which could involve an element of transfer risk, should be assigned to the same 100 percent risk category as claims on their central governments.

Incorporation of this change into the U.S. banking agencies' capital guidelines, which is necessary to ensure consistency with the Basle framework, will have the practical effect of moving claims on non-OECD central banks that involve an element of transfer risk from the 20 percent to the 100 percent risk category. As already noted, this will have no effect on the treatment of claims on central banks in OECD countries since all claims on these institutions are already assigned to the same risk category as OECD central governments, that is, to the zero percent risk category.

As a result of the Basle interpretation, the Federal Reserve Board is proposing to amend the language of its risk-based capital guidelines to provide that claims on central banks are to be assigned to the same risk category as claims on the respective central governments.

III. Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In

addition, consistent with current policy, these guidelines generally will not apply to bank holding companies with consolidated assets of less than $150 million.

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, Banking, Capital adequacy, Confidential business information, Currency, Dividend payments, Federal Reserve System, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board proposes to amend 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(1), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

Appendix A [Amended]

2. A new sentence is added immediately following the first sentence of the first paragraph under "II. A. 1. b. Perpetual preferred stock" of appendix A to Part 208 to read as follows:

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *

1. * * *

b. * * * Consistent with these provisions, any perpetual preferred stock with a redemption feature may qualify as capital *only if* the redemption is subject to prior approval of the Federal Reserve. * * *

* * * * *

Appendix A [Amended]

3. In appendix A to part 208, in II. B. 1., the footnote designator 14 in the text is removed and footnote 14 is removed and reserved.

Appendix A [Amended]

4. The last two sentences of footnote 30 under "III. C. 2. Category 2: 20 percent" of appendix A to part 208 are removed.

Appendix A [Amended]

5. Two new sentences are added immediately following the second sentence of the seventh paragraph under "II. D. 1. Items with a 100 percent conversion factor" of appendix A to part 208 to read as follows:

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

D. * * *

1. * * *

* * * Accordingly, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of one-to-four family residential mortgages, are to be converted at 100 percent and assigned to the risk weight appropriate to the obligor, or if relevant, the nature of any collateral or guarantees. The only exception involves transfers of pools of residential mortgages that have been made with insignificant recourse for which a liability or specific non-capital reserve has been established and is maintained for the maximum amount of possible loss under the recourse provision. * * *

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106 ,3108, 3907, 3909, 3310, and 3331–3351.

Appendix A [Amended]

2. A new sentence is added immediately following the first sentence of the first paragraph under "II. A. 1. b. Perpetual preferred stock of appendix A to part 225 to read as follows:

II. Definition of Qualifying Capital for the Risk Based Capital Ratio

* * * * *

A. * * *

1. * * *

b. * * * Consistent with these provisions, any perpetual preferred stock with a redemption feature may qualify as capital *only if* the redemption is subject to prior approval of the Federal Reserve. * * *

* * * * *

Appendix A [Amended]

3. In appendix A to part 225, in II. B., the footnote designator 15 in the text is removed and footnote 15 is removed and reserved.

Appendix A [Amended]

4. The last two sentences of footnote 33 under "III. C. 2. Category 2: 20 percent" of appendix A to part 225 are removed.

Appendix A [Amended]

5. Two new sentences are added to the end of footnote 48 under "III. D. 1. Items with a 100 percent conversion factor" of appendix A to part 225 to read as follows:

[48] * * * Accordingly, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of one-to-four family residential mortgages, are to be converted at 100 percent and assigned to the risk weight appropriate to the obligor, or if relevant, the nature of any collateral or guarantees. The only exception involves transfers of pools of residential mortgages that have been made with insignificant recourse for which a liability or specific non-capital reserve has been established and is maintained for the maximum amount of possible loss under the recourse provision.

Board of Governors of the Federal Reserve System, October 11, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–24425 Filed 10–16–90; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 226

[Reg. Z; Doc. No. R-0708]

Truth in Lending; Intent To Make Determination of Effect on State Law; New Mexico

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in the law of New

Mexico are not inconsistent with the Truth in Lending Act and Regulation Z and therefore are not preempted.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: Comments should refer to Docket No. R-0708 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination that certain provisions of New Mexico law are inconsistent with the Truth in Lending Act and Regulation Z and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and state laws.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provision if the state law requires a creditor to make disclosures or take actions that contradict the requirements of federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the federal law or interferes with the purposes of the federal law. Under § 226.28(a)(1), a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

The procedure for requesting a determination and the general procedures followed in making a determination are contained in appendix A to 12 CFR part 226. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. These principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal laws. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law also will be addressed.

(2) Discussion of Specific Request and Proposed Determination

The Board has been asked to determine whether provisions of sections 56-8-11.2(A) and 56-8-11.3 of the New Mexico Loan Disclosure Act regarding disclosures for certain credit transactions and penalties for noncompliance are inconsistent with and therefore preempted by provisions of the Truth in Lending Act and Regulation Z (12 CFR part 226) that regulate disclosures for closed-end credit and provide penalties for noncompliance.

A preliminary issue is whether there is any inconsistency between the state and federal definitions of "creditor." There is no significant substantive difference in the definitions, although the federal law is more specific. While federal law, unlike state law, requires disclosure of the identity of the creditor in § 226.18(a) of Regulation Z, the definition of the term "creditor" is relevant only with regard to coverage of the respective rules. Therefore, there is no basis for preempting the state law definition.

State officials have confirmed that section 56-8-11.2(D) of the state law permits creditors to substitute federal disclosures for those required under state law (although creditors are required to provide any additional state disclosures that are not addressed under federal law). The requesting party nevertheless asks for a determination of whether the state disclosures are preempted.

Disclosures Under the New Mexico Loan Disclosure Act Section 56-8-11.2(A) and Section 226.18 of Regulation Z

The requesting party asks for a determination as to possible inconsistency between the state and federal requirements for disclosures for closed-end credit transactions. (Although the state provisions generally apply to all types of consumer credit transactions, the requesting party asks for a determination based only on federal disclosures relating to closed-end credit to be given before consummation of the transaction.) Section 56-8-11.2(A) of the New Mexico Loan Disclosure Act requires the following disclosures in a credit transaction:

(1) The total principal amount of the loan or purchase as well as the amount or item to be received by the borrower or purchaser;

(2) The purpose of the loan and the date the loan was made;

(3) The interest rate * * * including all charges or costs stated as a percent per month and percent per year;

(4) The number, amount, and timing of payments * * * including any required minimum installments;

(5) The term of the loan;

(6) Any penalties for prepayment of the loan;

(7) The total amount to be repaid;

(8) For variable rate transactions, a disclosure of the circumstances under which the rate will vary and identification of any index to which the rate is tied; and

(9) A description of the legal and financial consequences of the borrower's failure to meet the repayment terms of the agreement and any penalties imposed for such failure.

Section 226.18 of Regulation Z requires disclosure of, among other items:

(1) The "amount financed," the "annual percentage rate," and the "total of payments," using those terms;

(2) The number, amounts, and timing of payments required to repay the obligation;

(3) Any penalty that may be imposed if the obligation is prepaid in full in cases where the finance charge is calculated by applying a rate to the unpaid principal balance;

(4) Depending on the type of variable-rate transaction, either the circumstances under which the rate may

increase (including any index to which the rate is tied) or the fact that the loan is variable rate and that certain disclosures were given earlier; and

(5) A statement that the borrower should refer to the appropriate contract document for information about nonpayment and default.

A review of the state provisions and conversation with the relevant state official indicate that the state law does not require the use of specific terminology in any of the disclosures required under section 56–8–11.2(A). Therefore, state law would not require, for example, the use of a different term than the federal law to describe the same item, and thus would not require a creditor to make disclosures that contradict the federal law.

The Board proposes to determine that the disclosures required under section 56–8–11.2(A). as they relate to closed-end transactions, are not preempted by the federal law since a creditor can comply with both the state and federal provisions, and the requirement of additional information under state law does not by itself contradict federal law. Since Regulation Z requires the disclosures under § 226.18 to be segregated from everything else, however, any additional information provided must be separate from the federal disclosures.

State law also imposes penalties for noncompliance with the state requirements. Under section 56–8–11.3, creditors may "forfeit all interest, charges or other advantage" for the transaction. The requesting party seeks a determination whether the state provision is preempted by the federal remedies provided under section 130 of the Truth in Lending Act (15 U.S.C.A. 1640). Since the existence of a separate remedy under state law for violation of state law provisions does not by itself contradict federal law, the Board proposes to determine that the state law provision is not preempted. This proposed determination, of course, does not extend to the issue of whether dual remedies always will be recoverable under state and federal law.

(3) Comment requested

The Board requests comment on the consistency with the federal law of the provisions in the New Mexico statute discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register**.

Lists of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

Board of Governors of the Federal Reserve System, October 11, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–24426 Filed 10–16–90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 90–357; DA 90–1412]

Amendment of the Commission's Rules With Regard To Establishment and Regulation of New Digital Audio Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: At the request of the Association of Independent Television Stations, the Association of Maximum Service Telecasters, Inc., Bonneville International Corporation, the National Association of Broadcasters, and Tribune Broadcasting Company (Requesting Parties), the Commission is extending the comment period in this proceeding to November 13, 1990, and the reply comment period to December 14, 1990. The Requesting Parties state that the Commission has undertaken a broad reexamination of the provision of radio services in the United States. They claim that a brief extension of time will enable commenters to provide more refined input with respect to the issues raised in this proceeding. As the Commission desires as complete a record as possible to assist in formulating its digital audio radio service proposals, this request for additional time is warranted.

DATES: Comments are now due on or before November 13, 1990 and reply comments are now due on or before December 14, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocations Branch, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time

Adopted: October 9, 1990.

Released: October 10, 1990.

By the Office of Engineering and Technology:

1. The Association of Independent Television Stations, the Association of Maximum Service Telecasters, Inc., Bonneville International Corporation, the National Association of Broadcasters, and Tribune Broadcasting Company (Requesting Parties), have jointly requested an extension of the comment and reply comment periods in the above proceeding to November 26, 1990, and December 28, 1990, respectively. Comments are currently due October 12, 1990, and reply comments are currently due November 13, 1990. See Notice of Inquiry (Notice), GEN Docket No. 90–357, 5 FCC Rcd 5237 (1990), 55 FR 34940, August 27, 1990.

2. The Requesting Parties state that the Commission has undertaken nothing less than a broad reexamination of the provision of radio services in the United States. They note that the Commission's Second Notice of Inquiry in preparation for the 1992 World Administrative Radio Conference (WARC NOI) also requests comment on the possible allocation of spectrum for digital audio radio services. The requesting parties claim that the record in this proceeding and in the WARC NOI would benefit from coordinated consideration of these interrelated issues. They also claim that a modest extension of time will enable commenters to provide the Commission with more refined and specific input with respect to the issues raised in the digital audio radio services proceeding.

3. We believe that additional time for filing comments and reply comments is warranted. The Commission desires as complete a record as possible to assist in formulating its digital audio radio service proposals. However, we believe that a thirty day extension of the comment and reply comment periods should be sufficient. Accordingly, pursuant to authority found in section 4(i), 302, and 303 of the Communications Act of 1934, as amended, *it is ordered* that the comment period in this proceeding *is extended* to November 13, 1990, and the reply comment period *is extended* to December 14, 1990.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 90–24423 Filed 10–16–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 64 and 68

[CC Docket No. 90–313; DA 90–1383]

Operator Service Providers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: In this rulemaking proceeding (55 FR 29639, July 29, 1990), the Commission originally ordered that reply comments be filed by October 9, 1990. This document extends the filing period for reply comments an additional two weeks, to October 23, 1990. Congress has recently passed the Telephone Operator Consumer Services Improvement Act of 1990, S. 1660, 101st Cong., 2d Sess. (1990). This extension is intended to provide time for interested parties to address in their reply comments: (1) Any new issues raised by the Act; (2) the relationship between the Act and issues already raised in this proceeding; and (3) the need, if any, for a Further Notice of Proposed Rule Making.

DATES: Reply comments must be filed on or before October 23, 1990.

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

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION:

ORDER

In the matter of policies and rules concerning operator service providers.

[DA 90-1383; CC Docket No. 90-313; RM-6767]

Adopted: October 5, 1990;
Released: October 5, 1990.
By the Chief, Common Carrier Bureau:

1. In the above-captioned proceeding, the Commission, *inter alia*, ordered that reply comments be filed by October 9, 1990. *Policies and Rules concerning Operator Service Providers*, Notice of Proposed Rule Making, 5 FCC Rcd 4630, 4636 (1990) ("NPRM"). During the pendency of this proceeding, Congress has been considering legislation that addresses many of the same issues, as well as additional related issues. On October 1 and October 3, respectfully, the Senate and the House of Representatives passed the Telephone Operator Consumer Services Improvement Act of 1990, S. 1660, 101st Cong., 2d Sess. (1990) ("Operator Services Act").

2. Although the Operator Services Act has not as of this point been signed into law by the President, we think it would nevertheless be helpful if the provisions of the Act were considered by interested parties in any reply comments they may file in the rule making proceeding. In order to provide ample time for such consideration, on our own motion[1] we extend the period for filing reply comments an additional two weeks, to October 23, 1990. We also ask interested parties to address, as part of their replies, three areas of concern: (1) Any new issues raised by the Operator Services Act; (2) the relationship between the Act and issues already raised in the NPRM; and (3) the need, if any, for a Further Notice of Proposed Rule Making.

3. Accordingly, *it is ordered*, Pursuant to authority delegated in § 0.291 of the Commission's Rules, 47 CFR 0.291, that the filing period for reply comments on matters discussed in the above-referenced Notice of Proposed Rule Making and on matters discussed in this order is extended to October 23, 1990.

Federal Communications Commission.
Richard M. Firestone,
Chief, Common Carrier Bureau.

[FR Doc. 90-24343 Filed 10-16-90; 8:45 am]
BILLING CODE 6712-01-M

[1] We note that the Operator Service providers of America ("OSPA") and the American Public Communications Council ("APCC") have each moved for an extention of the reply comment filing period, both citing the recent legislation. *See* OSPA, Request for Extension of Time (dated Oct. 4, 1990); APCC, Request for Short Extension of Time (dated Oct. 3, 1990).

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47 CFR Part 73

[MM Docket No. 86-308; RM-5233]

Television Broadcasting Services; Nogales, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a joint petition filed on behalf of Mountain States Broadcasting, licensee of television Station KMSB-TV, Channel 11, Tucson-Nogales, AZ, and the City of Nogales, based upon Mountain States' withdrawal of interest. Mountain States had requested the allotment of UHF television Channel 66 to Nogales as that community's first commercial television service. See 51 FR 26562, July 24, 1986. With this action, the proceeding is terminated.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-308, adopted September 21, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-24420 Filed 10-16-90; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-440, RM-7452]

Radio Broadcasting Services; Central Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petiton for rule making filed on behalf of Quality Broadcasters of California, Ltd., licensee of Station KNNN(FM), Channel 257A, Central Valley, California, seeking the substitution of FM Channel 257C3 for Channel 257A and modification of its license accordingly. Coordinates for this proposal are 40-33-46 and 122-27-07.

DATES: Comments must be filed on or before December 3, 1990, and reply comments on or before December 18, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., McQuaid, Beford, Clausen & Metzler, 650 California Street, Suite 800, San Francisco, CA 94108

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-440, adopted September 25, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.120(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24421 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-438, RM-7441]

Radio Broadcasting Services; Dock Junction, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lorraine M. Wiggins ("petitioner"), requesting the substitution of Channel 290C3 for Channel 290A at Dock Junction, Georgia, and modification of her construction permit (PBH-870910MJ) to specify operation on the higher class channel. Channel 290C3 can be allotted to Dock Junction in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) east of the community. The coordinates for this allotment are North Latitude 31-11-30 and West Longitude 81-28-50. In accordance with §1.420(g) of the Commission's Rules, competing expressions of interest in the use of Channel 290C3 at Dock Junction will not be considered, and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 3, 1990, and reply comments on or before December 18, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent A. Pepper, Ellen S. Mandell, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006, (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-438, adopted September 24, 1990, and released October 11, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24354 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-439, RM-7324]

Radio Broadcasting Services; Cave City, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Steven W. Newberry requesting the substitution of Channel 279C3 for Channel 279A at Cave City, Kentucky, and modification of the license for Station WHHT(FM) to specify operation on Channel 279C3. Channel 279C3 can be allotted to Cave City in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.2 kilometers (10.7 miles) south of the city. The coordinates for this allotment are North Latitude 36-59-39 and West Longitude 86-01-48. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest for use of Channel 279C3 at Cave City will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 3, 1990, and reply comments on or before December 18, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Attorney for Steven W. Newberry).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-439, adopted September 24, 1990, and released October 10, 1990. The full text of this Comission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the mater is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24353 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-432, RM-6795]

Radio Broadcasting Services; Denmark, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Hugh David Jett d/b/a Denmark Communications, dismisses his request to allot Channel 239A to Denmark, South Carolina, as the community's first local FM service. See 54 FR 41469, October 10, 1989. No party expressed an intent to apply for the channel, if allotted. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 89-432, adopted September 25, 1990, and released October 12, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcript Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24419 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

[Docket No. 89-20; Notice 2]

RIN 2127-AC57

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

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

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking begun by NHTSA when it granted a petition from Mr. Edward Horkey requesting that it amend the requirements for safety belt retractors in Standard No. 208, *Occupant Crash Protection*, and Standard No. 209, *Seat Belt Assemblies*. Based on responses to a notice requesting public comments and agency review and analysis, the agency has concluded that further rulemaking is not warranted. The agency has been unable to establish that amending the requirements for safety belt retractors would provide any significant safety benefits.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4911.

SUPPLEMENTARY INFORMATION: After granting two petitions for rulemaking about the effect of rear impacts on vehicle occupants, the agency consolidated them in a notice requesting comments. (54 FR 40897, October 4, 1989). The first petition, from Mr. Kenneth J. Saczalski of Environmental Research and Safety Technologists, requested the agency to amend the seat back requirements in Standard No. 207, *Seating Systems* (49 CFR 571.207). The second petition, from Mr. Edward J. Horkey of Horkey & Associates, requested the agency to amend the requirements for safety belt retractors, in Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) and Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209). This notice terminates rulemaking related to Mr. Horkey's petition, but does not affect Mr. Saczalski's petition, which the agency is still evaluating.

Mr. Horkey's petition requested rulemaking to change the type of safety belt retractor mechanisms required in passenger cars. He submitted information to illustrate his claim that in a rear impact, the occupant may suffer an injury caused by what he terms the "slingshot effect." This phenomenon is also known as a "rebound effect." Mr. Horkey theorized that in a real impact, an occupant is pushed rearward against the setback, which stores the energy and then propels the occupant forward. He continued that after the occupant is pushed rearward by the rear impact, the vehicle deceleration sensitive emergency locking retractor (ELR) on some safety belts can move to the unlocked position if there is no tension in the belt. The petitioner believes that, as a result, when the occupant is thrown forward, he or she is more likely to strike the vehicle's interior surfaces because the belt does not restrain the occupant's forward motion if the ELR is not locked. Mr. Horkey therefore concluded that it is "necessary to change the type of mechanism used in automobile seat belts currently installed in most American automobiles as they are ineffective in many rear end collisions." He requested the agency require the "use (of) the older rotary inertia reel type mechanism."

The agency requested comments about the slingshot effect and safety belt retractors in the October 1989 notice. Among the relevant questions posed in that notice were ones concerning data on injury frequency and severity in rear-impacts attributable to the slingshot effect, the adequacy of the Standard No. 209's current requirements on retractors, real-world experiences with dual-mode retractors, and anticipated safety benefits, costs, and consumer acceptance of the requested retractors. Dual-mode retractors are ELRs with two inertial sensing modes: one mode is sensitive to webbing acceleration, the other vehicle acceleration. The notice explained that—

> As more information becomes available, the agency will be able to determine what appropriate measures, if any, are needed to address this situation. NHTSA emphasizes that the grant of these petitions and the issuance of this request for comments does not necessarily mean that a notice of proposed rulemaking (NPRM) will follow. In accordance with statutory criteria, NHTSA will determine whether to issue an NPRM after it evaluates the comments it receives.

The notice elicited responses from the petitioners, ten manufacturers, two engineering consulting firms, and a safety organization. The consensus among commenters was that the slingshot effect, while theoretically possible, does not pose a significant threat to safety. As for dual-mode retractors, most commenters believed that aside from consumer convenience,

there was no reason to require them absent a demonstrated safety need. A few manufacturers, which use dual-mode retractors, commented that such retractors are effective for occupant protection.

After evaluating the Horkey petition, the docket comments, and studies about rear impact crashes, the agency has decided to terminate further action in this rulemaking. The petitioner submitted no data to support amending the requirements for safety belt retractors. Further, the agency's review of the Fatal Accident Reporting System (FARS), National Accident Sampling System (NASS), and state accident data indicates that, at present, the slingshot effect does not pose a significant risk to safety and safety belts and their retractors provide effective protection to occupants in rear impacts. (Partyka, Susan; "Belt Effectiveness in Pickup Trucks and Passenger Cars by Crash Direction and Accident Year, National Center for Statistics and Analysis," DOT HS 807285, June 1988; Partyka, Susan; "Fatalities in Rear-Impacted Small Cars," National Center for Statistics and Analysis, DOT HS 807294, June 1988.)

According to a recent analysis of NASS accident statistics for 1981–1986, safety belts provide protection to the head, face, and chest of passenger car drivers involved in rear impact similar to that provided in frontal impact. (Partyka, Susan; "Comparisons of Belt Effectiveness in Preventing Chest, Head, and Face Injuries in Front and Rear Impacts," August 1990). The studies indicate that safety belts are providing occupant crash protection in rear crashes. As such, the agency is unable to establish that any significant safety benefits would be derived by amending the requirements for safety belt retractors. In addition, out of thousands of consumer complaints, the agency's complaints file disclosed 45 concerning the alleged failure of safety belts in rear impacts between 1981 and March 1990.

Similarly, a paper sponsored by the Society of Automotive Engineers (SAE) determined that safety belts are beneficial in rear impacts because they minimize relative motion of the upper body with respect to the seat back and help control rebound motion. The paper concluded that under delta Vs (i.e., changes in velocity, measuring impact severity) of 11 to 20 mph, seat rebound is not likely to occur and thus no slingshot effect would be produced. (Strother, Charles; and James, Michael; "Evaluation of Seat Back Strength and Seat Back Effectiveness in Rear Impacts," SAE 872214, November 1987.)

There is insufficient evidence that the safety belt retractors now required are ineffective in rear impacts. Thus, there currently is insufficient justification for proceeding with further rulemaking on the petitioner's requested amendment. The agency has been unable to establish that any significant safety benefits would be derived by amending the requirements for safety belt retractors. In addition, the amendment would result in increased costs for some manufacturers. The agency therefore is terminating the rulemaking because there is no reasonable probability that the petitioner's request would be adopted at the conclusion of a rulemaking. The agency nevertheless will continue to monitor the overall problem of injuries from rear impact, especially in connection with its analysis of the Saczalski petition to amend the seat back strength requirements in Standard No. 207. Any further research into strengthening seat backs will incorporate consideration of possible consequences on retractor functioning and overall safety belt performance in rear impact crashes.

Issued on: October 11, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-24385 Filed 10-16-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 201
Wednesday, October 17, 1990

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

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development; Solicitation of Proposals

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Solicitation of proposals.

ACTIVITY: The Agency for International Development (A.I.D.) and the U.S. Department of Agriculture are interested in commissioning a study on reforestation to address global climate change/global warming and the production of a booklet on this topic. This activity will be sponsored by A.I.D.'s Office of Forestry, Environment and Natural Resources through its Forestry Support Program which is managed jointly by USDA's Forest Service and Office of International Cooperation and Development (OICD).

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1991 (FY 1991) to commission a state supported university with a strong international forestry department to undertake this study. The activity will be handled on a cost reimbursable basis for all costs associated with the research, writing, editing, and production of 500 copies of this study. The objective of the proposed study is to produce a short booklet which stimulates ideas of what A.I.D. and its partners can do to address global climate change through the management of trees. The study should address current practices worth considering and list A.I.D., world Food Projects and other organizations' projects, which illustrate them. Examples should include trees planted in natural forests as enrichment plantings, agroforestry plantings in farmers fields, woodlots, and block plantations. The study should include realistic expectations of various scales of tree planting efforts on global climate change. The target audience will be professional environmentalists and conservation leaders (not formally trained in forestry) in the State department, EPA, etc.

The booklet produced should be comparable in length and production values to that of the A.I.D. report "Conserving Tropical Forests and Biological Diversity" (copies available upon request). The total cost of this proposed study and the production of the booklet is anticipated to be less than $21,000. OICD would like to target 1 January 1991 as the date for having a final product ready for distribution.

Based on the above, this is a formal request for application. Proposals should be received at the below-noted address not later than 16 November 1990. Further information on this activity may be obtained from the undersigned, as follows:

USDA/OICD-Admin Service, 430 McGregor Bldg, Washington DC 20250–4300, Telephone 202/653–9151, Facsimile 202/653–8715.

Dated: October 5, 1990.

Nancy J. Croft,
Contracting Officer.

[FR Doc. 90–24422 Filed 10–16–90; 8:45 am]
BILLING CODE 3410-DP-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 29–30, 1990.

Time:

8:30 a.m.–4:30 p.m., October 29.

8:30 a.m.–3 p.m., October 30.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of the National Arboretum relating to congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact Person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, room 234 BG–005 BARC–W, Beltsville, MD 20705. Telephone: AC 301/344–3912.

Done at Beltsville, Maryland, this 3rd day of October 1990.

Howard J. Brooks,
Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 90–24475 Filed 10–16–90; 8:45 am]
BILLING CODE 3410-03-M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Standing Rock Sioux Tribe of the Standing Rock Indian Reservation in North Dakota and South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Standing Rock Sioux Tribe of the Standing Rock Indian Reservation in North Dakota and South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Standing Rock Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the

CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon October 15, 1990, and shall be made available through May 15, 1991, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on October 11, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90-24456 Filed 10-16-90; 8:45 am]

BILLING CODE 3410-05-M

Fire-cured (Type 21), Fire-cured (Types 22-23), Virginia Sun-cured (Type 37), and Cigar-Filler and Binder (Types 42, 43 44, 53, 54 & 55) Tobaccos; 1990-91 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, (ASCS), U.S. Department of Agriculture, (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 crops of fire-cured (type 21), fire-cured (types 22-23), Virginia sun-cured (type 37), and cigar-filler and binder (types 42-44 & 53-55) tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: fire-cured (type 21), 4,315 acres; fire-cured (types 22-23), 15,071 acres; Virginia sun-cured (type 37), 285 acres; and cigar-filler and binder (types 42-44 & 53-55), 11,953 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for cigar filler and binder (types 42-44; 53-55) tobacco for the three marketing years beginning October 1, 1990 and sets forth the results of the referendum held during the period March 26-30, 1990, in which producers of cigar filler and binder tobacco approved marketing quotas 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 in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations 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 the ability of 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 Loans 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 ASCS or 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 determinations of the national marketing quotas for the 1990 crops of fire-cured (type 21), fire-cured (types 22-23), Virginia sun-cured (type 37), and cigar-filler and binder (types 42-44 & 53-55) tobacco which were announced by the Secretary on March 1, 1990, and to set forth certain other determinations with respect to these kinds of tobacco. On March 1, 1990, the Secretary also announced that a referendum would be conducted by mail with respect to cigar filler and binder tobacco.

During the period March 26-30, 1990, eligible cigar filler and binder producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1990-91, 1991-92, and 1992-93 marketing years for this tobacco. Of the producers voting, 84.8 percent favored marketing quotas for cigar filler and binder tobacco. Accordingly, a quota for this kind is in effect for the 1990-91 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next three marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to cigar filler and binder tobacco, the 1989-90 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for cigar filler and binder tobacco is proclaimed for each of the three marketing years beginning October 1, 1990, October 1, 1991, and October 1, 1992. Section 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22-23), Virginia sun-cured (type 37), and cigar-filler and binder (types 42-44 & 53-55) tobaccos for the marketing year beginning October 1, 1989, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (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 fire-cured (type 21), fire-cured (types 22-23), Virginia sun-cured (type 37), cigar-filler and binder (types 42-44 & 53-55) tobaccos for the 1990-91 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco 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 these kinds of tobacco generally produce less than their respective national acreage allotments, 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 years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and efforts, 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

Ten written responses were received in response to the Notice of Proposed Determination. In addition, several recommendations were received by phone. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Three comments were received by phone. They recommended that the marketing quotas established for this kind of tobacco be the same as those for 1989 marketing year.

Fire-cured (type 22–23) tobacco: Eight comments were received. Recommendations ranged from no change in quota to 15 percent increase from the 1989 marketing quota.

Virginia sun-cured (type 37) tobacco: Three comments were received by phone. They recommended that marketing quotas established for this kind of tobacco be established at the same level which was applicable for the 1989 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Two comments were received. These comments ranged from a 10 percent increase in quota to a 15 percent increase in quota from the 1989 marketing year.

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

Fire-cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) 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 2.1 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and the 1989–90 marketing year was 2.7 million pounds (farm sales weight basis). Both domestic use and exports have trended downward. Accordingly, a normal year's domestic consumption has been determined to be 1.4 million pounds and a normal year's exports have been determined to be 2.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 8.3 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1989, of 6.5 million pounds. The 1989 fire-cured (type 21) tobacco crop is estimated to be 2.7 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1989–90 marketing year is 9.2 million pounds. During the 1989–90 marketing year, it is estimated that disappearance will total approximately 3.0 million pounds. By deducting this disappearance from the total supply, a carryover of 6.2 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 2.1 million pounds. This represents the quantity of fire-cured (type 21) 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 half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 4.3 million pounds is necessary to make available production of 2.1 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1990–91 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota of 5.2 million pounds for the 1990–91 marketing year.

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 1,202 pounds per acre results in a 1990 national acreage allotment of 4,315,35 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 31.0 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.

Fire-cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States estimated to have been consumed in the United States during the 10 years preceding the 1990–91 marketing year was approximately 17.4 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1989–90 marketing year was 18.3 million pounds (farm-sales weight basis). Both domestic use and exports are erratic. Accordingly, a normal year's domestic consumption has been determined to be 20.3 million pounds and a normal year's exports have been determined to be 21.4 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 95.7 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1989, of 75.8 million pounds. The 1989 fire-cured (types 22–23) crop is estimated to be 27.3 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 103.1 million pounds. During the 1989–90 marketing year, it is estimated that disappearance will total approximately 33.0 million pounds. By deducting this disappearance from the total supply, a carryover of 70.1 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 25.6 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make

available during the 1990–91 marketing year a supply equal to the reserve supply level. During the past 5 years, slightly less than 95 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 27.4 million pounds is necessary to make available production of 25.6 million pounds. In accordance with section 312(b) of the Act, it has been further determiend that the 1990–91 national marketing quota must be inceased by 20 percent in order to avoid undue restriction of marketings. This results in a natioal marketing quota for the 1990–91 marketing year of 32.9 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1990–91 marketing year has been divided by the 1985–89, 5-year national average yield of 2,183 pounds per acre, to obtain a national acreage allotment of 15,071.00 acres, for the 1990–91 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.05 is determined by dividing the national acreage allotment for the 1990–91 marketing year less a national reserve of 86 acres by the total of the 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.

Virginia Sun-cured (Type 37) Tobacco

The yearly average quantity of Virginia sun-cured tobacco prodced 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 410 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 130 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 100 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 100 thousand pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 462 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured (type 37) tobacco held on October 1, 1989 of 500 thousand pounds. The 1989 Virginia sun-cured (type 37) tobacco crop is estimated to be 100 thousand pounds. Therefore, the total supply of Virginia sun-cured (type 37) tobacco for the 1989–90 marketing year is 600 thousand pounds. During the 1989–90 marketing year, it is estimated that disappearance will total approximately 300 thousand pounds. By deducting this disappearance from the total supply, a carryover of 300 thousand 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 162 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, less than one-half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 329 thousand pounds is necessary to make available production of 162 thousand pounds. Accordingly, the national marketing quota for the 1990–91 marketing year is 329 thousand 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 1,155 pounds per acre results in a 1990 national acreage allotment of 284.85 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 2 acres, by the total of the 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.

Cigar-filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1989–90 marketing year was approximately 21.3 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1989–90 marketing year was very small. Domestic use has trended downward and exports are almost non-existent. Accordingly, a normal year's domestic consumption has been established at 15.0 million pounds while a normal year's exports has been established at zero million pounds. Application of the formula prescribed by section 301(b)(14)(B) the Act results in a reserve supply level of 43.3 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1989, of 33.7 million pounds. The 1989 cigar-filler and binder crop is estimated to be 9.4 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the 1989–90 marketing year is 43.1 million pounds. During the 1989–90 marketing year, it is estimated that disappearance will total about 14.0 million pounds. By deducting this disappearance from the total supply, a carryover of 29.1 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 14.2 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. it is expected that approximately 70 percent of the announced national marketing quota will be produced in the upcoming season. Accordingly, it has been determined that a 1990–91 national marketing quota of 20.3 million pounds is necessary to make available production of 14.2 million pounds. Increasing the quota by 20 percent in accordance with Section 312(b) of the Act to 24.3 million pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1990–91 marketing year of 24.3 million pounds.

In accordance with section 313(g) of the Act, the 1990–91 national marketing quota of 24.3 million pounds divided by the 1985–89, 5-year national average yield of 2,033 pounds per acre results in a 1990–91 national average allotment of 11,952.78 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.15 is determined by dividing the national acreage allotment, less a national reserve of 79 acres, by the total of the 1990 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Accordingly, the following determinations announced by the

Secretary of Agriculture on March 1, 1990, are affirmed:

Proclamations of National Marketing Quotas for Cigar Filler and Binder

Since the 1989–90 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for cigar filler and binder tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1990, October 1, 1991, and October 1, 1992 is proclaimed.

Determinations for the 1989–91 Marketing Years of Fire-cured (Type 21), Fire-cured (Types 22–23), Virginia Sun-cured (Type 37), and Cigar-filler and Binder (Types 42–44 and 53–55) Tobacco

Referendum Results

Marketing quotas shall be in effect for the 1990–91 marketing year for cigar filler and binder tobacco. In a referendum held during the period March 26–30, 1990, 84.8 percent of producers of cigar filler and binder tobacco voted in favor of marketing quotas.

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

	Total votes	Yes votes	No votes	Percent yes votes
Minnesota	13	8	5	61.5
Ohio	71	41	30	57.8
Wisconsin	1,668	1,437	231	86.2

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1990:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 8.3 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989, is 9.2 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1990, is 6.2 million pounds.

(d) *National marketing quota.* The 1990–91 national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1990, is 5.2 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,315.35 acres.

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

(g) *National reserve.* The national acreage reserve is 31 acres of which 10 acres are made available for the 1990 new farms and 21 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1990:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 95.7 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 103.1 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1990, is 70.1 million pounds.

(d) *National marketing quota.* The 1990–91 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1990, is 32.9 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 15,071.00 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1990–91 marketing year is 1.05.

(g) *National reserve.* The national acreage reserve is 86 acres of which 20 acres are made available for the 1990 new farms, and 66 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1990:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured (type 37) tobacco is 462 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1989, is 600 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1990, is 300 thousand pounds.

(d) *National marketing quota.* The national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1990, is 329 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 284.85 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1990–91 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 2.0 acres, of which 1.0 acres are made available for 1990 new farms, and 1.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1990:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 43.3 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1989, is 43.1 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1990, is 29.1 million pounds.

(d) *National marketing quota.* The amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1990, is 24.3 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,952.78 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1990–91 marketing year is 1.15.

(g) *National reserve.* The national acreage reserve is 79.0 acres, of which 70.0 acres are made available for 1990 new farms, and 9.0 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 October 11, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–24457 Filed 10–16–90; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 90–196]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit of Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit of Monsanto Agricultural Company to allow the field testing in Kauai County, Hawaii, of cotton plants genetically engineered to contain either a gene encoding resistance to certain lepidopteran insects or genes encoding tolerance to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Catherine Joyce, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-177-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interestate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to contain either a gene encoding resistance to certain lepidopteran insects or genes encoding tolerance to the herbicide glyphosate. The field trial will take place in Kauai County, Hawaii.

In the course of reviewing the permit application, APHIS assessed the impact on the environment or releasing the cotton plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding either resistance to certain lepidopteran insects or tolerance to the herbicide glyphosate have been inserted into the cotton chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced genes cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants.

2. None of the introduced genes confer on cotton any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. None of the genes for glyphosate tolerance nor the gene for insect resistance were derived from plant pests.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on cotton any plant pest characteristics.

5. None of the introduced genes provide the transformed cotton plants with any apparent selective advantage over nontransformed cotton in the ability to be disseminated or to become established in the environment.

6. The vector used to transfer the genes to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector.

7. The vector agent, the bacterium that was used to deliver the vector DNA and the genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed cotton plants.

8. Horizontal movement of the introduced genes is not possible. The vector acts by delivering and gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

10. Delta-endotoxin is an polypeptide that kills select lepidopteran insects upon ingestion. Delta-endotoxin is not toxic to other insects, wild or domestic birds, fish or mammals. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

11. The field test site is small, with a total area of less than 4 acres.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts, 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-24461 Filed 10-16-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-190]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Maui County, Hawaii, of cotton plants genetically engineered to contain either a gene conferring resistance to certain lepidopteran insects and a gene conferring tolerance to the herbicide bromoxynil; or only the gene conferring tolerance to the herbicide bromoxynil. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologies, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-108-03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered to contain a gene conferring resistance to certain lepidopteran insects and a gene conferring tolerance to the herbicide bromoxynil; or only the gene conferring tolerance to the herbicide bromoxynil. The field trial will take place in Maui County, Hawaii.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction of dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for insect resistance and one for resistance to the herbicide bromoxynil have been inserted into the cotton chromosome. In nature, chromosomal genetic material from plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene(s) cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants susceptible to cross-pollination.

2. Neither the introduced genes, nor their gene products, confers on cotton any plant pest characteristics.

3. Neither the microorganism from which the gene for insect resistance was isolated, nor the microorganism from which the gene for herbicide resistance was isolated, is a plant pest.

4. The vector used to transfer the resistance genes to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk herein. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown not to be pathogenic to any susceptible plants.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the 2 resistance genes into the plant cells, has been shown to be eliminated and no longer associated with the transformed cotton plants.

6. Horizontal movement of the introduced genes is not known to be possible. The vector acts by delivering and inserting the gene into the cotton genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No mechanism that can transfer an inserted gene from a chromosome of a transformed plant to a chromosome of another organism has been shown to exist in nature.

7. The toxic polypeptide produced by the insect resistance gene is called delta-endotoxin. Upon ingestion, the toxin kills only lepidopteran insects. Delta-endotoxin is not toxin to most other insects, birds, fish, or mammals. Because of its safety, its topical application on vegetable crops is permitted up to date of harvest.

8. Bromoxynil is a herbicide that rapidly degrades in the environment. It has been shown to be less toxic to animals than many other herbicides commonly used.

9. Regulatory sequences, derived from plant pest organisms and necessary for the function of the inserted genes, have also been transferred to recipient cotton, but these sequences confer no plant pest property on the plants.

10. The herbicide tolerance gene and the insect resistance gene provide the transformed cotton plants with little or no selective advantage over nontransformed cotton plants in their ability to disseminate or to become established in the environment.

11. The test is to take place on a small field site, with approximately 8.2 acres to be utilized for the planting of transgenic cotton.

12. At the conclusion of the test, seeds will be collected and saved, and all plant material remaining at the test site will be killed by applying herbicide and cultivating the plot. The site will subsequently be monitored, and any volunteer cotton that may arise will be killed through cultivation and herbicide application as required.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–24458 Filed 10–16–90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90–195]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Soybean Plant

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Isabela, Puerto Rico, of soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–184–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit to release into the environment, to field test soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The field trial will take place in Isabela, Puerto Rico.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no signficant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate has been inserted into a soybean chromosome. In nature, chromosomal genetic material of soybean can only be transferred to another sexually compatible plant by cross-pollination. In this field trial, the introduced gene will not spread to another plant by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plant with which a transgenic soybean plant might cross-pollinate.

2. Neither the 5-enolpyruvylshikimate-3-phosphate synthase gene itself, nor its gene product, confers on soybean any plant pest characteristic. Traits, such as weediness, are polygenic and cannot be conferred to another plant by adding a single gene.

3. The plant species from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated are not plant pests.

4. The 5-enolpyruvylshikimate-3-phosphate synthase gene does not provide any transgenic soybean with any apparent selective advantage over nontransgenic soybean in its ability to be disseminated or to become established in the environment.

5. The vectors used to transfer the 5-enolpyruvylshikimate-3-phosphate synthase gene to soybean have been evaluated for their use in this specific experiment and to not pose a plant pest risk. The vectors, although derived from a DNA sequence with known plant pest potential, have been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vectors have been tested and shown to be not pathogenic to a susceptible plant.

6. The vector agent, a bacterium that was used to deliver the vector DNA and the 5-enolpyruvylshikimate-3-phosphate synthase gene into the plant cell, has been shown to be eliminated and no

longer associated with any transformed syobean.

7. Horizontal movement of the introduced gene is not known to be possible. The foreign DNA is stably integrated into the soybean genome.

8. Glyphosate is a herbicide that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is relatively small and is located on a private research farm that is surrounded by a chain linked fence.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 11th day of October 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–24459 Filed 10–16–90; 8:45 am]

BILLING CODE 3410–34–M

Rural Electrification Administration

Poudre Valley Rural Electric Association; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of a new headquarters/warehouse facility in Larimer County, Colorado.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a new headquarters/warehouse facility in Larimer County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, room 0207, Agriculture South Building, Washington, DC 20250, telephone: (202) 382–8848. Copies of the EA and FONSI can be obtained from REA at the address provided above or at the office of Poudre Valley Rural Electric Association, P.O. Box 1727, Fort Collins, Colorado 80522.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Poudre Valley Rural Electric Association (Poudre Valley) develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from Federal, State and local agencies, has been adopted as REA's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Poudre Valley to meet its present and future needs in the area.

The proposed headquarters/warehouse facility will be located on a 17.3 hectare (43.3 acre) site along State Highway 392 approximately 3.2 kilometers (2.0 miles) northeast of the city of Loveland, Colorado. The property is in the NW ¼ of the NW ¼ of Section 23, Township 6 North, Range 68 West of the 6th P.M., Larimer County. Appoximately 8.1 hectares (20.0 acres) of land will be disturbed. The facilities will consist of 3,344 square meter (36,000 square foot) office building, a 2,230 square meter (24,000 square foot) warehouse and a 186 square meter (2,000 square foot) meeting room. Other facilities include an outside storage area and parking facilities.

Alternatives examined by the proposed project included the no action alternatives and alternative sites. The alternative sites included the following locations Alternative site #1 is located adjacent to Swede Lake on Larimer County Road Number 38. Alternative site #2 is also located on Larimer County Road Number 38 approximately 1.6 kilometers (1.0 mile) from Interstate 25. Alternative site #3 is located on Larimer County Road Number 38 approximately 3.2 kilometers (2.0 miles) from Interstate 25. Alternative site #4 is located on Weld County Road Number 74 approximately 9.0 kilometers (5.0 miles) west of Interstate 25. REA determined that the proposed project will meet Poudre Valley's existing and future needs and will have no significant impact on the environment.

REA has concluded that its approval to allow Poudre Valley to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Poudre Valley published a notice and advertistement in the *Fort Collins Coloradoan* and the *Windsor Beacon*. The newspapers have a general circulation in Larimer County, Colorado. The notice described the project, announced the availability of the BER for review, how copies could be obtained and gave addresses where comments could be sent. The public was given at least 30 days to respond and submit comments. No responses were received by Poudre Valley or REA.

As a result of its independent evaluation, REA concluded that approval to construct the proposed project will not constitute a major Federal action significantly affecting the quality of the human environment. REA hereby reaches a Finding of No Significant Impact with respect to the proposed project in accordance with 7 CFR part 1794.

Dated: October 11, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90–24473 Filed 10–16–90; 8:45 am]

BILLING CODE 3410–15–M

Wells Rural Electric Co.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of a new district headquarters/warehouse facility in Tooele County, Utah.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a new district headquarters/warehouse facility in Tooele County, Utah.

FOR INFORMATION CONTACT: Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, room 0207, Agriculture South Building, Washington, DC 20250, telephone: (202) 382–8848. Copies of the EA and FONSI can be obtained from REA at the address provided above or at the office of Wells Rural Electric

Company, P.O. Box 365, Wells, Nevada 89835.

SUPPLEMENTARY INFORMATION: REA, in accordance with its essential policies and procedures, required that Wells Rural Electric Company (Wells) develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from Federal, State and local agencies, has been adopted as REA's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Wells to meet its present and future needs in the area.

The proposed headquarters/warehouse facility will be located on a 5.8 hectares (14.3 acre) site along U.S. Highway 40 within the city limits of Wendover, Utah. The property is in Section 17, Township 6 South, Range 19 West of the 6th P.M., Tooele County, Approximately 1.7 hectares (4.3 acres) of land will be disturbed. The facilities will consist of an office building, a warehouse, a maintenance yard and parking facilities.

Alternative examined for the proposed project included the no action alternative and alternative sites. Wells considered other sites over 2.8 hectares (7.0 acres); however, only Stateline Properties was willing to make the necessary trade with Wells.

REA determined that the proposed project will meet Well's existing and future needs and will have no significant impact on the environment.

REA has concluded that its approval to allow Wells to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Wells published a notice and advertisement in the *High Desert Advocate*. The newspaper has a general circulation in Toole County, Utah. The notice described the project, announced the availability of the BER for review, how copies could be obtained and gave addresses where comments could be sent. The public was given at least 30 days to respond and submit comments. No responses were received by Wells or REA.

As a result of its independent evaluation, REA concluded that approval to construct the proposed project will not constitute a major Federal action significantly affecting the quality of the human environment. REA hereby reaches a Finding of No Significant Impact with respect to the proposed project in accordance with 7 CFR part 1794.

Dated: October 11, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90-24474 Filed 10-16-90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Economic Survey of Recreational Reef Fish Fishermen—Gulf of Mexico.

Form Number: No form number assigned.

Type of request: New collection.

Burden: 1200 respondents; 1038 reporting hours; average hours per response—.865 hours.

Needs and uses: The reef fish fishery in the Gulf of Mexico is heavily fished. This project will collect recreational economic data from reef fish anglers for development of economic models useful in assisting management regulatory decisions.

Affected public: Individuals or households.

Frequency: This is a one-time survey, with individuals reporting one or two times.

Respondent's obligation: Voluntary.

OMB desk officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1990.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 90-24391 Filed 10-16-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Quarterly Report of the Loan or Sale of Aircraft Equipment Parts, Accessories, and Components by Airlines.

Form number: Export Administration Regulations, § 776.8; OMB—0694-0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1 respondent reporting quarterly; 2 reporting hours. Average hours per respondent is ½ hour. 190 recordkeepers; 817 recordkeeping hours. Average hours per recordkeeper is 4.3 hours. Total reporting/recordkeeping burden is 819 hours.

Needs and uses: This collection of information is primarily a recordkeeping requirement for airlines operating abroad that provide U.S. commodities for maintenance, repair, or operation of aircraft. In the event that the airline is prohibited by foreign government regulation or statute from permitting a U.S. Government representative to inspect these records, the airline must submit a report of such transactions at the end of each calendar quarter.

Affected public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion; quarterly.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 16, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-24392 Filed 10-16-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 900945-0245]

Foreign Availability Assessment: General Purpose Single Beam Side Scan Sonar Systems With or Without a Sub-Bottom Profiler

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is initiating an assessment of the foreign availability to controlled countries of general purpose single beam side scan sonar systems with or without sub-bottom profilers. OFA is seeking public comments on the foreign availability of these items worldwide.

DATE: The period for submission of information will close November 16, 1990.

ADDRESSES: Submit information relating to this foreign availability assessment to: Anatoli Welihozkiy, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB-097, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4518, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ronald Rolfe, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone (202) 377-8074.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assessment the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR Part 730 *et seq.*) establishes the foreign availability procedures and criteria. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On August 15, 1990, OFA accepted for filing a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol to controlled countries of general purpose single beam side scan sonars and sub-bottom profilers capable of operating at depths exceeding 1,000 meters. These items are controlled for national security reasons under Export Control Commodity Number (ECCN) 1510A of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1): Marine or terrestrial acoustic or ultrasonic systems or equipment.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By January 15, 1991, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and model designations of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted. The top of each page should be marked with the term "Confidential Information." OFA either will accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information OFA accepts as privileged under section (b)(3) or (4) of the Freedom of Information Act (5 U.S.C. 522) will be kept confidential and will not be available for public inspection, except as authorized by law. Communications from agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Corejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for

submission of relevant information will close November 16, 1990. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: October 11, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-24424 Filed 10-16-90; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Gerald L. Kooyman (P16K)

On August 17, 1990, notice was published in the **Federal Register** (55 FR 33743) that an application had been filed by Dr. Gerald L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, 221 Scholander Hall, La Jolla, California 92093, to bleach mark up to 10 leopard seals (*Hydrurga leptonyx*) incidental to ongoing emperor penguin studies.

Notice is hereby given that on September 27, 1990, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit and supporting documentation are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, MD 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: September 27, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-24408 Filed 10-16-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determinations: USCENTCOM; Free Mail Privileges for Service Members

Under the provisions of section 3401(a)(1) of title 39, United States Code, as amended by Public Law 101-384, and pursuant to Executive Order 12556, the Secretary of Defense, Mr. Richard B. Cheney, has authorized free mail privileges for Service members assigned to USCENTCOM. This includes members located in the countries of Kuwait, Saudi Arabia, United Arab Emirates, Oman, Bahrain, Qatar, and the waters adjacent thereto to include the Red Sea, Arabian Gulf, North Arabian Sea north of Latitude 10 degrees North and west of 68 degrees East Longitude, East Mediterranean east of 27 degrees East, and Gulf of Aden, and those hospitalized as a result of disease or injury in that designated area.

Dated: October 12, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-24472 Filed 10-16-90; 8:45 am]

BILLING CODE 3810-01-M

Medical and Dental Reimbursement Rates for Fiscal Year 1991

Notice is hereby given that the Deputy Comptroller of the Department of Defense (Management Systems), in an October 3, 1990, memorandum, established the following reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1991:

The following reimbursement rates shall be charged for inpatient and outpatient medical and dental care for FY 1991.

	International military education and training	Other Federal agency sponsored patients	Other
Per Inpatient Day:			
Burn Unit	$1,223	$2,047	$2,176
General	239	565	[1] 603
Military Dependents		8.55	
Per Outpatient Visit	25	[2] 67	71
Per FAA Air Traffic Controller Examination	N/A	91	N/A

[1] The following daily rates (subdivisions of charges) will be used to bill third party payers pursuant to the provisions of 10 U.S.C. 1095. Hospital—$368; Physician—30; Ancillary—205; Total—$603.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

Dated: October 12, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-24471 Filed 10-16-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command, DoD

SUBJECT: Notice.

ACTION: Proposed revision to appendix A, Paragraph 44.f.(2),)page A-20), of DOD 4500.34-R, The Personal Property Traffic Management Regulation (PPTMR), to follow the use of upright wardrobe cartons for containerized domestic and international shipment of personal property, and request for public comment.

EFFECTIVE DATE: April 1, 1991.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to revise appendix A, paragraph 44.f.(2), of the PPTMR to read as follows: "Either upright wardrobes or flat wardrobe cartons will be used in containerized domestic or international codes of service (Codes 2, 4, 5, 6, and T), at the option of the service member. If the member expresses no preference, the carrier may select the type of wardrobe used." The remainder of PPTMR paragraph 44.f. would remain unchanged. This change would be effective April 1, 1991. Since this change will directly involve the carrier industry, MTMC requests public comment on the proposed review.

COMMENTS: Comments must be submitted on or before November 16, 1990.

ADDRESSES: Comments on the proposed revision should be addressed to Directorate of Personal Property, Headquarters, Military Traffic Management Command, ATTN: MTPP-QS, 5611 Columbia Pike, room 423, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Strong (Supervisory Traffic Management Specialist), (703) 756-0781.

Kenneth L. Denton,

Alternate Army Federal Register, Liaison Officer.

[FR Doc. 90-24377 Filed 10-16-90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Public Hearing for Draft Environmental Impact Statement for Realignment of Naval Station Puget Sound at Sand Point, Seattle, WA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed realignment of Naval Station Puget Sound (NSPS) at Sand Point, Seattle, Washington.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on November 7, 1990, beginning 7 pm, in the Ginny Stevens Hearing Room of the Snohomish County Administration Building, 3000 Rockefeller Avenue, Everett, Washington; and on November 8, 1990, beginning 7 pm, in Building 9, National Oceanic and Atmospheric Administration (NOAA) Western Regional Center, 7600 Sand Point Way, Seattle, Washington.

The public hearings will be conducted by the U.S. Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by November 26, 1990, to become part of the official record.

Pursuant to the Base Closure and Realignment Act of 1988 (Pub. L. 100–526), in response to recommendations of the Secretary of Defense Commission on Base Realignments and Closures, the Navy was directed to relocate support units at NSPS Sand Point to a site closer to NSPS Everett. Congress exempted this realignment decision from the provisions of NEPA, but required that NEPA be applied as appropriate to the implementation of the decision.

The proposed action involves the relocation of the Commissary/Exchange complex, Family Service Center, Auto Hobby Shop, Arts and Crafts Shop, Education Services Office, and some administrative functions from NSPS Sand Point to a site near NSPS Everett. In addition, playgrounds, sports fields and courts, and parking areas are proposed for the new site.

Three alternative sites for these facilities have been identified: Alternative 1 is a site located about nine miles northeast of NSPS Everett and about four miles from Marysville, within Snohomish County; Alternative 2 is a site located about seven miles north of NSPS Everett and about two miles northwest of Marysville, within the Tulalip Indian Reservation; Alternative 3 is a site located about four miles south of NSPS Everett and about two miles northeast of Paine Field, within the City of Everett. All three sites are presently vacant and are being prepared for development by the current owners.

Possible impacts resulting from development of these sites include significant increased traffic at an alternative site with a decrease in traffic at NSPS Sand Point. Increased air emissions resulting from traffic at alternative sites 1 or 2 is not expected to exceed air quality standards; carbon monoxide levels are approaching the air quality standard in the vicinity of alternative site 3 and increased air emissions will add to this level. Wetlands on alternative site 1 are being mapped and a filling and mitigation plan has been submitted to the Corps of Engineers. The present owner will mitigate any wetland filling prior to Navy acquisition of the site should the Navy choose this alternative; no wetlands are present on sites 2 or 3. Bald eagles and peregrine falcons have been sighted in the vicinity of alternative sites 1 and 2; a Biological Assessment determined that these sites do not serve as critical habitat for these endangered species.

Additional information concerning this notice may be obtained by contracting the Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 NW Anderson Hill Road, Silverdale, Washington 94055–0720 (Attn: Mr. Don Morris (Code 09EP3) (telephone (206) 476–1091).

Dated: October 12, 1990.

Wayne Baucino,

Lieutenant, JAGC, USNR, Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–24467 Filed 10–16–90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A]

Strengthening Institutions Program; Invitations for Applications for New Awards for Fiscal Year 1991

Purpose of program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability to enable institutions to become self-sufficient.

Deadline for transmittal of applications: January 18, 1991.

Deadline for transmittal of intergovernmental comments: March 18, 1991.

Applications available: Applications will be mailed by November 16, 1990, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available funds: $20,131,000.

Estimated range of awards: $20,000 to $25,000 for planning grants; $125,000 to $500,000 for development grants.

Average size of awards: $23,000 for planning grants; $185,000 per year for one- to three-year development grants; $450,000 per year for four- and five-year development grants.

Project period: Up to 12 months for planning grants; up to 60 months for development grants.

Estimated number of awards: 12 planning grants and 95 development grants.

Note: The Department is not bound by any estimates in this notice.

Special funding considerations: In tie-breaking situations described in § 607.23 of the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under § § 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market value, per FTE student, is less than the average, per FTE student, at similar type institutions; or which has expenditures for library materials, per FTE student, which are less than the average, per FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the

current market value of its endowment fund, per FTE student, or expenditures for library materials, per FTE student, is less than the following national averages for base year 1987–88.

	Average market value of endowment fund, per FTE	Average library expenditures for materials, per FTE
Two-year Public Institutions	$82.00	$39.00
Two-year Nonprofit, Private Institutions	2,806.00	42.00
Four-year Public Institutions	1,603.00	120.00
Four-year Nonprofit, Private Institutions	21,040.00	172.00

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the Strengthening Institutions Program Regulations 34 CFR part 607.

For information, contact: Dr. Louis J. Venuto, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB–3, Washington, DC 20202–5335. Telephone: (202) 708–8839.

Authority: 20 U.S.C. 1057.

Dated: September 28, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–24397 Filed 10–16–90; 8:45 am]

BILLING CODE 4000–01–M

Executive Committee; Teleconference

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Executive Committee of the National Asssessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Thursday, November 1, 1990.

TIME: 11 a.m. (e.s.t.).

PLACE: National Asssessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, 20005–4013, telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION CONTACT: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference on November 1, 1990 from 11 a.m. (e.s.t.) until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes preparation of the agenda for the November meeting of the Board.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–24375 Filed 10–16–90; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File Application for Institutional Eligibility and Certification for Participation in Campus-Based Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for institutions to file an "Application for Institutional Eligiblity and Certification" (ED Form E–40–34P, OMB #1840–0098) to participate in the Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs for the 1991–92 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1991–92 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1991–92 award year is July 1, 1991 through June 30, 1992.

DATES:

Closing date for filing application and required documents. To participate in a campus-based program in the 1991–92 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" along with all documents required for an eligibility determination on or before January 11, 1991. The application and all documents must be submitted to the Division of Eligibility and Certification at the address indicated below.

ADDRESSES:

Applications and required documents delivered by mail. An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying

on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions that submit eligibility applications and required documents after the closing date, will not be considered for funding under the campus-based programs for award year 1991–92.

Applications and required documents delivered by hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays and Federal holidays. An application for eligibility and required documents for the 1991–92 award year that are delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1991–92 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its eligibility application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1992–93 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP.

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution, but has been included in the institution's 1991–92 FISAP.

(3) A branch campus that is currently part of an eligible institution, but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Eligibility and Certification" should not be confused with the FISAP form that institutions were required to submit by September 7, 1990 for paper FISAP filers and September 28, 1990 for electronic FISAP filers, in order to be considered for funds under the campus-based programs for the 1991–92 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Perkins Loan Program, 34 CFR part 674.

(3) College Work-Study Program, 34 CFR part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT:

For information concerning designation of eligibility, contact Carol F. Sperry, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, Room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5242. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations and Systems, Room 4636, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5347. Telephone: (202) 708–9711.

Authority: 20 U.S.C. 1806 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance, Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: September 13, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–24398 Filed 10–16–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF91-4011-000, et al.]

Southwestern Power Administration, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 9, 1990.

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

1. Southwestern Power Administration

[Docket No. EF91–4011–000]

Take notice that on October 2, 1990, the Deputy Secretary, U.S. Department of Energy, submitted for filing the following Southwestern Power Administration System rates to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108, as amended May 301, 1986 (51 FR 19744):

Rate Schedule P–90A, Peaking Power
Rate Schedule P–90B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F–90–B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC–90, Transmission Service
Rate Schedule EE–90, Excess Energy
Rate Schedule IC–90, Interruptible Capacity

The System rates were confirmed and approved on an interim basis by the Deputy Secretary of Energy in Rate Order No. SWPA–23 for the period October 1, 1990, through September 30, 1994. The Deputy Secretary of Energy has submitted the rates to the Commission for confirmation and approval on a final basis for the same period.

The System rate schedules would increase ultimate annual revenue by $12,365,000 from $86,216,000 to $98,581,200 primarily to recover projected increases in annual operating expenses for the generation and transmission facilities. This would occur in two steps; the first effective October 1, 1990, and the second April 1, 1992. The first step, 60 percent of the total, would increase annual revenues by $7,419,000, or 8.6 percent, while the second step, 40 percent of the total, would increase annual revenues by an additional $4,946,000, or 5.8 percent. The first step would be accomplished primarily through an increase in the basic monthly demand charges for sales of Federal hydroelectric power and energy, although a slight increase in the base energy charge and decreases in the conditions of service charged for both 69

kV and load center, or below 69 kV, deliveries affect revenues as well. The second step would be accomplished through an additional increase in the base energy charge. Also, a credit, specifically designed for each customer, would apply against the purchased power adder component of the rate schedules to refund both excess revenues and interest accrued on such revenues, collected in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to effectively equalize the customers' average purchased power adder cost and should reduce the deferral account to a level needed both to cover system purchases under one year of critical water conditions and to allow the account to be essentially self-sustaining by acruing annual interest approximately equal to average annual purchase costs. The credit will offset much, and in some cases all, of the immediate effect of the rate increase for the majority of customers, except those to which the purchased power adder does not apply who will experience an initial increase of about 12 percent followed by about a four percent additional increase (upon implementation of the second step of the rate) in their basic 1200 hour peaking service. The total increase is derived about 78 percent from the basic peaking and firm service (54 percent demand and 24 percent energy) and about 22 percent from non-firm energy sales. The proposal also includes continuation of a provision for Southwestern's Administrator, at his discretion, to adjust the purchased power adder annually, under a formula-type rate, up to $0.0005 per kilowatthour as necessary, with notification to the Commission.

Comment date: October 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Power, Inc.

[Docket No. ER90-590-000]

Take notice that on September 12, 1990, Entergy Power, Inc. tendered for filing a certificate of concurrence for the Power Coordination, Interchange and Transmission Service Agreement (PCITA), accepted for filing by the Commission in Docket No. ER90-38-000, and copies of the executed PCITA. Entergy states that service under this agreement commenced on August 28, 1990.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water power Co.

[Docket No. ER91-4-000]

Take notice that the Washington Water Power Company (WWP), on October 1, 1990 tendered for filing a standby energy sale agreement for electric service to Sierra Pacific Power Company (SSP) delivered at Washington's border. WWP states that the energy will be made available to SPP July 1, 1990 through August 31, 1990. WWP will provide 25 Mw of standby energy.

Copies of this filing were served upon SPP.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana Michigan Power Co.

[Docket No. ER90-594-000]

Take notice that on September 25, 1990, Indiana Michigan Power Company (I&M) tendered for filing revised rates to be substituted for rates previously filed by I&M in Docket Nos. ER90-269-000 through ER90-273-000. I&M states that the rates in its September 25, 1990 filing are intended to be substituted for the rates previously filed that are scheduled to become effective October 21, 1990, subject to refund. I&M states that the revised rates reflect a lower rate of return, in keeping with a retail rate order issued by the Indiana Utility Regulatory Commission on August 24, 1990. I&M states that the revised rates to be substituted for those scheduled to go into effect in Docket No. ER90-269-000 also reflect an adjustment resulting from revised demand billing requirements for Michigan Power Company in Docket No. ER90-269-000.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corp.

[Docket No. ER90-593-000]

Take notice that on September 26, 1990, Wisconsin Public Service Corporation (WPS) tendered for filing an executive Supplement to the Service Agreement between WPS and Citizens Power and Light Corporation. The Supplement provides for non-firm transmission service under the T-1 Transmission Tariff filed by WPS April 5, 1990, in Docket No. ER90-314-000.

WPS requests that the Commission grant waiver of its notice requirements in order to allow the supplement to become effective on September 23, 1990, the date on which Citizens requested that service begin.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power Co.

[Docket No. ER91-6-000]

Take notice that the Washington Water Power Company on October 1, 1990 tendered for filing a capacity and energy sale agreement for electric service to Public Utility District No. 1 of Pend Oreille county (Pend Oreille) delivered at Washington's points of interconnection with the Bonneville Power Administration (BPA). WWP states that the energy will be made available to Pend Oreille August 1, 1990 through June 31, 1991. The Agreement provides for WWP to make available 5 Mw of capacity and firm energy up to a limit of 5 Mwh per hour for each hour in the month.

Copies of this filing were served upon Pend Oreille.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket No. ER91-5-000]

Take notice that the Washington Water Power Company (WWP) on October 1, 1990 tendered for filing a five-year agreement for electric service to City of Seattle. Department of Lighting (Seattle) for replacement energy for Seattle's High Ross Reservior delivered at Washington's interconnection with Bonneville Power Administration (BPA), Bell Substation, or as agreed upon by both parties. Washington will schedule a deliver to Seattle during the January 1 through June 30 period for each of the 1990-91 through 1994-95 operating year up to a maximum of 130,000 Mwh energy.

Copies of this filing were served upon Seattle.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Power Co.

[Docket No. ER91-8-000]

Take notice that on October 1, 1990, Interstate Power Company tendered for filing a Firm Power Interchange Transaction Agreement between Interstate Power Company and Minnesota Power & Light Company. Under this Agreement, Interstate Power Company will sell up to 50 MW of firm power in accordance with Service Schedule J of the Mid-Continent Area in accordance with Service Schedule J of the Mid-Continent Area Power Pool Agreement. This Agreement provides for firm power sales during the MAPP winter seasons only (six month seasons starting November 1 and ending April

30, inclusive) commencing November 1, 1990 and ending April 30, 1993.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. El Paso Electric Co.

[Docket No. ER91-1-000]

Take notice that on October 1, 1990, El Paso Electric Company (El Paso) tendered for filing an executed San Juan/Four Corners-Coronado Firm Transmission Service Agreement between El Paso and Salt River Project Agricultural Improvement and Power District (Salt River Project). Pursuant the Agreement, El Paso provides firm transmission service of up to 50 MW to Salt River Project.

El Paso asks that the filing become effective as anticipated in the parties Agreement on April 19, 1990. Accordingly, waiver of notice is requested.

Comment date: October 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. El Paso Electric Co.

[Docket No. ER91-2-000]

Take notice that on October 1, 1990, El Paso Electric Company (EPE) tendered for filing a Notice of Cancellation of a contract for the sale of energy by El Paso Electric Company to San Diego Gas & Electric Company (SDG&E) together with a Certificate of Concurrence by SDG&E.

El Paso asks that the filing become effective on June 22, 1990. Accordingly, waiver of notice is requested.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Co.

[Docket No. ER91-3-000]

Take notice that on October 1, 1990, Washington Water Power Company (WWP) tendered for filing a power sale agreement providing for delivery to California Department of Water Resources (CDWR) at the Oregon-California border. WWP states that the energy will be made available to CDWR July 1, 1990 through November 30, 1990. The Agreement provides for WWP to make available to CDWR 93 MW of capacity and associated energy @ 80% load factor.

Copies of this filing were served upon CDWR.

Comment date: October 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filling 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. 90-24367 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-20-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

October 9, 1990.

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

1. Trunkline Gas Co.

Docket No. CP91-20-000]

Take notice that on October 2, 1990, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-20-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Catamount Natural Gas, Inc. (Catamount), under Trunkline's blanket certificate issued in Docket No. CP86-586-000 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.

Trunkline proposes to transport on an interruptible basis up to 150,000 Mcf of natural gas on a peak day, 50,000 Mcf on an average day, and 25,000 Mcf on an annual basis for Catamount. Trunkline states that it would perform the transportation service for Catamount under Trunkline's Rate Schedule PT. Trunkline indicates that it would receive the gas from various existing points of interconnection in the states of Illinois, Louisiana, Tennessee, and Texas; from the Panhandle Eastern Pipe Line Company point of interconnection at Douglas County, Illinois; and from the areas of offshore Louisiana and offshore Texas. Trunkline states that it would then deliver the gas, less fuel and unaccounted for line loss, to Midwestern Gas Transmission in Vermilion County, Illinois.

It is explained that the service commenced June 1, 1990, under the automatic authorization provision of § 284.223 of the Commission's Regulations, as reported in Docket No. ST91-44. Trunkline indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 23, 1990, in accordance Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc. Stingray Pipeline Co.

[Docket No. CP91-41-000; Docket No. CP91-48-000]

Take notice that Arkla Energy Resources, a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, and Stingray Pipeline Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-820-000 and Order No. 509 [1], respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[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 Applicants and is summarized in the attached appendix.

Comment date: November 23, 1990, in accordance with Standard Paragraph G at the end of this notice.

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[1] Corresponding to the rates, terms and conditions specified in Docket No. RP89-70.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (Type)	Peak Day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related Docket, start up date
CP91-41-000 (10-3-90)	Enron Gas Marketing, Inc. (Enron) (Marketer)	75,000 [2] 50,000 27,375,000	OK	TX	5-1-90, FT, Firm	ST90-3804, 6-11-90.
CP91-48-000 (10-4-90)	Access Energy Corporation (Marketer)	100,000 40,000 14,600,000	LA, OLA	TX	5-8-89, ITS, Interruptible.	ST90-4414, 8-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] AER also proposes an auxiliary overrun service for interruptible deliveries of up to 50,000 MMBtu on a peak day, 50,000 MMBtu on an average day and 18,250,000 MMBtu on an annual basis pursuant to Enron's Rate Schedule FT-AOS.

3. Florida Gas Transmission Co.

[Docket Nos. CP90-2315-000 and CP90-2316-000]

Take notice that on September 27, 1990, Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002, 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 its blanket certificate issued in Docket No. RP89-50 *et al.*, 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 Commision and open to public inspection.[3]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.233 of the Commission's Regulations is provided in the attached appendix.

Comment date: November 23, 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 [1] average annual	Points of Receipt	Delivery	Start up date rate schedule	Related [2] dockets
CP90-2315-000(9-27-90)	Florida Gas Transmission Company.	Reliance Gas Marketing company.	50,000 37,500 18,250,000	Offshore TX, TX, LA, MS, AL, FL.	TX, LA, AL, FL	8-7-90 ITS-1	RP89-50 *et al.* ST90-4621-000.
CP90-2316-000 (8-9-90)	Florida Gas Transmission Company.	PPG Industries Inc..	60,000 45,000 21,900,000	Ofshore TX, TX, LA, MS, AL, FL.	LA	8-7-90, ITSp1	RP89-50 *et al.* ST90-4622-000.

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

4. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-15-000,[4] CP91-16-000, CP91-17-000]

Take notice that on October 2, 1990, Williston Basin Interstate Pipeline Company, filed in the above referenced dockets, prior notice requests pursuant to §157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the authorization issued in Docket No. CP88-6-000 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 and in the attached appendix.

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 United States and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the United would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 23, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-15-000 (10-2-90)	Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, N.D. 58501.	Western Gas Processors, Ltd..	50,600 15,200 18,469,000	WY	WY, ND	9-1-90, IT-1	CP89-1118-000. ST90-4755-000.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-16-000 (10-2-90)	Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, N.D. 58501.	Western Gas Processors, Ltd..	226,645 21,700 82,725,425	ND, MT, WY	WY, MT, ND	9-1-90, IT-1	CP89-1118-000. ST90-4754-000.
CP91-17-000 (10-2-90)	Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, N.D. 58501.	Chevron, U.S.A., Inc.	13,148 2,200 4,799,020	ND, MT, WY	ND, WY	9-1-90, IT-1	CP89-1118-000. ST90-4752-000.

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

5. United Gas Pipe Line Co.

[Docket No. CP91-7-000]

Take notice that on October 1, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 filed a request with the Commission in Docket No. CP91-7-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a two-inch delivery tap and related facilities needed to transport natural gas for Cataphote Incorporated (Cataphote), an end-user, under United's blanket certificates, issued in Docket Nos. CP82-430-000 and CP88-6-000, respectively, all as more fully set forth in the request which is open to public inspection.

United proposes an interruptible natural gas transportation service, under its FERC Rate Schedule ITS, of 2,500 Mcf on peak and average days, and 912,500 Mcf annually for Cataphote. United would receive the gas for Cataphote's account at various points on its pipeline sysetm and delivery equivalent volumes via the proposed delivery tap at Cataphote's Rankin County, Mississippi, plant. United estimates that it would spend $45,649 to construct and operate the proposed tap. Cataphote would reimburse United for all construction costs.

Comment date: November 23, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. National Gas Pipeline Co.

[Docket Nos. CP91-44-000, CP91-45-000, CP91-46-000, CP91-47-000

Take notice that on October 4, 1990, National Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, 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 in Docket No. CP86-582-000, 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.[5]

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 Applicant and is summarized in the attached appendix.

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

Comment date: November 23, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day [1] average day annual	Receipt points [2]	Delivery points	Start up date rate schedule service type	Related [3] docket contract date
CP91-44-000 (10-4-90)	Vesta Energy Company...	4,200 2,500 912,500	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	8-4-90, ITS, Interruptible.	ST90-4597-000, 7-20-90.
CP91-45-000 (10-4-90)	Enron Gas Marketing Inc..	100,000 60,000 21,900,000	AR, CO, IA, LA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	8-4-90, ITS, Interruptible.	ST90-4415-000, 5-7-90.
CP91-46-000 (10-4-90)	Transworld Oil, U.S.A., Inc..	100,000 40,000 14,600,000	TX, LA, OK, AR	LA, TX, AR	8-1-90, ITS, Interruptible.	ST90-4417-000, 5-4-90.
CP91-47-000 (10-4-90)	Sun Operating Limited Partnership.	200,000 75,000 28,375,000	TX, OTX, LA, OLA, IL, OK, AR.	TX	8-1-90, ITS, Interruptible.	ST90-4418-000, 2-21-90.

[1] Quantities are shown in MMBtu and additional volumes may be accepted pursuant to the overrun provisions of Applicant's Rate Schedule ITS.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation services was reported in it.

7. Panhandle Eastern Pipe Line Co. and Colorado Interstate Gas Co.

[Docket No. CP80-34-009, Docket No. CP80-35-009]

Take notice that on October 2, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, and Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, jointly referred to as Applicants, filed pursuant to section 7 of the National Gas Act to amend the terms of an existing system-wide Gas Purchase, Transportation, and Exchange Agreement (Master Agreement) dated December 1, 1978, which was certificated by the Commission on May 7, 1980, in Docket Nos. CP80-34 and CP80-35 and has been amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they have executed an Amendment to the Master Agreement dated August 31, 1990, which includes certain operational changes, new transportation rates, contract quantities with a volume adjustment option, and a request by Panhandle to implement a means for the recovery of a portion of the costs incurred for shippers electing to utilize Panhandle's service rights.

Applicants further state that subsequent to certification by the Commission and acceptance by the Applicants, certain tariff filings would be required to incorporate the Amendment. CIG proposes to make the appropriate corresponding changes to its Rate Schedule X-38 of its FERC Gas Tariff, Original Volume No. 2 and Panhandle proposes to make the appropriate corresponding changes to its Rate Schedule TSE-4 of its FERC Gas Tariff, Original Volume No. 2 and to its Rate Schedule PT-Firm and PT-Interruptible of its FERC Gas Tariff, Original Volume No. 1.

Comment date: October 30, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Co.

[Docket No. CP91-1-000]

Take notice that on October 1, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-1-000 an application pursuant to section 7(b) of the Natural Gas Act for permision and approval to abandon from interstate service by sale to Phillips 66 Natural Gas Company (Phillips), certain certificated pipeline, gathering and well-tie facilities, with appurtenances, principally located in Andrews County, Texas [6] and hereinafter referred to as the "South Andrews Gathering System", and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it seeks to abandon the following certicates facilities: (i) The South Andrews to TXL Plant Line, consisting of approximately 22.7 miles of 20-inch pipeline and necessary appurtenances; and (ii) approximately 60.1 miles of certificated gathering and well-tie pipelines and appurtenances ranging in size from 2⅜ inch to 20 inch. According to El Paso, the system also includes a lift-gas system consisting of approximately 32.3 miles of non-certificated pipeline ranging in size from 2⅜ inch to 6⅝ inch to 6⅝ inch.

According to El Paso, the South Andrews Gathering System, was initially constructed in 1957 to gather and compress significant quantities of casinghead gas received from the West Fuhrman-Mascho, Block 9, Wemac, South Andrews and Midland Farms Northeast Fields in Andrews County, Texas, so as to satisfy the increasing natural gas demands on its system. The system in 1957 consisted of approximately 9,000 horsepower (hp) of field compression constituting the South Andrews Field Plant; one dehydration unit at the plant with a capacity of 20 MMcf per day (MMcfd) of natural gas; approximately 60 miles of gathering and well-tie pipeline facilities; the South Andrews Plant to Shell Oil Company's TXL Plant Line; and a 4½ inch fuel line extending approximately 11 miles from El Paso's Snyder Line to the to South Andrews Field Plant.[7] El Paso states that, as designed, the system permitted it to deliver approximately 20.5 MMcfd of natural gas to the TXL Plant.

In 1959, as a result of increased drilling activities in the fields supporting the South Andrews Field Plant, El Paso states that it constructed approximately 12.1 miles of 8-⅝ inch pipeline extending from its 20-inch Goldsmith-Dumas Line to the South Andrews Field Plant to provide additional quantities of gas to producers located behind the plant for lift gas and lease use, 21 FPC 474 (1959). El Paso states that the lift gas fuel was provided under the terms of the various casinghead gas purchase contracts between El Paso and the produces situated behind the plant. In 1961, El Paso states that it installed an additional 1,760 hp of compression at its South Andrews Field Plant to handle the additional volumes of casinghead gas attributable to the successful drilling of additional wells, 25 FPC 125 (1961). With the installation of this horsepower, El Paso states that its South Andrews Gathering System could deliver up to approximately 35 MMcfd of gas to the TXL Plant.

El Paso states that as a result of declining gas production in the area in the early 1970's and a reduced need by the producers for recycling and lift gas operations due to depletion of the liquid hydrocarbon supply, El Paso determined that it no longer needed the compression serving the plant, the lift recycling service and, as well, the dehydration plant. Accordingly, El Paso states that in 1976 it abandoned the South Andrews Field Plant consisting of 11,660 hp of compression and one 20 MMcfd dehydration unit, 56 FPC 358 (1976). Due in large part of the abandonment of the plant, El Paso states that it no longer needed and subsequently abandoned the 8-⅝ inch fuel pipeline extending from the Goldsmith-Dumas Line to the South Andrews Field Plant.[8]

El Paso states that it is continuing its transition from being primarily a merchant to being a major gas transporter. Similarly, El Paso states that the remaining producers with gas in the South Andrews Gathering System during the transition period no longer make their sales to El Paso and now sell directly to others with El Paso providing the gathering and transportation services.

Due to the precipitous decline in gas from the fields behind the system and changes in its market environment, less than 1000 Mcfd of gas is now received by El Paso from the system. El Paso states that a maximum of only up to 125 Mcfd of that quantity is system supply gas. El Paso states that it is using only a small fraction of the designed gathering capacity of the South Andrews Gathering System, while continuing to incur direct operating and maintenance costs.

According to El Paso, it no longer requires the assured access to the remaining gas supply provided by the system due to the present and projected low demand for its system supply gas. Moreover, El Paso states that it is unable to utilize sufficient capacity of the system to warrant its continued

[6] El Paso states that the facilities are predominantly located in Andrews County, Texas; however, a segment of one pipeline facility extends into Ector County, Texas.

[7] 16 FPC 1354 (1956), *as amended*, 17 FPC 438 (1957).

[8] El Paso states that it abandoned the fuel line under its blanket certificate in Docket No. CP82-435-000, as reported to the Commission on April 30, 1990.

ownership and operation. Considering these conditions, El Paso believes that its continued operation of this gathering system would frustrate its goal of optimizing system operations. Accordingly, El Paso decided to sell the South Andrews Gathering System to Phillips pursuant to an Agreement of Sale Concerning the South Andrews Gathering System (Agreement), dated July 17, 1990.

It states that Phillips intends to operate the South Andrews Gathering System as a non-jurisdictional gathering system. The operation of the South Andrews facilities as an integrated non-jurisdictional gathering system will, according to El Paso, greatly benefit producers in the South Andrews production area and El Paso's transportation customers who are end-users of gas produced from the area. Producers in the area will benefit by having an additional experienced competitor offering gathering and processing services for their production. El Paso states that its mainline transportation customers will benefit from alternative gathering and processing services and from greater supply diversity.

After abandonment of the South Andrews System, El Paso states that it will have minor purchase obligations of approximately 125 Mcfd remaining for gas located in the production area. El Paso states that the related gas purchase contracts have various expiration dates, ranging from December 31, 1990 to January 1, 1995. In addition, El Paso states that, to date, it has permanently released approximately 299 Mcfd of production from the South Andrews area. According to El Paso, the sale of the system will not prevent it from honoring its remaining contractual obligations in the area because Phillips has agreed to provide gathering and processing services for El Paso's remaining gas in the South Andrews production area. El Paso states that Phillips also is endeavoring to enter into contracts for gathering and processing services to all other producers in the production area.

El Paso states that it will abandon no gas supply as a direct result of the abandonment of the South Andrews Gathering System; therefore, its ability to render existing sales for resale service to its customers will not be impaired. El Paso avers that it makes no sales directly from any of the facilities proposed to be abandoned. Furthermore, El Paso states that open access transportation will continue to be provided, and Phillips has represented its commitment to non-discriminatory access and operation of the gathering facilities upon acquistion.

Additionally, it is stated that the abandonment will require no changes in El Paso's FERC Gas Tariff and no significant changed in its rates will result therefrom.

El Paso states that there will be no adverse environmental effects from the proposed abandonment. Accordingly, El Paso states that it believes the proposed action does not constitute a major federal action significantly effecting the quality of the human environment and thus not subject to the requirements of the National Environmental Policy Act of 1969. In El Paso's judgement, and environmental analysis for the instant proposal is not necessary.

Comment date: October 30, 1990, in accordance with Standard Paragraph F 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 383.214) 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 Energy Regulatory Commission by section 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 othewise 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's 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,

Secretry.

[FR Doc. 90-24365 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-6-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 10, 1990.

Take notice that ANR Pipeline Company ("ANR") on October 5, 1990 tendered for filing as part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets:

Thirty-Second Revised Sheet No. 18
Alternate Thirty-Second Sheet No. 18
Sixth Revised Sheet No. 88
Sixth Revised Sheet No. 89
Sixth Revised Sheet No. 90
Fifth Revised Sheet No. 90A
Second Revised Sheet No. 90A.1
Original Sheet No. 130
Original Sheet No. 131

ANR states that the above-referenced tariff sheets are being filed under § 2.104 of the Commission's Regulations to implement partial recovery of approximately $11.0 million of additional buyout buydown costs. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty-five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 and SGS-1 sales customers and to recover up to fifty percent of such costs through a volumetric buyout buydown surcharge of 0.29¢ per Dth applicable to each sales, transportation and storage Rate Schedule, where appropriate, under Original Volumes Nos. 1, 1-A, 2 and 3 of

ANR's FERC Gas Tariff, but all subject to reservation of rights to make changes, including to achieve 100 percent cost recovery by increased direct charge recovery.

ANR has requested that the Commission accept this filing, to become effective November 5, 1990.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1-A, 2 and 3 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 Commission, 825 North Capitol Street, NE., Washington, DC 20426 by October 17, 1990, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24370 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-4-006]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 10, 1990.

Take notice that on October 3, 1990, Columbia Gulf Transmission Company, (Columbia Gulf) tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 3, 1990.

Second Revised Sheet No. 071
Third Revised Sheet No. 084
Second Revised Sheet No. 088
Second Revised Sheet No. 089
Second Revised Sheet No. 112
Third Revised Sheet No. 125
Second Revised Sheet No. 126
Second Revised Sheet No. 127
Second Revised Sheet No. 147
Second Revised Sheet No. 160
Second Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 177
Third Revised Sheet No. 189
Second Revised Sheet No. 191
Second Revised Sheet No. 192

Columbia Gulf states that these tariff sheets are being filed to update certain information which is required to be maintained in its tariff under the provisions of Order Nos. 497, *et seq.* Specifically, Columbia Gulf is removing references to Columbia Natural Resources, Inc. (CRN), in order to reflect that CNR meets the exemption under § 161.2 of the Commission's Regulations, excluding it from the definition of "marketing affiliate." In addition, Columbia Gulf is making a minor revision to its transportation tariffs, in order to reflect the impact of a recent Commission order.

Any person desiring to be heard or to protest the subject 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 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by October 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 90-24371 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT89-3-004, and MG89-11-001]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 10, 1990

Take notice that on October 3, 1990, Columbia Gas Transmission Corporation, (Columbia) tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Vomume No. 1, to be effective November 3, 1990:

Third Revised Sheet No. 41
First Revised Sheet No. 54
First Revised Sheet No. 55
Third Revised Sheet No. 61
First Revised Sheet No. 74
Second Revised Sheet No. 214
Second Revised Sheet No. 220

Columbia states that these tariff sheets are being filed to update certain information which is required to be maintained in its tariff under the provisions of Order Nos.497, *et seq.* Specifically, Columbia is removing references to Columbia Natural Resources, Inc. (CNR), in order to reflect that CNR meets the exemption under § 161.2 of the Commission's Regulations, excluding it from the definition of "marketing affiliate." In addition, Columbia is making a minor revision to its transportation tariffs, in order to reflect the impact of a recent Commission order.

Any person desiring to be heard or to protest the subject 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 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by October 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24372 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-15-000]

El Paso Natural Gas Co. v. Kaneb Energy Co. and Kaneb Operating Co., Ltd.; Complaint

October 10, 1990.

Take notice that on September 17, 1990, El Paso Natural Gas Company (El Paso) filed a complaint under Rule 208 of the Commission's Rules of Practice and Procedure against Kaneb Energy Company and Kaneb Operating Company Ltd. (Kaneb). El Paso alleges that it purchased natural gas from Kaneb under a May 15, 1965 contract, and that Kaneb charged El Paso the incorrect maximum lawful price for certain production after September 1980. According to El Paso, Kaneb priced the gas under section 108 of the Natural Gas Policy Act of 1978, when the gas was not entitled to that price. El Paso states that the amount of the overcharge is $1,142,512.89. El Paso has requested Kaneb to refund the amount but no refund has been made. El Paso states that it is unable to make billing adjustments because it has no ongoing contractual relation with Kaneb. El Paso requests that the Commission issue an order directing Kaneb to refund the overcharges plus interest.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with rules 214 (18 CFR 385.214 (1990)) or 211 (18 CFR 385.211 (1990)) of the

Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 9, 1990. All protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before November 9, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24374 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-2-007]

Williston Basin Interstate Pipeline Co., Change in FERC Gas Tariffs

October 10, 1990.

Take notice that on October 4, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the tariff sheets were filed in compliance with the Commission's Order dated September 19, 1990 in the instant docket.

Williston Basin states that copies of this filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., 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 October 17, 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.

Lolis D. Cashell,

Secretary.

[FR Doc. 90-24373 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-36-006, CP90-273-003, CP88-266-009, CP87-107-004, CP87-106-008, CP88-338-002, TA91-1-82-001 & TM91-1-82-001]

Viking Gas Transmission Co.; Tariff Filing

October 10, 1990.

Take notice that on October 4, 1990, Viking Gas Transmission Company (Viking) filed the following revised tariff sheets to its FERC Gas Tariff to be effective as follows:

To be effective November 1, 1989:

Original Volume No. 1

Substitute Second Revised Sheet No. 11

To be effective October 1, 1990:

Original Volume No. 1

Substitute Third Revised Sheet No. 11
Third Revised Sheet No. 12
Substitute First Revised Sheet No. 13
First Revised Sheet No. 81D
First Revised Sheet No. 170
First Revised Sheet No. 200

Original Volume No. 2

First Revised Sheet Nos. 111-113
Substitute First Revised Sheet Nos. 114-115

To be effective November 1, 1990:

Original Volume No. 1

Tenth Revised Sheet No. 6
Fourth Revised Sheet No. 11
First Revised Sheet No. 66
First Revised Sheet No. 74

Original Volume No. 2

Third Revised Sheet No. 55
Second Revised Sheet No. 72
Second Revised Sheet No. 114

The purpose of this filing is (1) To further implement the terms of the Stipulation and Agreement filed by Viking in Docket Nos. RP89-36, *et al.*, on November 21, 1989 (the Stipulation), including the reduction of fuel and loss percentages and the incorporation of settlement rates into Viking's recent Annual PGA filing, (2) to adjust the Index of Purchasers to reflect the partial abandonment of sales service to ANR Pipeline Company, as authorized by the Commission's Order issued on June 27, 1990 in Docket No. CP88-338, (3) to implement a minor revision regarding certain requested changes in transportation service on Viking, and (4) to correct certain inadvertent errors made in Viking's August 31, 1990 filing in Docket Nos. RP89-36 and CP90-273, (August 31 Filing), which was accepted by the Commission's Order issued on September 28, 1990.

Viking states that a copy of this filing is being served on all affected customers and state commissions as shown on the attached list and parties in the above-referenced dockets, and is available for public inspection during regular business hours in a convenient form and place at Viking's offices in the Tenneco Building, Houston, Texas.

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 October 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24368 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM91-1-49-001 and TQ91-1-49-001]

Williston Basin Interstate Pipeline Co.; Annual Charge Adjustment Filing

October 10, 1990.

Williston Basin Interstate Pipeline Company (Williston Basin), on October 4, 1990, submitted for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

Substitute Twenty-ninth Revised Sheet No. 10

Original Volume No. 1-A

Substitute Twenty-second Revised Sheet No. 11
Substitute Twenty-eighth Revised Sheet No. 12

Original Volume No. 1-B

Substitute Seventeenth Revised Sheet No. 10
Substitute Seventeenth Revised Sheet No. 11

Original Volume No. 2

Substitute Thirty-first Revised Sheet No. 10
Substitute Twenty-third Revised Sheet No. 11B

The proposed effective date of the tariff sheets is November 1, 1990.

Williston Basin states that the instant filing is being made pursuant to the Commission's Order Accepting and Rejecting Tariff Sheets and Clarifying Annual Charge Bills, issued September 26, 1990 in Docket Nos. RM87-3-000, *et al.*, and the General Terms and Conditions of Williston Basin's FERC Gas Tariff (First Revised Volume No. 1,

section 30; Original Volume No. 1-A, section 27; and Original Volume No. 1-B, section 25). The filing incorporates an ACA surcharge of .220 cents per Mcf (.208 cents per dkt on the Williston Basin system), as authorized by the Commission's Order of September 26, 1990.

Also included for filing is Substitute Twenty-seventh Revised Sheet No. 10 of Williston Basin's First Revised Volume No. 1 FERC Gas Tariff which incorporates gas cost-related changes submitted in the Company's purchased gas cost adjustment compliance filing of September 14, 1990 in Docket Nos. TA90-1-49-000 and TA90-1-49-001 into the previously filed ACA tariff sheets accepted by the Commission's September 26, 1990 Order. This tariff sheet is to be effective October 1, 1990.

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 October 17, 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 availablle for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24369 Filed 10-16-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 13 Through August 17, 1990

During the week of August 13 through August 17, 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

Robert L. Jackman, 8/17/90, LFA-0061

Robert L. Jackman filed an Appeal from a denial by the Freedom of Information and Privacy Acts Branch (FOI Office) of a Freedom of Information Request. The FOI Office denied Jackman's request because it found that it was so broad and lacking in specificity that it could not determine what records Jackman sought or locate any such records with a reasonable amount of effort. The DOE agreed that Jackman's request for all information on energy demand for electricity was overbroad and did not satisfy the requirement that FOIA requests reasonably describe the records sought. Nonetheless, the DOE noted that Jackman stated that he especially wanted studies by a particular research institute. The DOE remanded the matter for a determination on whether a request for studies by this research institute reasonably described the records sought. The DOE also found that the FOI Office had failed to respond to one item of Jackman's request and remanded that portion of the request for a determination. Accordingly, the Appeal was granted in part.

Implementation of Special Refund Procedures

West Coast Oil Co., 8/15/90, KEF-0142

The DOE Issued a Decision and Order implementing procedures for the disbursement of $99,727, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with West Coast Oil Co. (West Coast) on June 28, 1989. The funds were paid by West Coast towards the settlement of alleged violations of the DOE price and allocation regulations relating to transactions by West Coast involving the marketing of refined petroleum products during the period September 1, 1973 through June 30, 1976. The DOE determined that it will distribute these funds in two stages. In the first stage, the DOE will accept claims from identifiable purchasers of petroleum products from West Coast who may have been injured by the alleged overcharges. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. Purchasers of regulated petroleum products from West Coast during the period September 1, 1973 through June 30, 1976 may file Applications for Refund from the West Coast consent order fund. Applications for Refund must be postmarked by September 30, 1991. Instructions for the completion of refund applications are set forth in the Decision.

Refund Applications

Brothers Truck Rental Co., et al., 8/17/90, RF272-68878, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the subpart V crude oil refund proceeding. During the period August 19, 1973 through January 27, 1981, seven of the applicants were resellers of refined petroleum products and the remaining four applicants were engaged in the business of renting and/or leasing motorized vehicles. All 11 applicants are considered resellers for the purposes of the subpart V crude oil refund proceeding. Because none of the applicants demonstrated that it was injured due to crude oil overcharges, the applicants were found ineligible for crude oil refund monies. Accordingly, the 11 Applications for Refund considered in the Decision were denied.

Corning Glass Works, 8/15/90, RF272-141, RD272-141

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Corning Glass Works, a specialty glass manufacturer. In reaching its determination, the DOE rejected objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that industry-wide econometric data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for individual end-users. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely, in fact, to have passed through the crude oil overcharges. Accordingly, Corning Glass Works was granted a refund of $48,702

Emerson Electric Company, 8/16/90, RF272-5989, RD272-5989

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Emerson Electric Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of 28 States and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The States submitted an affidavit by an economist stating that Emerson was able to pass through all costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. The refund granted in this Decision is $50,620. Emerson Electric Company will be eligible for

additional refunds as additional crude oil overcharge funds become available.

Exxon Corporation/Alberto Barreras Rivera et al., 8/15/90, RF307-5134 et al.

The DOE issued a Decision and Order concerning seven 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 based its volume claim on Exxon-generated volume sheets and estimated figures for certain years not included on the Exxon sheets. The DOE approved the use of estimates where the estimates were reasonable and the applicants submitted written explanations of their estimation methodologies. 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 $12,750 ($9,428 principal plus $3,322 interest).

Exxon Corporation/Florida Power & Light Co., 8/15/90, RF307-8845

The DOE issued a Decision and Order concerning an Application for Refund filed by Florida Power & Light Co. (FPL) in the Exxon Corporation special refund proceeding. FPL purchases refined petroleum products from Exxon during the consent order period. FPL purchased these products both directly from Exxon and indirectly from Belcher Oil Co. (Belcher), a firm that has been granted an Exxon refund under the medium-range presumption of injury. In accordance with prior Decisions, FPL's claim was therefore considered under the procedures used to evaluate direct purchase claims. FPL established that 100 percent of the refined petroleum products purchased from Belcher originated with Exxon. Therefore, the DOE granted FPL a refund based on 100 percent of its purchases from Exxon and Belcher. FPL, a public utility, certified that it will notify the appropriate regulatory body of any refund received and that it will pass through the amount of the refund to its customers. The amount of the refund granted in this Decision is $1,485,615 ($1,098,584 principal plus $387,031 interest).

Gulf Oil Corporation/Kirk Brown's Gulf, 8/17/90, RR300-11

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted on behalf of Kirk Brown's Gulf in the Gulf Oil Corporation special refund proceeding by Mike Shields, an agent of Federal Refunds, Inc. On January 19, 1990, the original Application for Refund submitted on behalf of Kirk Brown's Gulf was dismissed in a letter. On January 29, 1990, the DOE received a first Motion for Reconsideration on behalf of Kirk Brown's. This initial Motion for Reconsideration was denied in a May 1, 1990 Decision and Order. *Gulf Oil Corp./Kirk Brown's Gulf*, 20 DOE ¶ 85,282 (1990). Mr. Shields then submitted a second Motion for Reconsideration on May 21, 1990 which was considered in this Decision and Order. In this Decision, it was found that the applicant was able to demonstrate that it did purchase Gulf products during the Gulf consent order period and therefore was granted a refund using a presumption of injury. The refund granted to Kirk Brown's Gulf, which includes principal and interest, is $316.

Lee Dyeing Co. of North Carolina, Inc., 8/15/90, RA272-27

The DOE issued a Supplemental Order to Lee Dyeing Co. of North Carolina, Inc. (Lee). On July 13, 1990, the DOE granted a refund of $2,215 to Lee in *Gabel Farms, et al.*, Case Nos. RF272-62001, *et al.* Since that Decision inadvertently reduced Lee's refund claim, Lee was granted an additional refund of $437 based on 545,705 additional gallons of petroleum products purchased during the consent order period.

Shell Oil Company/Moby Dick Wash Systems, Inc., 8/16/90, RF315-9218

The DOE issued a Supplemental Order to Moby Dick Wash Systems, Inc. in the Shell Oil Company special refund proceeding. In an earlier Decision, the DOE had granted a refund to Moby Dick based on purchases of 2,239,309 gallons of Shell petroleum products. The DOE later determined that Moby Dick's refund should have been based on a figure of 12,239,309 gallons. Accordingly, the DOE granted Moby Dick an additional refund of $2,910 ($2,260 in principal plus $650 in interest) based on the 10,000,000 gallons that were inadvertently omitted when its first refund was calculated.

Texaco Inc./Fairview Texaco, 8/15/90, RF321-1935, RF321-8224

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceedings by Fairview Texaco. The applications were denied because one of the claims contained a false certification.

Texaco Inc./Joe's Texaco, 8/16/90, RF321-1522, RF321-8222

The DOE issued a Decision and Order denying duplicate refund applications filed in the Texaco Inc. special refund proceeding by Joe's Texaco. The applicant filed two refund applications for the same Texaco purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Mike's Downtown Texaco, Berthoud's Texaco #1, 8/13/90, RF321-2647, RF321-7989

The DOE issued a Decision and Order denying duplicate refund applications filed in the Texaco Inc. special refund proceeding by one applicant for the same outlet under the names Mike's Downtown Texaco and Berthoud's Texaco #1. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Nerland Oil Co., Inc. et al., 8/16/90, RF321-1802 et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed in the Texaco Inc. subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is less than $10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The total of the refund granted in this Decision is $54,505 ($46,416 principal plus $8,009 interest).

Texaco Inc./Ray's Texaco, 8/13/90, RF321-4645, RF321-7596

The DOE issued a Decision and Order denying duplicate refund applications filed in the Texaco Inc. special refund proceeding by Ray's Texaco. The applicant filed two refund applications for the same Texaco purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Surfside Texaco, 8/15/90 RF321-4495, RF321-8213

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Surfside Texaco. The applications were denied because one of the claims contained a false certification.

Texaco Inc./Wong's Texaco, 8/17/90 RF321-1806, RF321-4522

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by an owner of a retail service station. One application was filed on March 13, 1990, and the other application was filed on April 30, 1990. Both applications were denied on the grounds that they were duplicates of one another and the owner falsely certified in the April 30 application that he had not previously filed another Texaco refund application.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decision and Orders:

Name	Case No.	Date
Exxon Corp./Ron & Ron's Exxon *et al.*.	RF307-2557	8/14/90
Shell Oil Co./Samuel Lazar *et al.*.	RF315-254	8/13/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Adams Shell Auto Care	RF315-1040
American Frozen Foods, Inc.	RF272-70490
Bonray Drilling Corp.	RF272-36170
Butterfield Shell	RF315-5318
Cedar Shell	RF315-5975
Dead River Petroleum Co.	RF307-9
Harold J. Rhodes, Sr.	RF315-63
Russell Townsend	RF272-31072
Slattery Associates, Inc.	RF272-32222
Steve's Shell	RF315-7955

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: October 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-24486 Filed 10-16-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 20 Through August 24, 1990

During the week of August 20 through August 24, 1990 the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Connecticut Natural Gas Corp. et al., 8/22/90; RF272-32479 et al.

The DOE issued a Decision and Order granting refunds to 16 purchasers of refined petroleum products in the subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products which form the basis of its refund claim, and therefore was not required to demonstrate injury. The refunds approved in this Decision total $71,433.

Exxon Corporation/Chapman & Main Car Wash, 8/22/90; RF307-10139

The DOE issued a Decision and Order rescinding a refund that was granted in a December 11, 1989 Decision to Chapman & Main Car Wash. Energy Refunds, Inc., who represented Chapman, informed the DOE that its client could not be located and returned the check. Therefore, the refund of $152 ($121 principal plus $31 interest) was redeposited into the Exxon escrow account.

Exxon Corporation/E.I. Kane, Inc., 8/21/90; RF307-6434

The DOE issued a Decision and Order denying an Application for Refund filed by E.I. Kane, Inc. In *Exxon Corp.*, 17 ¶ 85,590 (1988), the DOE stated that applicants must submit documentation of the volume of Exxon product they purchased during the consent order period. Since the applicant could not document its claim, it was ineligible to receive a refund. Accordingly, this application was denied.

Exxon Corporation/Monserrate Colon Serrano et al., 8/23/90; RF307-9251 et al.

The DOE issued a Decision and Order denying seven Applications for Refund filed in the Exxon Corporation special refund proceeding. Each applicant claimed that it purchased directly from Exxon, but did not submit documentation verifying its purchases. The DOE determined that each applicant was ineligible to receive a refund based on insufficient documentation. Accordingly, the seven Applications were denied.

Exxon Corporation/S.K. Harrell Oil Company, 8/24/90, RF307-9302, RF307-10147

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both applications were based on the purchases of Exxon products by S.K. Harrell Oil Company. One application, filed by Joseph Harrell, the current owner of Harrell Oil, was denied because the right to a refund was not transferred to him from the previous owner. S.K. Harrell, the previous owner, was found eligible to receive a refund because he was the owner of S.K. Harrell Oil Company during the consent order period. The sum of the refund granted was $6,627 ($5,000 principal plus $1,627 interest.)

Exxon Corp./Smith's Car Care Center, Victor C. Smith, 8/23/90, RR307-8, RR307-10

The DOE issued a Decision and Order regarding a Motion for Modification and a Motion for Reconsideration of a Supplemental Decision and Order issued on June 27, 1990. In the June 27 Decision, the DOE rescinded a duplicate refund granted in the Exxon refund proceeding to Victor C. Smith d/b/a/ Smith's Car Care Center and directed Mr. Smith to show cause why an earlier refund granted to him in the Exxon proceeding should not also be rescinded. In considering the reconsideration motion, the DOE rejected Mr. Smith's request that no interest be assessed on the amount of money that he was required to repay, but permitted him to make the repayment in eight monthly installments. The DOE also permitted Mr. Smith to retain his earlier Exxon refund. Accordingly, the Motion for Reconsideration was granted in part. The Motion for Modification was dismissed at the request of the movant.

Exxon Corporation/Stewart's Exxon, 8/23/90, RF307-10146

The DOE issued a Decision and Order granting a refund to Stewart's Exxon. Stewart's Exxon was previously granted a refund in a Decision and Order dated July 20, 1990 based on an incorrect gallonage figure. The DOE found that Stewart's was eligible to receive a refund based on additional gallonage. Accordingly, Stewart's was granted a refund of $163 ($123 principal plus 440 interest.)

Exxon Corporation/System Fuels, Inc., 8/24/90, RF307-8837

The DOE issued a Decision and Order granting an Application for Refund filed by System Fuels, Inc. in the Exxon Corporation special refund proceeding. System Fuels purchased products directly from Exxon on behalf of four electric utility companies, Arkansas Power & Light Co., Louisiana Power & Light Co., Mississippi Power & Light, and New Orleans Public Service, Inc. The Decision directs System Fuels to pass through the entire refund to the four public utilities it supplies, and those four utilities are in turn required to pass the refund through to their customers. The sum of the refund granted in this Decision is $36,194 ($27,310 principal plus $8,884 interest).

Gulf Oil Corporation/Ray's Gulf, et al., 8/22/90, RF300-10913, et al.

The Department of Energy issued a Decision and Order regarding five Applications for Refund filed by Akin Energy, Inc. on behalf of retailers of Gulf refined products. Four of these Applicants originally filed Applications through Petroleum Association Development Corporation (PAD). The Applications filed by PAD were dismissed. It was determined that each of the five Applications considered in this Decision ordered that the checks be mailed to Akin Energy, Inc. These Applicants were granted refunds using presumptions of injury. The total amount of the refunds granted in this Decision and Order, including interest, is $13,882.

Gulf Oil Corp./Water Street Gulf Service, et al., 8/22/90, RTF300-10108, et al.

The Office of Hearings and Appeals (OHA) granted seven Applications for Refund submitted on behalf of various applicants by Energy Watch, Inc. (EWI), a private filing service. The OHA found that EWI had not submitted any information that demonstrated that the applicants were in business during the latter portion of the Gulf II consent order period (1977-81) and therefore granted refunds that were based exclusively on purchases that were made in the early portion of the consent order period (1973-1976) and that were adequately substantiated. The sum of the refunds granted in this Decision and Order was $3,685.

Mich-I-Penn Oil & Grease Co., et al., 8/22/90, RF272-29731, et al.

The DOE issued a Decision and order concerning five Applications for Refund filed in the subpart V crude oil special refund proceeding. Each Applicant was either a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the Applicants demonstrated that it was injured due to the crude oil overcharges, the Applicants were ineligible for a crude oil refund and the Applications were denied.

Shell Oil Company/Dalton Petroleum, Inc. et al., 8/23/90, RF315-501 et al.

The DOE issued a Decision and Order granting 10 Applications for Refund submitted by four different companies in the Shell Oil Company special refund proceeding. Each company submitted multiple refund claims, but was granted a single refund under the medium-sized reseller injury presumption based upon the total purchase volume claimed in all of its refund claims. The total volume approved in this Decision was 125,975,731 gallons, and the total of the refunds granted was $25,752 ($20,000 in principal and $5,752 in interest).

Shell Oil Company/Renfro Valley Shell, 8/23/90, RF315-4912

The DOE issued a Decision and Order granting an Application for Refund filed in the Shell Oil Company special refund proceeding by Renfro Valley Shell, a retailer of Shell products. The applicant purchased indirectly from Shell and was a reseller whose allocable share was less than $5,000. As the supplier of the applicant had not filed for a Shell refund, the applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The amount of the refund granted in the Decision was $342 ($266 prinicipal plus $76 interest).

Texaco Inc./Bendel's Texaco, 8/22/90, RF321-3303, RF321-8175

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Bendel's Texaco. The Applications were denied because one of the claims contained a false certification.

Texaco Inc./Joe Glorioso Texaco Service Station, 8/23/89, RF321-1117, RF321-8384

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding by Joe Glorioso Texaco Service Station. Since the initial application was signed prior to the issuance of the Decision and Order implementing refund procedures for the Texaco proceeding, the applicant was required by that Decision to recertify its application. The applicant filed a recertification on March 30, 1990. Four months later it filed another application, in which it certified that it had not filed any other refund application in the Texaco proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Joe's Texaco et al., 8/22/90, RF321-2423 et al.

The DOE issued a Decision and Order concerning 62 Applications for Refund filed in the Texaso Inc. Special refund proceeding. Each of the applicants purchased directly from Texaco and was a reseller whose allocable share is less than $10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $254,899 ($217,066 principal and $37,833 interest)

Texaco Inc./Turbyfill Texaco, T&S Texaco, 8/23/90, RF321-1863, RF321-3208, RF321-5773

The DOE issued a Decision and Order denying three Applications for Refund filed in the Texaco Inc. special refund proceeding by Charles W. Turbyfill. The applicant filed three refund applications for the same Texaco purchases. In each application, the applicant certified that it had filed or Authorized the filing of only one refund application in the Texaco proceeding. In view of the false certifications, the DOE determined that all three refund applications should be denied.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co.-Louis Aquilar's Arco *et al.*	RF304-10000	8/23/90
E.D.G., Inc./Dunbar's Texaco.	RF311-12	8/24/90
Exxon Corp./Carl's Exxon Service *et al.*	RF307-8869	8/21/90
Exxon Corp./Chatham Esso *et al.*	RF307-3040	8/21/90
Exxon Corp./Highway 70 Exxon *et al.*	RF307-825	8/24/90
Exxon Corp./White's Exxon Service Center, Warf & Son Exxon Station, Reives Exxon.	RF307-1926 RF307-1928 RF307-9225.	8/23/90
Global Terminal & Container Services, Inc. *et al.*	RF272-77046	8/21/90
Gulf Oil Corp./John White's Gulf *et al.*	RF300-10814	8/24/90
Gulf Oil Corp./ Rainbow Signs Co., Inc, *et al.*	RF300-8823	8/24/90
Jack T. Baillie Co., Inc. *et al.*	RF272-77001	8/21/90
Kingwood Mining Co.	RF272-78438	8/24/90
Texaco Inc./Norm's Texaco *et al.*	RF321-418	8/23/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Baty's Garage Service	RF307-1938
Bedwell Oil Co., Inc	RF321-3031
Bogers Oil Co	RF321-7905
Chuck's Getty *et al* (See Attached List).	RF321-2378
Clair's Exxon *et al* (See Attached List).	RF307-9818
Dan's Getty	RF321-5955
E. Saenz Texaco	RF321-1593
Eastover Exxon	RF307-6553
Frank Harrell	RF272-50730
H. Paul Cook, Inc	RF304-11682
Johnsonbury Texaco	RF321-7906
L Street Exxon	RF307-6552
Leatherwood Motor Coah Corporation *et al* (See Attached List).	RF272-60191
Main Street Texaco	RF321-6824
Mill Lake Exxon	RF307-7243
Sims Gulf Service	RF300-9180
Sines & Sons, Inc	RF321-7310
Skyway Gulf	RF300-9174
Southern Avenue	RF307-6433
Sowders Gulf Service	RF300-9126
The Dow Chemical Company	RF272-68020
Turner's Exxon	RF307-1803
Wayne's University Exxon	RF307-1827
Williams Exxon	RF307-1921
Village Gulf	RF300-11230

Service List

RF321-2378

Chuck's Getty, c/o Charles R. Carlson, 2217 N. Portland, Oklahoma, City, OK 73107.

RF321-2383

Buster's Service Station, c/o George Strausberger, 4 Main Road, Lehighton, PA 18325.

RF321-2394

Arnold Nixon, Rt. 1, Box 24, Higbee, MO 65257.

RF321-2401

Sauder Service Center, c/o Charley L. Dahlem, 1002 Denker, Wichita, KS 67216.

RF321-2400

Schnobrich & Turbes Oil Co., c/o Florian Schnobrich, 1104 S. State Street, New Ulm, MN 56073.

RF321-2405

North Avenue Getty, S/S, c/o Louis Siano, 720 North Ave., New Rochelle, NY 10801.

APPENDIX

Case No.	Applicant Name & Address
RF307-9818	Clair's Exxon, Clair Proper, Jr., Main Street, Hydetown, PA 16328.

APPENDIX—Continued

Case No.	Applicant Name & Address
RF307-9819	Exxon Service Station #235, Charlie Mae Grabert, 918 S. Pierce St., Amarillo, TX 79101.
RF307-9832	Wayne Dalton Exxon Serv., Harold Dalton, 835 E. Park Row Drive, Arlington, TX 76010.
RF307-9863	Duval Exxon, Joe & Jessie Moreno, 43 & Duval, Austin, TX 78751.
RF307-9865	Pflum's Exxon #2, Fred Pflum, 2000 Del Rio, Atascadero, CA 93422.
RF307-9867	Jeff's Exxon, Nancy Stewart, 834 W. Main St., Santa Maria, CA 93454.
RF307-9882	Westwood Exxon Car Care Center, Dorothy Bowerstock, 7003 W. Hwy. 90, San Antonio, TX 78227.

RF321-2407

Long's Skelly Service c/o Kenneth C. Long, 804 18th Ave., Franklin, NE 68938.

RF321-2410

Leffler's Getty, c/o Richard Leffler, 1101 North St., Jim Thorpe, PA 18229.

RF321-2418

J&G Getty, c/o Guelfo Pivano, 416-10th St., Union City, NJ 07087.

RF321-2419

Fox's Getty, c/o Clarence Fox, 110 Greenwich St., Belvidere, NJ 07823.

RF321-4195

Rosewall's Getty Service; c/o Chester Rosewall, 1049 Rae Dr., Vineland, NJ 08360.

RF321-6382

Struble Gas Service, c/o Marge Struble, 902 N. Spruce, Kingman, KS 67068.

APPENDIX

Case No.	Case Name
RF272-60191	Leatherwood Motor Coach Corporation.
RF272-60204	Ron's Moving.
RF272-60207	Continental Foods, Inc.
RF272-65636	Enoch Caldwell.
RF272-65655	Truck Service Inc.
RF272-65663	Ecology Paper Products Co., Inc.
RF272-65912	T.W. Moutaw.
RF272-66045	Guthmiller Trucking.
RF272-66331	Myers Trucking.
RF272-67192	Colvind Glass Shop.
RF272-69152	Townsend's Inc.
RF272-70283	Construction Litter Control.
RF272-70290	Davidson Transportation Agency, Inc.
RF272-70293	Kilber Excavating.
RF272-70294	Tripp Motor Service.
RF272-70233	Memphis Delivery Service, Inc.
RF272-70351	Gary Booth Trucking.
RF272-70354	Don Van Trucking.
RF272-72823	Lloyd Green Trucking.
RF272-74877	Robert J. Sauls.

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 commerically published loose leaf reporter system.

Dated: October 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-24485 Filed 10-16-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 27 Through August 31, 1990

During the week of August 27 through August 31, 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.

Appeals

Natural Resources Defense Council, 8/28/90; KFA-0024

The Natural Resources Defense Council (NRDC) filed an Appeal from a denial by the Deputy Assistant Secretary for Uranium Enrichment of a Request for Information which it had submitted under the Freedom of Information Act. Because the responsive material had been jointly prepared with the Central Intelligence Agency (CIA), the DOE referred the request to the CIA for an additional classification review. The DOE found that the document containing the responsive information was properly classified as National Security Information by the CIA and therefore had been correctly withheld pursuant to Exemptions 1 and 3 of the FOIA. The DOE also found that certain portions of the document which did not contain responsive information were properly classified by the DOE as Restricted Data and therefore were also withholdable under Exemption 3. Accordingly, the DOE denied the Appeal in its entirety.

Y. Shanmugadhasan, 8/28/90; HFA-0266

Y. Shanmughasan (Shanmughasan) filed an Appeal from a determination issued by the Director, Program Support Division of the Office of Military Application of the Department of Energy. The Determination denied a Request for Information which

Shanmughasan had filed with the DOE's San Francisco Operations Office. Shanmugadhasan requested copies of all issues of the DOE's Abstracts of Weapons Data Reports (AWDR). In considering the Appeal, the DOE determined that the withheld information had properly been classified as Restricted Data, Formerly Restricted Data or as National Security Information and that Exemptions 1 and 3 protected these documents from being released pursuant to the FOIA.

Refund Applications

Atlantic Richfield Co./Kelley Williamson Co.; Watkins Oil Co., Inc., 8/31/90; RF304-2152, RF304-2154

The DOE issued a Decision and Order concerning Applications for Refund filed by Kelley Williamson Co. and Watkins Oil Co., Inc. in the Atlantic Richfield Company special refund proceeding. The firms submitted information which indicated that they were spot purchasers of Arco products and, thus, ineligible for a refund. Although allowed an opportunity to rebut this presumption, the applicants failed to submit the necessary material evidence needed to rebut the spot purchaser presumption. Accordingly, both applications were denied.

Clover Trading Co., Inc.; 8/30/90; RF272-48346

The DOE issued a Decision and Order granting an Application for Refund filed in the crude oil special refund proceeding. The Applicant was a foreign flag ocean carrier which purchased 19,004,278 gallons of domestic petroleum products during controls, none of which were purchased from the Panama canal zone. The applicant was therefore granted a refund of $15,203.

Cotter & Co., Inc.; 8/27/90; RF272-33548

The DOE issued a Decision and Order denying an Application for Refund in the subpart V Crude Oil refund proceeding. Since Cotter & Company previously released its rights to all other crude oil refunds by signing the Waiver and Release required for its Stripper Well Surface Transporters claim, the DOE determined the firm was not eligible for a refund in this proceeding. Accordingly, Cotter & Company's Application for Refund was denied.

Edwards & Sons Trucking, Carroll L. Edwards, 8/28/90; RC272-94, RC272-95

The DOE issued a Decision and Order concerning two Applications for Refund which were granted in an earlier Decision and Order, *Blackwell Land Company, Inc., et al.*, 20 DOE ¶_____, Case Nos. RF272-65519, *et al.* (July 27, 1990) (*Blackwell Land*). In *Blackwell Land*, the DOE granted Edwards & Sons Trucking a refund of $354 based on its purchases of 442,500 gallons of refined petroleum products and also granted Carroll L. Edwards a refund of $457 based on its purchases of 571,500 gallons of refined petroleum products. However, because the gallonage claims of both applicants were overstated, thus resulting in inflated refund amounts granted to these two applicants, the present Decision and Order rescinded *Blackwell Land* with respect to these two claims. Additionally, the DOE directed that the refund checks issued to these two applicants be voided and that no further refund checks be issued to these applicants at this time based upon the volume claims stated in *Blackwell Land*.

Exxon Corp./ Williams' Exxon, 8/29/90; RF307-9915

The DOE issued a Decision and Order denying an Application for Refund. This application was based on the purchases of Exxon products by Williams' Exxon. In *Exxon* the DOE required that resellers or end-users submit documentation of the volume of Exxon product they purchased during the consent order period. Since the applicant could not document its claim, it was ineligible to receive a refund. Accordingly, the application was denied.

Federal-Hoffman, Inc., 8/29/90, RF272-435

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Federal Hoffman, Inc. based on its purchases of No. 2 and No. 6 fuel oil, propane and gasoline during the period August 19, 1973 through January 27, 1981. The applicant consumed these petroleum products in the manufacture of small arms ammunition and determined its claim using contemporaneous records. Because the applicant was an end-user of the products it claimed for a refund, it was presumed injured. The applicant also requested a refund based upon purchases of glycol. It was determined that glycol was not a product which was covered by the regulatory program established under the Emergency Petroleum Allocation Act (EPAA), and therefore the purchases of glycol were not considered eligible for a refund. The total refund amount granted based upon purchases of No. 2 and No. 6 fuel oil, propane and gasoline is $11,103.

Getty Oil Co./Lossee's Service Station, 8/27/90, RR265-3

The DOE issued a Decision and Order granting a supplemental refund to Lossee's Service Station in the Getty Oil Company special refund proceeding. Based on documentation of additional purchases of Getty gasoline and a showing of significantly changed circumstances, the DOE approved an additional $856 in principal plus accrued interest of $929.

Gulf Oil Corp./Bursey and Johnson Gulf, 8/27/90, RF300-10036, RF300-11455

The Office of Hearings and Appeals (OHA) granted two Applications for Refund submitted on behalf of Bursey and Johnson Gulf by Mr. Ollie Bursey and Mr. Artis Johnson. The OHA found that Mr. Bursey and Mr. Johnson had operated the business as equal partners during a portion of the consent order period. Therefore, the refund that corresponded to this time period was split between the two parties on a 50/50 basis. However, Mr. Johnson received 100 percent of the refund for the periods that predated and postdated the existence of the partnership, as he operated the business as a sole proprietorship during these periods. The two Applications were approved under the small claims presumption of injury. The total volume considered in this Decision and Order was 3,044,214 gallons of covered petroleum products and the total sum of the refunds granted was $2,801.

Montana Sulphur & Chemical Co., 8/30/90, RF272-36050, RD272-36050

The DOE issued a Decision and Order granting in part an Application for Refund filed by Montana Sulphur & Chemical Co. (Montana) in the subpart V crude oil proceeding. A group of 28 States and two territories filed an objection to Montana's claim and a Motion for Discovery. In that Decision, the DOE determined that two of the products purchased by Montana, refinery gas and acid gas, could not form the basis for a refund in the crude oil proceeding. After examining the regulatory history and language of the Emergency Petroleum Allocation Act (EPAA), the DOE found that neither product was regulated under its provisions. The DOE granted Montana a refund of $264 based upon its purchases of eligible products. Since the determination granted only a small portion of Montana's claim, the States' submissions were dismissed.

Shell Oil Co. Koch Marketing Co., 8/31/90; RF315-9001 et al.

The DOE issued a decision and Order granting eight Applications for Refund filed by Koch Marketing Co., in the Shell

Oil Company special refund proceeding. Koch was granted a refund under the presumption of mid-level claimants. The total refund granted in the Decision was $7,963 ($6,185 principal plus $1,778 in interest).

Shupe Brothers Co., 8/29/90; RF272-5984, RD272-5984

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Shupe Brothers Company (Shupe) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. The refund granted in this Decision is $12,013. Shupe Brothers Company will be eligible for additional refunds as additional crude oil overcharge funds become available.

South African Airways, et al., 8/30/90; RF272-0244 et al., RD272-0244 et al.

Twenty-nine foreign airlines (Airlines) filed Applications for Refund from the subpart V crude oil overcharge monies based upon their purchases of non-bonded aviation fuel which their planes consumed as fuel. A group of thirty States and two Territories of the United States (collectively "the States") filed objections opposing the receipt of refunds by the Carriers, on the basis that: (i) Sales of non-bonded aviation fuel to the Airlines were price-exempt "export sales" under 10 CFR 212.53 and, as a matter of law, foreign firms cannot claim refunds since they never were intended to benefit under DOE's price control program, and (ii) as a factual matter, the Airlines were able to pass through a substantial part of increased fuel costs by virtue of regulations administered by the Civil Aeronautics Board (CAB) and therefore were not injured by crude oil overcharges. In connection with these objections, the States also filed a Motion connection with these objections, the States also filed a Motion for Discovery in each proceeding. In considering the States' objections, the DOE determined that: (i) Sales of non-bonded aviation fuel were specifically excluded from the "export sales" exemption under 10 CFR 212.53(c), and the Airlines were not disqualified from receiving refunds simply because of their foreign status, and (ii) the CAB regulations cited by the States did not constitute a means of automatically passing through increased fuel costs; nor had the States established that the Airlines systematically passed through increased fuel costs as a matter of industry practice. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to the Airlines' refund claims. Accordingly, the Airlines' Applications for Refund were approved and the States' Motions for Discovery were denied. The total of the refunds granted in this decision is $3,692,961.

Southwestern Bell Telephone Co., 8/29/90; RF272-18896

The DOE issued a Decision and Order concerning an Application for Refund filed in the crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claim was meritorious and granted a refund of $100,968. The DOE denied the States' Objections, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applicant was injured by the crude oil overcharges.

Starr Transit Co., Inc.; Acustar; Standard Properties; Great Coastal Express, Inc., 8/27/90; RF272-61995, RF272-74164, RF272-74876, RF272-76487

The Department of Energy issued a Decision and Order concerning four Applications for Refund submitted by firms that purchased refined petroleum products during the period August 19, 1973, through January 27, 1981. The four applicants requested refunds based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). In this Decision, it was determined that in each case either the applicant firm or an affiliated firm was granted a refund from the Surface Transporters Escrow, thereby precluding the applicant firm from eligibility for a subpart V crude oil refund. Thus, the four firms considered in this Decision are ineligible for subpart V crude oil refunds and the Applications for Refund were dismissed.

Texaco Inc./Al's Texaco, 8/28/90; RF321-738, RF321-5992

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding by Al's Texaco. Since the initial application was signed prior to the issuance of the Decision and Order implementing refund procedures for the Texaco proceeding, the applicant was required by that Decision to recertify its application. The applicant filed a recertification on April 5, 1990. Two months later it filed another application, in which it certified that it had filed only one refund application in the Texaco proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Callahan's Texaco, 8/29/90; RF321-2966, RF321-8408

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Callahan's Texaco. The applicant filed two Texaco refund applications for the same purchases. In both applications, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco Proceeding. In view of the false certification, the DOE determined that both refund applications should be denied.

Texaco Inc./Dixon's Texaco, 8/28/90, RF321-976, RF321-8420

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Dixon's Texaco. The Applications were denied because one of the claims contained a false certification.

Texaco Inc./John F. Barrett et al., 8/30/90, RF321-2761 et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is greater than $10,000 or an end-user. In lieu of making a detailed showing of injury to receive its full allocable share, each reseller applicant elected to limit its claim to $10,000 or 50 percent of its allocable share, whichever is greater. The total of the refunds granted in this Decision is $218,342 ($185,933 principal plus $32,409 interest).

Texaco Inc./Keitzer Texaco Warren's Texaco 8/28/90; RF321-4764, RF321-4765, RF321-5575, RF321-5576

The DOE issued a Decision and Order denying duplicate refund applications in the Texaco Inc.subpart V special refund proceeding on behalf of Keizer Texaco and Warren's Texaco. In the duplicate filings, the applicant certified that it had only filed one refund application in the Texaco proceeding. In view of these

false certifications, the DOE determined that the applications should be denied.

Texaco Inc./Labadie Oil Co., et al. 8/27/90, RF321-2428 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Texaco Inc. special refund proceeding. Each firm purchased directly from Texaco and was a reseller of Texaco products. Each firm's allocable share exceeds $10,000. In lieu of making an injury showing to receive its full allocable share, each applicant elected to accept the larger of $10,000 or 50 percent of its allocable share up to 50,000. The sum of the refunds granted in this Decision is $254,787 ($216,970 principal and $37,817 interest).

Texaco Inc./Mac's Texaco Super Service et al., 8/27/90, RF321-2800 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is less than $10,000 or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The total refund amount granted in this Decision is $150,311 ($127,997 principal plus $22,314 interest).

Wm. Mueller & Sons Inc. Azzarelli Construction Co., 8/29/90, RF272-12681, RF272-12819

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Wm. Meuller & Sons Inc. and Azzarelli Construction Company based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed pleadings objecting to and commenting on the applications. The States submitted affidavits by an economist stating that the applicants were able to pass through crude oil overcharges to their customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive refunds. The sum of the refunds granted in this Decision is $28,775. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Buckhart Sand & Gravel Co. Inc., Big River Industries, Inc.	RF272-24972 ... RF272-28040 ...	8/29/90
Exxon Corp./Bowater Carolina Company, Waterman Steamship Corp.	RF307-8722..... RF307-9215.....	8/29/90
Pickett Cooperative et al.	RF272-60242 ...	8/30/90
Vernon Manor Section 1 et al.	RF272-60058 ...	8/30/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Beach Plaza Shell	RF315-9607
Bellemeade Shell	RF315-9966
Camden County Board of Chosen Freeholders.	RF272-75679
Corner Grocery	RF300-7626
Dan Mar Enterprises	RF307-9856
Dan's Mission Exxon	RF307-9857
Franc Pajek Company	LFA-0065
Koch Marketing Co	RF315-8953 thru RF315-9967
McKee's Texaco	RF321-5968
Mike's Texaco	RF321-3430
Miller Gulf Service	RF300-7277
Stormer Shell	RF315-9605
Town of Dobbins Heights	RF272-60019
Wingate Shell	RF315-9553

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: October 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-24484 Filed 10-16-90; 8:45 am]

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Issuance of Decisions and Orders; Week of September 3 Through September 7, 1990

During the week of September 3 through September 7, 1990, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

City of Bellevue, 9/6/90;RRF272-57

The Department of Energy issued a Decision and Order regarding a Motion for Reconsideration filed in the crude oil proceeding by the City of Bellevue, Washington, (Bellevue), an end-user of petroleum products. The OHA had received two Applications for Refund filed by the City of Bellevue (Case Nos. RF272-15087 and RF272-69864). On January 17, 1990, the OHA dismissed one of these Applications for Refund (Case No. RF272-69864) as a duplicate. In its Motion for Reconsideration, Bellevue explained that the Application for Refund that was dismissed was not a duplicate. In this decision, Bellevue was granted a refund in the amount of $469 using the end-use presumption of injury.

Gulf Oil Corp./AP Propane, Inc., 9/4/90, RF300-9625

The Department of Energy issued a Decision and Order regarding an Application for Refund filed in the Gulf Oil Corporation special refund proceeding by AP Propane, Inc. UGI Corporation, an affiliate of AP Propane, Inc., already received a refund in the Gulf proceeding based upon a presumption of injury because it was a public utility. The DOE held that AP Propane, Inc. was nevertheless eligible to receive a refund based upon the reseller presumption of injury. The total amount of the refund granted to AP Propane, Inc. including interest, is $22,424.

Shell Oil Co./Westfield Fuel Co., Inc., 9/4/90, RF315-10038

The DOE issued a Supplemental Order which corrected the refund and purchase volume granted to Westfield Shell in an August 1, 1990, Decision and Order. *Shell Oil Company/Graymount Standard et al.* The purchase volume of Westfield Shell should have been listed as 2,277,797 gallons, and Westfield Shell should receive a total refund of $658 (comprised of $515 in principal and $143 in interest).

Texaco Inc./Ellis Robertson Corp., West St. Texas, 9/7/90; RF321-6398, RF321-9310

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by one applicant under the names Ellis Robertson Corp. and West St. Texaco. In both applications, the applicant certified that it had filed only one refund application in the Texaco refund proceeding. In view of the false certification, the DOE determined that

both refund applications should be denied.

Texaco Inc./Gandy Oil Co. et al., 9/7/90; RF321-2420 et al.

The DOE issued a Decision and Order concerning 22 Applications for Refund filed in the Texaco, Inc. special refund proceeding. Each of the applicants purchased product directly from Texaco and was a reseller whose allocable share is less than $10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $68,969 ($58,730 principal and $10,239 interest).

Texaco Inc./Interstate Texaco, 9/7/90; RF321-1076, RF321, 6029, RF321-6526

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Texaco, Inc. special refund proceeding by Interstate Texaco. The applicant filed three refund applications for the same Texaco purchases. In each application, the applicant certified that it had filed or authorized the filing of only one refund application in the Texaco refund proceeding. In view of the false certifications, the DOE determined that all three refund applications should be denied.

Texaco Inc./Jack Lane Texaco et al., 9/5/90; RF321-1910 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Texaco, Inc. subpart V special refund proceeding. Each applicant purchased product directly from Texaco and was a reseller whose allocable share is less than $10,000 or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The total of the refunds granted in this Decision is $39,715 ($33,821 principal plus $5,894 interest).

Texaco Inc./Jim's Texaco, 9/6/90; RF321-1104, RF321-5741, RF321-5940

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Texaco, Inc. special refund proceeding by Jim's Texaco. The initial application was filed on March 9, 1990. Since it was signed prior to the issuance of the Decision and Order implementing refund procedures for the Texaco proceeding, and was not recertified, the DOE determined that this application should be dismissed. The applicant filed a second application on May 24, 1990 and one week later filed a third application, in which he certified that he had filed only one refund application in the Texaco proceeding. In view of this false certification, the DOE determined that the second and third refund applications should be denied.

Texaco Inc./Langer's Texaco, 9/6/90, RF321-581, RF321-8406

The DOE issued a Decision and Order denying duplicate refund applications filed in the Texaco Inc. special refund proceeding by Langer's Texaco. The applications were denied because one of the claims contained a false certification.

Texaco Inc./Sumter County School Board et al., 9/7/90, RF321-3000 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Texaco, Inc. special refund proceeding. Each of the applicants purchased product directly from Texaco and was either an end-user or a reseller whose allocable share is less than $10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $135,230 ($115,159 principal and $20,071 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Case Name	Case No.	Date
Atlantic Richfield Co./Dillsburg Grain & Milling Co. *et al.*	RF304-4471	9/6/90
Atlantic Richfield Co./Paul J. Martin, Inc. *et al.*	RF304-2720	9/6/90
Atlantic Richfield Co./Pat ARCO *et al.*	RF304-6149	9/5/90
Gulf Oil Corp./Coy Nutt Gulf Station, Coy W. Nutt's Southside Gulf, West Main Gulf.	RF300-11780, RF300-11781, RF300-11782	9/7/90
Gulf Oil Corp./ Jaudon's Gulf *et al.*	RF300-8948	9/6/90
Gulf Oil Corp./Wright Industries, Inc.	RF300-5252	9/4/90
Shell Oil Co./Indiana Harbor Belt Railroad *et al.*	RF315-3568	9/7/90
Texaco Inc./Belmont Texaco.	RF321-807, RF321-8683	9/7/90
Texaco Inc./Craig's Texaco Service.	RF321-34, RF321-6098	9/7/90
Texaco Inc./Stan's Service.	RF321-538, RF321-4497	9/7/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Airport Texaco Service	RF321-6333
Borough of Plum	RF304-3325
D.N. Kelley & Son, Inc.	RF321-6761
Floyd Dickerson	RF304-11432
G.R. Sorber & Sons, Inc.	RF304-4499
Harrison County Road Dept.	RF321-5172
Heskett Texaco Service Station.	RF321-370
John's Gulf Service	RF300-10936
Joshua C. King	RF304-10461
Odom's Texaco	RF321-5930
Pitt's Gulf	RF300-10005
Rocky Hill Oil Service	RF321-6827, RF321-7098
Sunset Fuel Co.	RF304-10565
Tom's Service Center	RF321-8450
Trooper Heat & Fuel Co., Inc.	RF304-4505
Westside Texaco	RF321-1267
Woodlawn Texaco	RF321-1294

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., Washingon, 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: October 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-24483 Filed 10-16-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 11, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on

this information collection should contact Bruce McConnell. Office of management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0019.

Title: Application for Radio Station License or Modification Thereof Under part 23 or 25.

Form Number: FCC Form 403.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion.

Estimated annual burden: 6,000 responses: 5 hours average burden per response; 30,000 hours total annual burden.

Needs and Uses: The FCC 403 form is used to license the operations of all transmit/receive and receive-only satellite earth station facilities in the Domestic Fixed-Satellite Service (part 25) and the International Fixed Public Radiocommunication Service (part 23). It is also used to make certain minor changes in the existing operations of earth stations. The form is used by FCC staff to determine the applicant's eligibility to operate earth station facilities and to receive requested modifications to earth station facilities

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-24414 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

Meeting of the Systems Subcommittee of the FCC Advisory Committee on Advanced Television Service

October 11, 1990.

The eleventh meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service is being rescheduled. It will be held on November 6, 1990 at 10 a.m., 6th floor, PBS Building, 1320 Braddock Place, Alexandria, Virginia.

The agenda for the meeting will consist of:

1. Introductory Remarks.
2. Approval of Agenda.
3. Approval of Minutes from 21 June 1990 Meeting.
4. Status of Open Action Items from the Previous Meeting.
5. Report of CCIR IWP 11/9 Meeting in Tokyo.
6. Report on Status of Subjective Test Materials.
7. Report by Working Party 1 (Systems Analysis).
   A. Status of Technical Analysis of Systems.
8. Report by Working Party 2 (System Evaluation and Testing).
   A. Report on Test Procedures Plans.
   B. Status of Laboratories.
   —Status of Format Converter.
9. Report by Working Party 3 (Economic Assessment).
10. Report by Working Party 4 (System Standard).
11. Open Discussion.
12. Next Meeting.

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding this meeting should be directed to Bruce Franca at (202) 632-7060.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-24342 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

Maines Broadcasting Co., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, City and State	File No.	MM docket No.
I		
A. Maines Broadcasting Company; Saginaw, MI.	BPH-880825MN	90-422
B. Saginaw Bay Broadcasting, Inc.; Saginaw, MI.	BPH-880825MZ	.....
C. Thomas M. Eells; Saginaw, MI.	BPH-880825NO	.....
D. Hicks Broadcasting Corporation; Saginaw, MI.	BPH-880825NS	.....
Issue Heading and Applicant 1. Air Hazard, C and D 2. Comparative, All applicants 3. Ultimate, All applicants		
II		
A. North Country Broadcasting; Malone, NY.	BPH-881116MA	90-425
B. Lila Lou Couturier; Malone, NY.	BPH-881116MB	.....
C. Malone FM, Inc.; Malone, NY.	BPH-881117MA	.....
Issue Heading and Applicant(s) 1. See Apendix, C 2. Air Hazard, B,C 3. Comparative, A,B,C 4. Ultimate, A,B,C		
III		
A. Joseph R. Soucise & Benjamin L. Mevorach, A General Partnership; North Windham, ME.	BPH-890119MI	90-426
B. Etta M. Dodge; North Windham, ME.	BPH-890119MJ	.....
C. Sebago Broadcasting Company; North Windham, ME.	BPH-890119MS	.....
Issue Heading and Applicants 1. Air Hazard, A-C 2. Comparative, A-C 3. Ultimate, A-C		
IV		
A. Marion Radio Corporation; Barrackville, WV.	BPH-881208MH	90-419
B. T.C. Monte, Inc.; Barrackville, WV.	BPH-881208MI	.....
C. Rosemary C. Fantasia; Barrackville, WV.	BPH-881208ML	.....
D. Roger F. Weigle; Barrackville, WV.	BPH-881208MM	.....
Issue Heading and Applicants 1. Comparative, ALL 2. Ultimate, ALL		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor,

International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

Appendix (Malone, New York)

1. To determine whether Thomas L. Root, son of Joanne Root, is an undisclosed party-in-interest in Malone FM's application, and if so, what effect that has on its basic qualifications to be a Commission licensee.

[FR Doc. 90-24344 Filed 10-16-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0009.

Title: Disaster Assistance Registration/Application; Receptionist Screening Form.

Abstract: The Federal Emergency Management Agency (FEMA) uses FEMA Form 90-69, Disaster Assistance Registration/Application (English version) and FEMA Form 90-69A, Disaster Assistance Registration/Application (Spanish version) only in Presidentially declared major disasters to register individuals for disaster assistance. Respondents are individuals, families, businesses, or non-profit organizations. Agency interviews complete the application from by noting oral responses from applicants, who apply for recovery assistance.

The Receptionist Screening Form is used to obtain preliminary information needed to determine whether the disaster victim has limited or extensive needs. Those disaster victims with limited needs are referred directly to the agency providing benefits to meet those needs. Those with extensive needs complete FEMA Form 90-69 or 90-60A to initiate the eligibility determination process for the Disaster Housing Assistance program (administered by FEMA) and the Individual and Family Grant program (administrated by the States under FEMA regulations). These froms are currently undergoing automation for direct computer entry.

Type of Respondents: Individuals and households, Farms, Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 136,000.

Number of Respondents: 408,000.

Estimated Average Burden Hours per Response: 20 Minutes.

Frequency of Response: Information is collected only in Presidentially declared major disasters.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: October 5, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-24478 Filed 10-16-90; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0039.

Title: Recertification for Continued Assistance.

Abstract: The Disaster Relief Act of 1974 (Public Law 93-288) as amended by the Robert T. Stafford Act (Pub. L. 100-707) authorizes the President to provide Temporary Housing Assistance to or on behalf of individuals and families who from the results of receiving the initial temporary housing assistance have requested continued housing assistance. Continued housing assistance is based upon need and proof by the occupant that the initial assistance was used for the purposes intended by law.

FEMA Form 90-71, Recertification for Continued Assistance, is the form FEMA uses to document information provided by the occupant concerning their relocation efforts and needs for continued assistance. This documentation supports decisions regarding continuation or termination of assistance. This form is completed either by the occupant or a FEMA representative.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 167 Hours.

Number of Respondents: 1,000.

Estimated Average Burden Hours per Response: 10 Minutes.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: October 10, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-24479 Filed 10-16-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 90-26]

General Steamship Corp., Ltd., et al. v. City of Long Beach Harbor Department; Filing of Complaint and Assignment

Notice is given that a complaint was served October 11, 1990, which complaint was filed by General Steamship Corporation, Ltd.; Interocean Steamship Corporation; Kerr Steamship Company, Inc.; Transmarine Navigation Corporation; Williams Dimond & Co.; Atlantic Container Line; Blue Star Line Ltd.; Columbus Line; d'Amico Line; EAC Lines; Evergreen Line; French Line (CGM); Grancolombiana Line; Hanjin Container Lines; Hapag-Lloyd A.G.; Hyundai Merchant Marine (USA), Inc.; Italian Line; "K" Line; Maersk Line; Mexican Line; Mitsui O.S.K. Lines; Naviera Interamericana "Navicana"; Nedlloyd Lines; Neptune Orient Line; Norsk Pacific Steamship Co.; NYK Line; OOCL (USA), Inc.; Polynesia Line; Senator Line; Shinwa Line; Showa Line; Splosna Plovba; Star Shipping A/S; Taiwan Navigation Co.; Toko Line; Yang Ming Line; and Zim Container Service (collectively designated "Complainants") against City of Long

Beach Harbor Department ("Respondent"). Complainants allege that Respondent has violated sections 10 (d)(1), and (b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1709 (d)(1) and (b)(12), by instituting and enforcing procedures for identifying and collecting damages to berthing premises and by reinstituting vicarious liability upon agents for physical loss and damage claims in breach of the settlement agreement and in violation of the Commission's final order approving said settlement agreement in Commission Docket No. 83-48.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 11, 1991, and the final decision of the Commission shall be issued by February 10, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 90-24361 Filed 10-16-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10 a.m., October 30, 1990.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open

Matters to be considered: Approval of the minutes of the July 10, 1990, meeting; report of the Executive Director on the status of the Thrift Savings Plan; changes in, and distribution of, new Thrift Savings Plan materials; status of Voice Response System (VRS); status of implementation of new legislation and regulations; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Dated: October 12, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90-24476 Filed 10-16-90; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-27]

Fourth List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS), and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for ATSDR (of DHHS) and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Section 104(i)(2) of CERCLA (42 U.S.C. 9604(i)(2) requires the two agencies to prepare a list of at least 100 hazardous substances most commonly found at NPL sites or facilities that pose the most significant potential threat to human health (52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (54 FR 43615, October 26, 1990).

This notice contains the required list of 25 additional substances and provides a summary of the procedure used to generate this list. The ATSDR is developing a data base containing additional information on the frequency of occurrence of substances at NPL sites and potential for human exposure at these sites. The agencies intend to revise the algorithm used in the ranking activity in order to incorporate new information. The lists of hazardous substances will be reevaluated using the revised algorithm and the substances will be re-ranked if appropriate. Upon completion, the list that results from this evaluation will be published in the **Federal Register.**

ADDRESSES: Comments on this notice should bear the docket control number [ATSDR-27], and should be submitted to:

ATSDR, Division of Toxicology, Mail Stop E-29, 1600 Clifton Rd., NE., Atlanta, GA 30333.

All comments will be placed in a publicly accessible docket; therefore please do not send confidential business information.

FOR FURTHER INFORMATION CONTACT: The Division of Toxicology, ATSDR, Atlanta, GA 404-639-6000 or FTS 236-6000.

LIST OF SUBSTANCES: The following newly listed 25 hazardous substances are shown in the order of their Chemical Abstract Service (CAS) numbers.

CAS Number	Name of compound (Synonym)
50-31-7	Trichlorobenzene.
71-36-3	1-Butanol (n-Butyl alcohol).
77-73-6	Dicyclopentadiene.
87-61-6	1,2,3-Trichlorobenzene.
88-85-7	2-sec-Butyl-4,6-dinitrophenol (Dinoseb).
95-94-3	1,2,4,5-Tetrachlorobenzene.
98-82-8	1-(methylethyl)-benzene (Cumene).
99-65-0	1,3-Dinitrobenzene.
99-99-0	4-Nitrotoluene.
00-44-7	Benzyl chlordie.
103-65-1	n-Propyl benzene.
106-48-9	4-Chlorophenol.
107-92-6	Butanoic acid (Butyric acid).
108-60-1	Bis(2-chloro-1-methylethyl) ether.
109-06-8	2-Methylpyridine.
110-00-9	Furan.
121-69-7	Dimethyl aniline (N,N-Dimethylaniline).
123-86-4	n-Butyl acetate (Acetic acid, butyl ester).
141-78-6	Ethyl acetate (Acetic acid, ethyl ester).
622-97-9	p-Methyl styrene.
637-50-3	Propenyl benzene.
3268-87-9	Octachlorodibenzo-p-dioxin.
7647-10-0	Hydrochloric acid.
7664-38-2	Phosphoric acid.
39638-32-9	Bis(2-chloroisoprophyl) ether.

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(i) of CERCLA (42 U.S.C. 9604(i)), as amended, requires the preparation of: (1) A list of hazardous substances found at NPL sites (in order

of priority, (2) toxicological profiles of those substance, and (3) the initiation of a research program to fill data gaps associated with the substances.

A priority list of the first 100 substances was published (52 FR 12866, April 17, 1987), with a short summary of the procedure used by ATSDR and EPA to compile the list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites, and announced the intention to refine the listing process in response to these comments and ongoing efforts by the agencies to improve the listing process.

A second priority list of 100 additional substances was published (53 FR 41280, October 20, 1988). At that time, the procedure used to prepare the second priority list was summarized.

For the most part, the same procedure was used in the activity initiated to generate the third list of 25 substances (54 FR 43615, October 26, 1989) and the fourth list of 25 substances that appears in this notice. The approach used in the activity initiated to generate the third and fourth lists is summarized below.

ATSDR and EPA solicit public comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. ATSDR and EPA will continue to seek improvements in the listing process as future revisions of the list are prepared. All comments previously received are in the public file for this notice. A more detailed description of the revised listing methodology is contained in support documents which have been placed in the public file and are available for public review (see unit V of this notice).

II. Review of Methodology for Selecting Substances on the First List

A. General Approach for the First List

To obtain the first list of 100 hazardous substances, ATSDR and EPA defined a subset of the 717 hazardous substances which formed the CERCLA list (under section 102 of CERCLA). The subset was defined as those hazardous substances which EPA has identified at National Priorities List (NPL) sites. To rank the substances within this subset, three criteria were considered: (1) Toxicity, (2) frequency of occurrence at NPL sites or facilities, and (3) potential for human exposure. These criteria reflect the requirements of section 104(i)(2) of CERCLA (42 U.S.C. 9604(i)(2)). To develop a detailed ranking system employing these criteria, ATSDR and EPA first reviewed a number of hazard scoring systems for their applicability to the ranking criterion of toxicity. From all the approaches considered, the Reportable Quantity (RQ) scoring scheme was selected for ranking toxicity of the 100 priority substances. The RQ scoring scheme is described in several **Federal Register** documents (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987).

The second criterion used by ATSDR and EPA to prepare the first priority list of hazardous substances was the frequency of occurrence at NPL sites. Data from the Contract Laboratory Program (CLP) statistical data base was used for determining frequency of occurrence. The CLP is an EPA program which provides a range of chemical analysis services at hazardous waste sites. The CLP statistical data base represents a random, stratified sample of sites and waste samples from those sites that were analyzed under CLP Routine Analytical Services (RAS) contracts from 1980 to 1984. The data base provides information on the percentage of sites at which a substance was detected at least once in any medium (i.e., frequency of occurrence) and the average and range of concentration for each medium or matrix (e.g., soil, ground water, drums).

The third criterion used to prepare the first priority list of hazardous substances was the potential for human exposure. ATSDR and EPA evaluated various sources of data associated with this criterion, and selected the CLP survey data to derive a rough estimate of potential for human exposure to hazardous substances at NPL sites. Three types of exposure-related data from the CLP survey were used: the average concentration of the candidate substances detected in ground water and surface water across the 358 NPL sites included in the CLP survey; the frequency detection of those substances in ground water and surface water across the 358 sites; and whether the substances has been selected for detailed exposure and risk assessment at Superfund Remedial sites.

B. Generation of the First List

Using the ranking factors described above, as well as some minor criteria, ATSDR and EPA developed an algorithm incorporating these criteria to calculate a hazard index value for each candidate substance. This algorithm served as the basis for generating the rank of the first 100 substances.

The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites based on the site percent data from the CLP survey. The agencies divided the site percent data value for each substance (representing frequency of occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices. The agencies then calculated an exposure index for each substance by ranking them based on the three exposure-related factors (with each factor receiving equal weight). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

For purposes of assessing hazardous substances in toxicity profiles, ATSDR and EPA combined some of the candidate substances into groups. If substances are stereoisomers of one another, are readily metabolized to other substances on the list, or generally are characterized as mixtures with respect to toxicity and/or frequency of occurrence, they were grouped together and occupy only one position on the priority list. Examples of these types of substances include: heptachlor and heptachlor epoxide; endrin and endrin aldehyde; and PCBs.

III. Methodology for Selecting Substances on the Second, Third, and Fourth Lists

A. Bases for Improvements in Methodology for Selecting Substances

After publication of the first priority list of hazardous substances, ATSDR and EPA solicited public comment and conducted critical reviews of the above-described prioritizing method in order to identify potential improvements. The procedure used to generate the second 100 substances was a modified version of that used to rank the first 100. The modifications reflect an effort to: (1) Improve data acquisition for data-poor substances of the second list, and (2) adapt the method to data sources that provide a more complete description of exposure to substances found at NPL sites. The ranking algorithm used to generate the third and fourth lists is the same version as that used for the second list. However, several new sources of exposure and frequency of occurrence data were used as inputs for the algorithm.

B. Determination of the Frequency of Occurrence Criterion of the Ranking Methodology

In the procedure for selection of the first 100 priority substances, the number of NPL sites at which a substance is found was estimated from the CLP statistical data base. For selection of the second 100 priority substances, two additional estimates of frequency of occurrence were employed, the NPL technical (NPLt) data base, and the CLP Special Analytical Services (SAS) data base. For the development of the third and fourth lists, the View data base (described below) was substituted for NPLt, and the CLP Analytical Results data base (CARD) was added to supplement the CLP statistical data base (described above). The View, CARD, and SAS data bases are described below.

The View data base has been developed by ATSDR's Exposure and Disease Registry Branch (EDRB) for use in selecting sites for Exposure Registry development. View is built upon EPA's NPLt data base supplemented with information from ATSDR Health Assessment and Health Consultation documents. View currently contains updated verified frequency of occurrence data for all of the 1,177 NPL sites. The View data base was used as a replacement for the NPLt data base as a source of frequency of occurrence data for the algorithm.

CARD contains information generated by recent CLP Routine Analytical Services (RAS) contracts. Only CARD data from NPL sites was used as a source of frequency of occurrence data for the algorithm.

The final source of additional information used to estimate frequency of occurrence was the SAS data base. This data base contains information on the occurrence of substances which do not appear in the CLP statistical data base for methodological reasons. Most of the information in the CLP statistical data base is obtained under the RAS program, in which samples submitted for analysis are screened for certain target chemicals; additional substances are then determined by matching their mass spectra to known standards. A request for determination of a substance under SAS may occur when there is reason to believe that a specific hazardous compound is present in a sample at a concentration below the detection limit of the RAS, or when there is reason to believe that a specific hazardous substance which is not a target substance may be present in a sample.

The SAS data files were examined to identify substances with five or more requests for SAS which are not present in the CLP statistical data base. Those substances were then examined further to determine the number of NPL sites at which the substance had actually been detected. This number was then divided by the total number of NPL sites to obtain a site percent frequency.

The overall site percent value used for a particular substance was the highest of the CLP statistical data base site percent (as determined by either RAS or SAS data), the View data base site percent, and the CARD site percent.

C. Determination of the Exposure Component of the Ranking Methodology

For the preparation of the second list, ATSDR and EPA expanded the bases for evaluating the potential for human exposure to the priority substances in two ways: (1) By considering the air and soil as additional routes of potential exposure, and (2) by considering additional data bases reflecting the potential for human exposure to the substances.

The potential for exposure to candidate substances through soil was considered by incorporating data on soil concentrations from the CLP statistical data base in the calculation of an exposure index for each substance. To estimate the potential for air exposure, ATSDR and EPA used an indirect method, since no data are readily available on actual air concentrations of the candidate substances at NPL sites. Retention time on a gas chromatography column was used to estimate the potential for air migration since these values correlate positively with boiling point, which in turn correlates negatively with volatility. For the development of the third and fourth lists, the agencies used boiling points as a correlate of potential for air migration because they were more readily available for the substances to be ranked. The potential for air exposure was included in the calculation of an overall exposure index.

Exposure potential also was represented in the second 100 ranking procedure through the incorporation of eight separate data sources. The data sources used were:

CLP statistical data base (CLPs)
NPL Technical data base (NPLt)
National Human Adipose Tissue Survey (NHATS)
Department of Transportation Hazardous Materials Information System (DOT/HMIS)
Acute Hazardous Events data base (AHE)
National Response Center data base (NRC)
Removal Tracking System data base (RTC)
NEXIS

This source list was modified for the development of the third and fourth lists to exclude NPLt and include the following additional sources:

CLP Analytical Results data bae (CARD)
View data base
Toxic Release Inventory (TRI)

Information from these sources was incorporated in one of two ways: (1) As part of the water, soil and air exposure potential rank (boiling point, and CARD and CLP concentration data) or (2) as a weighting factor applied to the overall exposure rank (NHATS, DOT/HMIS, AHE, NRC, NEXIS, RTS, TRI). When no NPL site soil or water concentration data were available to determine the exposure potential rank, information on frequency of occurrence at sites was used as an alternate. The ten data bases used to estimate exposure potential in the activity initiated to generate the third and fourth lists are described below.

CLP Statistical Data Base

The CLPs contains data on the frequency of occurrence and media concentration of chemicals found at NPL and other hazardous waste sites. The data base was derived from CLP Routine Analytical Service (RAS) analyses and contains concentrations of specific chemicals found in soil, ground water, and surface water from a subset of the total NPL sites. Only the information from NPL sites was used to estimate exposure potential in the activity initiated to generate the third and fourth lists.

National Human Adipose Tissue Survey

The NHATS data base contains chemical analysis data of human adipose tissue collected from individuals in hospitals across the United States. Information is avaiable for 372 substances, derived from 800 individual adipose tissue samples that were pooled into 46 composite samples (approximately 17 individual samples per composite). This data base gives some indication of the degree to which the population of the United States has been exposed to the substances detected. The ATSDR and EPA considered occurrence of a substance in human tissue to be an indication of potential for significant human exposure, and therefore assigned greater weight to the exposure index for such substances.

Department of Transportation Hazardous Materials Information System

The DOT/HMIS data base contains information concerning accidental release of hazardous substances during transportation. A written report must be

submitted to HMIS within 15 days of the accidential release. The reports contain an identification of the substance released and an accounting of any injuries or fatalities resulting from the release. The ATSDR and EPA considered occurrence of a substance in the HMIS data base to be an indication of potential for significant human exposure at facilities on the NPL, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Acute Hazardous Events Data Base

The AHE data base was developed by the EPA, following the tragic release of a toxic substance in Bhopal, India, to provide information concerning sudden, accidential releases of toxic chemicals in the United States. The main purpose of the data base is to characterize the kinds of events releasing acutely toxic substances, the substances involved, and the causative factors leading to their release. The ATSDR and EPA considered occurrence of a substance in the AHE data base to be an indication of potential for significant human exposure at facilities on the NPL; therefore, ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

National Response Center Data Base

The NRC data base contains information concerning hazardous substance releases exceeding the RQ, pipeline failures and certain transportation incidents involving hazardous substances, and certain releases of toxic or flammable gases. ATSDR and EPA considered the occurrence of a candidate substance in this data base for any releases that resulted in death, injury, or evacuation, to be an indication of potential for significant human exposure at facilities on the NPL. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the NRC.

Removal Tracking System Data Base

The RTS data base describes activities undertaken to clean up a site under the Superfund removal program. It lists the materials of concern that triggered a removal action and frequently lists other major contaminants being addressed at a site. ATSDR and EPA considered that the occurrence of a candidate substance in this data base indicates potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the RTS.

NEXIS

The NEXIS information system contains full-text articles reporting the release of toxic substances in over 125 newspapers, newsletters, and wire services. ATSDR and EPA considered the reporting in this data base of release of a candidate substance which led to human death, injury, or evacuation, to be a significant indicator of potential for significant human exposure at facilities on the NPL. Consequently, the agencies increased the weight of the exposure index for any such substance.

CLP Analytical Results Data Base

The CARD contains soil and water monitoring information generated by all CLP RAS contracts starting on or after January 1, 1988. Substance geometric mean soil and water concentration data from NPL sites in CARD was used to estimate exposure potential for development of the third and fourth lists.

View Data Base

The View data base is built upon EPA's NPLt data base supplemented with information from ATSDR Health Assessment and Health Consultation documents. View currently contains updated verified frequency of occurrence data for all of the 1,177 NPL sites.

Toxic Release Inventory

Section 313 of the Emergency Planning and Community Right-To-Know Act (also known as SARA title III) requires EPA to establish a computerized national data base of toxic chemical emissions from manufacturing facilities throughout the United States. This Toxic Release Inventory is a composite of over 70,000 submissions of toxic release inventory reports filed on section 313 chemicals. Industry is required to submit these forms annually to EPA and the states. The data currently available represent releases in 1987. Information in the data base includes quantitative estimates of releases to air, water, and soil, facility information including storage data, and waste treatment data. Reported release in the TRI data base were used to weight the exposure index for candidate substances.

D. Determination of the Toxicity Component of the Ranking Methodology

ATSDR and EPA decided to continue to use the Reportable Quantity (RQ) approach as a hazard scoring system, for the same reasons that guided its choice for the first and second priority list of hazardous substances. This approach provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the agencies.

The reportable quantity ranking scheme was developed by EPA to set RQs for hazardous substances as required by CERCLA. Each RQ category corresponds to a weight, in pounds, for which releases must be reported to the Coast Guard's NRC. Section 103 of CERCLA (42 U.S.C. 9603) requires immediate notification from any person in charge of a vessel or an offshore or onshore facility that releases an amount of a hazardous substance equal to or greater than its RQ. RQs are developed for individual chemicals and waste streams that have already been designed under CERCLA as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five RQ categories based on chronic toxicity, acute toxicity, carcinogenicity, acquatic toxicity, and ignitability and reactivity. RQs are determined for each criterion separately, and the lowest of these is selected as the RQ for the substance. Only values for acute and chronic mammalian toxicity or carcinogenicity were considered for developing the third and fourth lists of 25 hazardous substances.

Some of the candidate hazardous substances have not yet been assigned RQ values. In these cases, the ATSDR and EPA used the expertise of EPA's Office of Toxic Substances (OTS) to evaluate the potential health hazards associated with new chemicals submitted to the Premanufacture Notice Program. OTS employs a panel of toxicologists to assign a level of concern for the potential for toxicity, based upon the available experimental data, physical-chemical properties, toxicities of analogous substances, and toxicities of possible metabolites of the substance, or the substance, or of substances analogous to possible metabolites. On this basis, the level of concern for potential toxicity was adjusted to a five-point scale to coincide with the five-point RQ scale. This value was then used to represent the RQ value in the ranking algorithm.

IV. Generation of the Third and Fourth Lists

The ATSDR and the EPA generated an algorithm to rank the hazard potential of each candiate substance. The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites by means of the View data base, the CARD, the CLPSD or the SAS data base. The agencies divided the site percent value for each substance

(representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices, then calculated an exposure potential index for each substance. This index was based upon water concentration, soil concentration, and the boiling point of each substance, or frequency of occurrence (if no other information was available). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each candidate substance. The activity resulted in the ranking of substances; substances in the third and fourth lists were selected from this ranking. The fourth list of substances is composed of the 25 previously unlisted substances which have the highest hazard potential based on their hazard indices.

The algorithm for calculating the hazard index is described in greater detail in the support document of this notice, which is contained in the public file.

V. Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR-27 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, GA.

For the Agency for Toxic Substances and Disease Registry.

Dated: September 27, 1990.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

For the Environmental Protection Agency

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 90-24362 Filed 10-16-90; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0271]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Pevely Dairy Co. to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been used to Pevely Dairy Co., 1001 South Grand Blvd., St. Louis, MO 63104-1084.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 8 grams to 2 grams, and (2) sufficient vitamin A palmitate is added to ensure that 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 21,980 cases, containing 16 one-quart (1946-milliliter) containers each, of the test product. The test product is to be manufactured at Pevely Dairy Co., 1001 South Grand Blvd., St. Louis, MO 63104, Plant No. 29-498, and will be distributed in St. Louis, MO, eastern Missouri, Illinois, Indiana, Kentucky, and Tennessee.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 15, 1991.

Dated: October 5, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-24411 Filed 10-16-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Anti-Infective Drugs Advisory Committee

Date, time, and place. November 1 and 2, 1990, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, November 1, 1990, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open public hearing, November 2, 1990, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695. A meeting agenda and list

of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 22, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 1, 1990, the committee will discuss various draft guidelines for antimicrobial agents prepared by the Infectious Diseases Society of America in fulfillment of its contract with FDA. Specific guidelines to be discussed include: gynecologic infections, skin and skin structure infections, bone and joint infections, urinary tract infections, surgical prophylaxis, gastrointestinal infections, central nervous system infections, respiratory tract infections, endocarditis, bacteremia, sexually transmitted diseases, intra-abdominal infections, fever in the neutropenic patient, and general microbiology.

On November 2, 1990, 9 a.m. to 12 m., the committee will discuss the draft general guidelines of the above contract. From 1 p.m. to 5 p.m., the committee will continue to discuss any of the topics from the November 1, 1990 agenda which were not previously discussed or which need further discussion.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding a pending new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General Hospital and Personal Use Devices Panel

Date, time, and place. November 30, 1990, 10:30 a.m., First Floor Conference Room, Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 4:30 p.m.; Amalie C. Mattan, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1225.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 8, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for an implanted subcutaneous intraspinal catheter.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the above PMA. This portion of the meeting will be closed to permit discussion of the information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. November 30, 1990, 8 a.m., First Floor Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 10:10 a.m.; open committee discussion, 10:25 a.m. to 11:25 a.m.; closed presentation of data, 11:25 a.m. to 11:35 a.m.; open committee discussion, 1 p.m. to 2 p.m.; closed presentation of data, 2 p.m. to 2:10 p.m.; open committee discussion, 2:25 p.m. to 3:25 p.m.; closed presentation of data, 3:25 p.m. to 3:35 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, informaton, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for a porous-metal coated total hip prosthesis, a stair climbing wheelchair, an anterior cruciate ligament augmentation device, and a bone growth stimulator.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding materials, design, and/or manufacturing information for the above mentioned PMA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing poriton. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentation by participants.

Meetings of advisory committee shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Council, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FDCA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature of disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessons to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 12, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-24560 Filed 10-15-90; 10:39 am]

BILLING CODE 4160-01-M

Public Health Service

Advisory Committee on the Food and Drug Administration

ACTION: Correction notice.

SUMMARY: The notice announcing the schedule of subcommittee meetings, printed in the August 7th **Federal Register** on page 32153, incorrectly identified the meeting time for the second meeting of the Foods, Cosmetics, and Veterinary Medicine subcommittee.

The second meeting of the Foods, Cosmetics, and Veterinary Medicine subcommittee will take place on Friday, October 26, 1990 from 8:30 a.m. to 5 p.m. The meeting is open to the public and will be held in the Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC, 20201. Public registration will begin at 8 a.m.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 245-7305.

Dated: October 11, 1990.

Eric M. Katz,

Executive Director, Advisory Committee on the Food and Drug Administration.

[FR Doc. 90-24394 Filed 10-16-90; 8:45 am]

BILLING CODE 6050-28-M

Social Security Administration

Supplemental Security Income Modernization Project; Rescheduled Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescheduled meeting.

SUMMARY: Notice is hereby given that the meeting of the Supplemental Security Income (SSI) Modernization Project (the Project) that was to be held at the Harold Washington Social Security Center, First Floor Central Auditorium, 600 West Madison, Chicago, IL 60606 on October 23 and 24, 1990, has been rescheduled. The meeting will be held at the same location, but has been rescheduled for December 4 and 5, 1990. This notice supersedes the original notice of this meeting published on September 25, 1990 at 55 FR 39214.

DATES: December 4-5, 1990, 9 a.m. to 5 p.m.

ADDRESSES: Harold Washington Social Security Center, First Floor Central Auditorium, 600 West Madison, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room

300, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3571.

SUPPLEMENTARY INFORMATION: The meeting of the SSI Modernization Project has been rescheduled. This notice supersedes the original notice of this meeting published on September 25, 1990 at 55 FR 39214.

The Social Security Administration (SSA) is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

As part of the first phase of this Project, this notice announces a public meeting that is intended to create a dialogue that provides a full examination and how well the SSI program serves the needy, aged, blind, and disabled.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and SSI applicants and recipients may speak and submit written comments on the issues to be discussed.

There will be a public comment portion of the meeting beginning in the afternoon of December 4, 1990. A second public comment session will be held on December 5, 1990, in the morning. In order to ensure that as many individuals as possible are given the opportunity to speak in the time allotted for public comment, each individual will be limited to a maximum of 10 minutes. Because of the time limitation, individuals are requested to present comments in their order of importance. A written copy of comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of each speaker's concerns, we welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Individuals unable to attend the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To request to speak, please telephone the Project Staff, at (301) 965-3571, and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; e.g., public official, representative of an organization, or citizen; and (5) time of day desired. To guarantee an opportunity to speak, requests must be received by November 30, 1990. Late requests to speak will be honored, if time permits.

A transcript of the meeting will be available on an at-cost basis. Transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: October 11, 1990.

Peter Spencer,

Executive Staff Director, SSI Modernization Project.

[FR Doc. 90-24430 Filed 10-16-90; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-919-01-4830-02-ADVB]

Northern Alaska Advisory Council; Meeting

The public meeting of BLM's Northern Alaska Advisory Council scheduled for October 24, 1990, has been cancelled and will be rescheduled. The date will be published 30 days prior to the new meeting.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

Dated: October 10, 1990.

Roger Bolstad,

Designated District Manager.

[FR Doc. 90-24450 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-JA-M

[U-61588]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-61588 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from June 1, 1990, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-61588 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-24448 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-942-01-4212-13; U-61697]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 1,164.20 acres of public land out of Federal ownership. This action will also open 1,636.81 acres of reconveyed lands to surface entry.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

SUPPLEMENTARY INFORMATION:

1. The United States has issued an exchange conveyance document to Thomas E. Flinders and Linda A. Flinders, for the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Salt Lake Meridian, Utah

T. 13 N., R. 9 W.,
  Sec. 3, Lots 1, 2, 3, and 4;
T. 14 N., R. 9 W.,
  Sec. 32, E½E½;
  Sec. 33, All;
  Sec. 34, SE¼SW¼, SE¼.
Containing 1,164.20 acres.

2. In exchange for these lands, the United States acquired the surface of the following described lands.

Salt Lake Meridian, Utah

T. 9 N., R. 15 W.,
  Sec. 13, SW¼NW¼, NW¼SW¼;
T. 10 N., R. 14 W.,
  Sec. 31, All;
T. 12 N., R. 11 W.,
  Sec. 29, All;
T. 7 N., R. 18 W.,
  Sec. 3, Lots 1, 2, S½NE¼, N½SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, SE¼.
Containing 1,636.81 acres.

3. At 7:45 a.m., on November 16, 1990, the lands described in paragraph 2 will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The purpose of this exchange was to acquire non-federal lands which have high public historical values due to the existence of the abandoned Transcontinental Railroad Grade.

James M. Parker,

State Director.

[FR Doc. 90-24449 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer listed below and the Office of Management and Budget, Paperwork Reduction Project (****-****), Washington, DC 20503; telephone 202-395-7340.

Title: Buried Pipeline Performance Survey.

OMB approval number: ****-****.

Abstract: It is essential to safety, liability, and economic considerations that information be collected from operators and owners of Reclamation-installed pipelines concerning failures encountered, service provided, and maintenance required for the various pipeline systems. The information will be used to ascertain the most reliable and economical types of pipeline for new and replacement closed conduit systems, to assist in providing adequate maintenance planning, and to ensure adequate safety precautions.

Bureau form number: none.

Frequency: One-time.

Description of respondents: Managers of Reclamation-installed pipelines.

Estimated completion time: 6 hours.

Annual Responses: 360.

Annual Burden Hours: 2160.

Bureau Clearance Officers: Mr. Antonio Alcon, Acting Chief, Publications and Records Management Branch, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado, 80225-0007, 303-236-6869; or Ms. Nancy Smith, Alternate Bureau Clearance Officer, 303-236-6476.

Dated: September 27, 1990.

Margaret W. Sibley,

Deputy Commissioner.

[FR Doc. 90-24183 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Outer Continental Shelf; Availability of Proposed Notice of Sale, Central Gulf of Mexico; Oil and Gas Lease Sale 131

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 131.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 131, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for March 1991.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: October 11, 1990.

Barry A. Williamson,

Director, Minerals Management Service.

[FR Doc. 90-24412 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATE: November 17, 1990.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESS: Public Safety Building, Room 205, 10 East Church Street, Bethlehem, PA.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Division of Park and Resource Planning, Mid-Atlantic Regional Office, National Park Service, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, 215-597-6486.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 90-24429 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places, Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 6, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluations may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written

comments should be submitted by November 1, 1990.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Jefferson County

Bear Creek Canyon Scenic Mountain Drive Denver Mountain Parks MPS), CO 74 section between Morrison and Idledale, Morrison vicinity, 90001706

Bergen Park (Denver Mountain Parks MPS), CO 74 S of I–40, Evergreen vicinity, 90001707

Colorow Point Park (Denver Mountain Parks MPS), 900 Colorow Rd., Golden vicinity, 90001712

Corwina Park O'Fallon Park, Pence Park (Denver Mountain Parks MPS), Roughly area SE of jct. of Kittredge & Myers Gulch Rds., Evergreen vicinity, 90001708

Dedisse Park (Denver Mountain Parks and Parkways MPS), 29614 Upper Bear Creek Rd., Evergreen vicinity, 90001709

Genesee Park (Denver Mountain Parks MPS), 26771 Genesee Ln., Golden vicinity, 90001710

Lariat Trail Scenic Mountain Drive (Denver Mountain Parks MPS), Lookout Mountain Rd. S of US 6 to Golden Reservoir, Golden vicinity, 90001711

Lookout Mountain Park (Denver Mountain Parks MPS), 987 1/2 Lookout Mountain Rd., Golden vicinity, 90001713

DELAWARE

New Castle County

Hersey—Duncan House, 2116 Ducan Rd., Mill Creek Hundred, Wilmington vicinity, 90001714

Naaman's Creek School, Jct. of Philadelphia Pike and Darley Rd., Brandywine Creek, Claymont, 90001715

Sussex County

Chipman Potato House (Sweet Potato Houses of Sussex County MPS), Jct of DE 465 & 465A, Laurel vicinity, 90001691

Collins Potato House (Sweet Potato Houses of Sussex County MPS), Jct of DE 509 & DE 510A, Laurel vicinity, 90001692

Dickerson Potato House (Sweet Potato Houses of Sussex County MPS), Jct of De 494 & DE 498, Delmar vicinity, 90001693

Hearn Potato House (Sweet Potato Houses of Sussex County MPS), 6 mi. N jct. of DE 74 & DE 62, Laurel vicinity, 90001694

Hitch, E. L. Potato House (Sweet Potato Houses of Sussex County MPS), Jct. of DE 460 & 489, Laurel vicinity, 90001695

Moore Potato House (Sweet Potato Houses of Sussex County MPS), SE of jct. of DE 72 and DE 463, Laurel vicinity, 90001696

Phillips Potato House (Sweet Potato Houses of Sussex County MPS), SW of jct. of DE 492 & DE 492A, Laurel vicinity, 90001697

Ralph Potato House (Sweet Potato Houses of Sussex County MPS), SE of Jct. of DE 493 & DE 494, Laurel vicinity, 90001698

Rider Potato House (Sweet Potato Houses of Sussex County MPS), SE of jct. of DE 506 & DE 505, Laurel vicinity, 90001699

Stanley Potato House (Sweet Potato Houses of Sussex County MPS), N of jct. of DE 68 & DE 451, Laurel vicinity, 90001700

West Potato House (Sweet Potato Houses of Sussex County, MPS), US 13 N of jct. with DE 454A, Delmar vicinity, 90001701

Wright Potato House (Sweet Potato House of Sussex County MPS), SW of jct. of DE 24 & DE 510, Laurel vicinity, 90001702

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Blagden Alley—Naylor Court Historic District, Bounded by O, 9th, M, and 19th Sts., Washington, 90001734

FLORIDA

Collier County

Parker House, 680 Eighty Ave. S., Maples, 90001732

IDAHO

Ada County

Capitol Boulevard Memorial Bridge, Capitol Blvd. over the Boise R., Boise, 90001717

Villeneuve, Charles and Martha, House, 7575 Moon Valley Rd., Eagle, 90001731

Bannock County

A. F. R. Building, 501 N. Main St., Pocatello, 90001737

ILLINOIS

Cook County

Oak Lawn School, 9526 S. Cook Ave., Oak Lawn, 90001725

Kendall County

Reorganized Church of Jesus Christ of Latter Day Saints, 304 S. Center Ave., Plano, 90001724

La Salle County

Ranson Water Tower, Plumb St. between Cartier & Columbus, Ransom, 90001723

Lee County

Whitney, Col. Nathan, House, 1620 Whitney Rd., Franlkin Grove vicinity, 90001726

Warren County

Patton Block Building, 88 & 90 Public Square, Monmouth, 90001727

INDIANA

Grant County

Grant County Jail and Sheriff's Residence, 215E. 3rd St., Marion, 83004526

IOWA

Clay County

Wanata State Park, (CCC Properties in Iowa State Parks MPS), S. of Jct. of Co. Rd. M27 and IA 10, Peterson vicinity, 90001677

Delaware County

Backbone State Park, Cabin—Bathing Area (Area A) (CCC Properties in Iowa State Parks MPS), Jct. of Co. Hwy. W69 & Co. Hwy. C54, Dundee vicinity, 90001681

Backbone State Park, Picnicking, Hiking & Camping Area (Area B) (CCC Properties in Iowa State Parks MPS), Jct. of Co. Hwy. W69 & Co. Hwy. C54, Dundee vicinity, 90001682

Backbone State Park, Richmond Springs (Area C) (CCC Properties in Iowa State Parks MPS), Jct. of Co. Hwy. W69 & Co. Hwy. C54, Dundee vicinity, 90001683

Dickinson County

Gull Point State Park, Area A (CCC Properties in Iowa State Parks MPS), Off IA 86 on W Shore of W Okoboji Lake, Milford vicinity, 90001661

Gull Point State Park, Area B (CCC Properties in Iowa State Parks MPS), Off IA 86 on W Shore of W Okoboji Lake, Milford vicinity, 90001662

Pikes Peak State Park (CCC Properties in Iowa State Parks MPS), W of jct. of IA 9 and US 71, Spirit Lake vicinity, 90001675

Pillsbury Point State Park (CCC Properties in Iowa State Parks MPS), Off US 71 W of Minnewashta Lake, Arnolds Park, 90001674

Trappers Bay State Park (CCC Properties in Iowa State Parks MPS), N of jct. of IA 219 & IA 9, Lake Park vicinity, 90001676

Franklin County

Beeds Lake State Park, Civilian Conservation Corps Area (CCC Properties in Iowa State Parks MPS), Jct. of IA 3 & IA 134, Hampton vicinity, 90001672

Guthrie County

Springbrook State Park, Civilian Conservation Corps Area (CCC Properties in Iowa State Parks MPS), Jct. of IA 384 & Co. Hwy. F25, Guthrie Center vicinity, 90001671

Hancock County

Pilot Knob State Park, Observation Tower (Area 2) (CCC Properties in Iowa State Parks MPS), S of Jct. of IA 9 and IA 332, Forest City vicinity, 90001686

Pilot Knob State Park, Picnic Shelter (Area 3) (CCC Properties in Iowa State Parks MPS), S of Jct. of IA 9 and IA 332, Forest City vicinity, 90001687

Pilot Knob State Park, Amphitheater (Area 4) (CCC Properties in Iowa State Parks MPS), S of Jct. of IA 9 and IA 332, Forest City vicinity, 90001688

Pilot Knob State Park, Portals (Area 5a) (CCC Properties in Iowa State Parks MPS), S of Jct. of IA 9 and IA 332, Forest City vicinity, 90001689

Pilot Knob State Park, Trail Area (Area 6a–6b) (CCC Properties in Iowa State Parks MPS), S of jct. of IA 9 and IA 332, Forest City vicinity, 90001690

Henry County

Geode State Park, Civilian Conservation Corps Area (CCC Properties in Iowa State Parks MPS), Co. Rd. X23 E of Lowell, Danvile vicinity, 90001673

Mahaska County

Lake Keomah State Park, Bathhouse—Lodge Area (Area A) (CCC Properties in Iowa State Parks MPS), Off IA 371 S of jct. with IA 92, Oskaloosa vicinity, 90001666

Lake Keonah State Park, Erosion Control Area (Area B) (CCC Properties in Iowa State Parks MPS), Off 1A 371 S of jct. with IA 92, Oskaloosa vicinity, 90001667

Sac County

Blackhawk State Park, Wildlife Preserve Area (Area A) (CCC Properties in Iowa

State Parks MPS), S of jct. of US 71 and Co. Hwy. M68, Lake View, 90001678

Blackhawk State Park, Black Hawk Preserve (Area B) (CCC Properties in Iowa State Parks MPS), S of jct. of US 71 and Co. Hwy. M68, Lake View, 90001679

Blackhawk State Park, Denison Beach Area (Area C) (CCC Properties in Iowa State Parks MPS), S of jct. of US 71 and Co. Hwy. M68, Lake View, 90001680

Van Buren County

Lacy—Keosauqua State Park, Lodge and Picnic Area (Area A) (CCC Properties in Iowa State Parks MPS), Off 1A 1 on S bank of Des Moines R., Keosaqua vicinity, 90001668

Lacey—Keosauqua State Park, Picnic and Custodial Group (Area B) (CCC Properties in Iowa State Parks MPS), Off 1A 1 on S bank of Des Moines R., Keosauqua vicinity, 90001669

Lacey—Keosauqua State Park, Bathing Area (Area C) (CCC Properties in Iowa State Parks MPS), Off IA 1 on S bank of Des Moines R., Keosauqua vicinity, 90001670

Warren County

Lake Ahquabi State Park, Picnic Area (Area A) (CCC Properties in Iowa State Parks MPS), 1650 118th Ave., Indianola vicinity, 90001663

Lake Ahquabi State Park, Bathhouse Area (Area B) (CCC Properties in Iowa State Parks MPS), 1650 118th Ave., Indian vicinity, 90001664

Lake Ahquabi State Park, Refectory Area (Area C) (CCC Properties in Iowa State Parks MPS), 1650 118th Ave., Indianola vicinity, 90001665

Webster County

Dolliver Memorial State Park, Entrance Area (Area A) (CCC Properties in Iowa State Parks MPS), N of 1A 50 on Des Moines R., Lehigh vicinity, 90001684

Dolliver Memorial State Park, Picnic, Hiking & Maintenance Area (Area B) (CCC Properties in Iowa State Parks MPS), N of 1A 50 on Des Moines R., Lehigh vicinity, 90001685

LOUISIANA

Lincoln Parish

Ruston State Bank, 107 N. Trenton St., Ruston, 90001730

Richland Parish

Rhynes, Nonnie Roark, Memorial Library, 206 S. Louisa St., Rayville, 90001736

MARYLAND

Somerset County

Rock Creek Methodist Episcopal Church, Deal Island Rd. NE of Scotts Cove, Chance, 90001718

St. Peter's Methodist Episcopal Church, Jct. of Old Crisfield—Marion Rd. & Heart's Ease Rd. Hopewell vicinity, 90001721

MASSACHUSETTS

Norfolk County

Massachusetts Fields School, Jct. of Rawson Rd. & Beach St., Quincy, 90001729

Plymouth County

Lincoln Historic District, Roughly, North & South Sts. from West to Water Sts., Main St. S to Garrison Rd. & Lincoln St. & Fearing Rd. N to Miles, Hingham, 90001728

Worcester County

First Methodist Church, 75 Walnut St., Clinton, 90001720

MICHIGAN

Ingham County

St. Mary Cathedral, 229 Seymour St., Lansing, 90001716

TEXAS

Lubbock County

Tubbs—Carlisle House, 602 Fulton Ave., Lubbock, 90001719

Val Verde County

Seven Mile Ranch Archeological District, Address Restricted, Comstock vicinity, 90001733

WASHINGTON

Yakima County

Buckeye Ranch House, 10881 WA 410, Naches vicinity, 90001735

WISCONSIN

Columbia County

Columbus Public Library (Public Library Facilities of Wisconsin MPS), 112 S. Dickason Blvd., Columbus, 90001704

Cox, Angie Williams, Library (Public Library Facilities of Wisconsin MPS), 129 N. Main St., Pardeeville, 90001703

Dodge County

Hutchinson Memorial Library (Public Library Facilities of Wisconsin MPS), 228 N. High St., Randolph, 90001705

In order to assist in the preservation of the following property, the commenting period has been waived:

MICHIGAN

Ingham Co.

Penfil Apartments, 108—110 S. Hosmer St., Lansing 90001654

[FR Doc. 90-24407 Filed 10-16-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-300]

Certain Doxorubicin and Preparations Containing Same; Commission Decision To Terminate Investigation With Final Determination of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to terminate the above-captioned investigation with a final determination of no violation of section 337 (19 U.S.C. 1337). The Commission has also decided to (1) deny complainant's motion to certify additional evidence into the record and to impose sanctions ("motion to certify"); (2) deny complainant's motion for leave to reply to the responses of the Cetus respondents and the Commission investigative attorney to its motion to certify; (3) grant the Commission investigative attorney's motion to supplement his response to complainant's petition for review; and (4) deny as moot the Commission investigative attorney's motion to strike the supplemental submission to complainant's motion to certify.

ADDRESSES: Copies of the Commission's opinion, the initial determination (ID) of the presiding administrative law judge (ALJ) and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On May 21, 1990, the presiding ALJ issued an ID finding no violation of section 337 in the subject investigation. On July 5, 1990, the Commission determined to review the ID in its entirety. On July 26, 1990, Erbamont filed a motion to certify additional evidence into the record and to impose sanctions against the Cetus respondents ("motion to certify"). On August 1, 1990, the Commission investigative attorney filed a motion for leave to supplement his response to complainant's petition for review. On August 9, 1990, the Commission investigative attorney filed a motion to strike the supplemental submission to complainant's motion to certify. On August 14, 1990, complainant filed a motion for leave to reply to responses to its motion to certify.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54-.56

of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.54–.56 (1990)).

By order of the Commission.

Issued: October 9, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–24464 Filed 10–16–90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-297]

Likely Impact of a Free Trade Agreement With Mexico on the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for comments.

EFFECTIVE DATE: October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–252–1264), Trade Reports Division, Office of Economics, and Robert W. Wallace (202–252–1458), Textiles Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

SUMMARY: Following receipt on September 28, 1990, of a request from the Committee on Ways and Means of the U.S. House of Representatives and the Committee on Finance of the U.S. Senate, the Commission instituted investigation No. 332–297 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information relating to the implications for the United States of a U.S.-Mexico free trade agreement.

More specifically, the Committees requested that the Commission in its report provide the following: (1) An overview of recent events significantly influencing U.S.-Mexico economic relations, including a profile of Mexico's trade and investment patterns; (2) a summary of the likely impact of the proposed free trade agreement with Mexico on the U.S. economy in general; (3) a summary of the likely impact on major U.S. industries and other sectors, including agriculture, that would be most affected by the proposed free trade agreement with Mexico; and (4) an indication of the regions in the United States that would be most affected by the proposed free trade agreement with Mexico and a summary of the nature of these effects. Because Canada may participate in the proposed negotiations, the Committees requested that the Commission also analyze, to the extent feasible, the three-way interrelationship and the impact on U.S.-Canada and on U.S.-Mexico trade if Canada does join an agreement.

The Committees requested that the Commission submit its report by February 1, 1991.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. The Commission is particularly interested in learning about completed or ongoing research on the regional economic impact, as well as the overall impact on the United States, of the proposed free trade agreement. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection to interested persons by the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received no later than November 26, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1809.

By order of the Commission.

Issued: October 11, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 24465 Filed 10–16–90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-445 (Final)]

Industrial Nitrocellulose From Yugoslavia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Yugoslavia of industrial nitrocellulose,[2] provided for in subheading 3912.20.0 of the Harmonized Tariff Schedule of the United States (previously classified in items 445.25 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective April 19, 1990, following a preliminary determination by the Department of Commerce that imports of industrial nitrocellulose from Yugoslavia were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 9, 1990 (55 FR 19367). the hearing was held in Washington, DC, on May 29, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 5, 1990. the views of the Commission are contained in USITC Publication 2324 (October 1990), entitled "Industrial Nitrocellulose from Yugoslavia: Determination of the Commission in Investigation No. 731–TA–445 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: October 9, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–24463 Filed 10–16–90; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 201.2(h)).

[2] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocelllose is used as a film-former in coatings, lacquers, funiture finishes, and printing inks. The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

[Investigations Nos 701-TA-304 (Prelim.) and 731-TA-470-472 (Prelim.]

Silicon Metal From Argentina, Brazil, and the People's Republic of China

Determinations

On the basis of the record [1] developed in investigation No. 701-TA-304 (Preliminary) the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of silicon metal [2] that are alleged to be subsidized by the Government of Brazil.

The Commission further unanimously determines, on the basis of the record developed in investigations Nos. 731-TA-470-472 (Preliminary), pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reasons of imports from Argentina, Brazil, and the People's Republic of China (China) of silicon metal [3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 24, 1990, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by the merchant-producer members of the U.S. silicon metal industry,[4] alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of silicon metal from Brazil and LTFV imports of silicon metal from Argentina, Brazil, and China. Accordingly, effective August 24, 1990, the Commission instituted countervailing duty investigation No. 701-TA-304 (Preliminary) and antidumping investigations Nos. 731-TA-470-472 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 5, 1990 (55 FR 36330). The conference was held in Washington, DC, on September 14, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on October 5, 1990. The views of the Commission are contained in USITC Publication 2325 (October 1990), entitled "Silicon Metal from Argentina, Brazil, and the People's Republic of China: Determinations of the Commission in Investigations Nos. 701-TA-304 and 731-TA-470-472 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: October 11, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-24466 Filed 10-16-90; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. The subject merchandise is used primarily as an alloying agent for aluminum and in the chemical industry as a precursor to silicones. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States (HTS)* as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.

[3] The merchandise covered by these investigations is identical to that in investigation No. 701-TA-304 (Preliminary).

[4] The petitioners in the investigations with respect to imports from Argentina and China are American Alloys, Inc., Pittsburgh, PA; Elkem Metals Co., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech Inc., Seattle, WA; SiMETCO, Inc., Canton, OH; and SKW Alloys, Inc.; Niagara Falls, NY. Elkem Metals Co., and SKW Alloys, Inc. are not petitioners in the investigations with respect to imports from Brazil.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 24, 1990, a proposed Consent Decree in *United States* v. *Baker Pacific Corporation*, Civil Action CV-F-89-227 REC, was lodged with the United States District Court for the Eastern District of California. The Complaint sought civil penalties and other relief against Baker Pacific Corporation, Inc., pursuant to sections 112(c), 113 and 114 of the Clean Air Act ("Act"), 42 U.S.C. 7412(c), 7413 and 7414. The defendants' violations involved failure to notify the EPA in writing prior to scheduled renovations of facilities containing friable asbestos material, in violation of the notification requirements of the National Emission Standards for Hazardous Pollutants ("NESHAP") for asbestos, 40 CFR part 61, subpart M.

The proposed Consent Decree requires Baker Pacific Corporation to pay $26,000 in settlement of the United States' claims for civil penalties. The defendant is subject to a one year injunction against violation of notice requirements of the Act or the asbestos NESHAP.

The United States Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resource Division, United States Department of Justice, Post Office Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Baker Pacific Corporation*, 90-5-2-1-1272.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 4304 Federal Building, 1130 O Street, Fresno, California 93721, and at the offices of the Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-237-7829. 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 $3.75 ($0.25 per page) payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90-24382 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 27, 1990, a proposed Consent Decree in *United States* v. *Green Mountain Power Corp., et al.*, Civil Action No. 88-307 was lodged with the United States District Court for the District of Vermont. The proposed Consent Decree concerns a portion of the Pine Street Canal Site in Burlington, Vermont, known as the Maltex Pond. The proposed Consent Decree requires the settlors to reimburse

the United States for a portion of its past costs regarding the Maltex Pond. The settlors have paid $945,000 into an escrow account, and this sum, plus interest earned (minus the service fee of the escrow agent) thereon, will be paid to the United States after entry by the Court of the Consent Decree. The United States' declaratory judgment claims will be dismissed without prejudice.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Green Mountain Power Corp., et al.*, D.J. Ref. 90-11-3-409.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Vermont, Federal Building, 3rd floor, 151 West Street, Rutland, Vermont 05701 and at the Region 1 Office of the Environmental Protection Agency, JFK Federal Building, Boston, Mass. 02203. "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 *$17.25* (25 cents per page reproduction cost) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-24378 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT of JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that proposed Consent Decree in *United States* v. *Tucson Airport Authority et al.* was lodged on September 27, 1990, with the United States District Court for the District of Arizona. This action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606-07.

Under this Consent Decree, the Settling Parties agree to implement the remedial action selected by the U.S. Environmental Protection Agency ("EPA") pertaining to cleanup of contaminated groundwater at the Tucson International Airport Area Superfund Site, located in Tucson, Arizona. The Settling Parties are the Tucson Airport Authority, the City of Tucson, Hughes Aircraft Co., the United State Air Force, and the McDonnell-Douglas Corporation. Essentially, the Settling Parties have agreed to construct and operate a groundwater extraction and treatment system to treat groundwater that is contaminated with volatile organic compounds. The treated water, which will meet applicable Federal and State cleanup levels, will be fed into the City of Tucson's drinking water system.

In addition, the settling Parties will reimburse the EPA for the costs it incurred relating to the Tucson Airport Site, in the amount of 2.334 million, and will reimburse EPA for its costs in overseeing the work performed under the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 45 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Tucson Airport Authority*, D.J. Ref. 90-11-3-369.

The proposed Consent Decree may be examined at the Office of the United Attorney, Acapulco Building, suite 310, 110 S. Church Street, Tucson, Arizona 85701 and at the Region IX office of the U.S. Environmental Protection Agency, 1235 Mission St., San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, room 1515, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section Document Center 1333 of F Street, NW., suite 600, Washington, DC 20004, Telephone Number (202) 347-2072. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $25.50 for copying costs ($0.25 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Divisions, United States Department of Justice.

[FR Doc. 90-24383 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 5, 1990 a proposed Consent Decree in *United States* v. *Washington Circle Theatre Corp.* (D.D.C.), Civil Action No. *90-2451-RCL*, was lodged with the United States District Court for the District of Columbia. The Consent Decree concerns a violation of the Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 61.140, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, ("the Act"). The proposed Consent Decree requires defendant Washington Circle Theatre Corporation ("defendant") and certain related entities and individuals (1) to pay a civil penalty of $9,000.00; (2) to comply with the asbestos NESHAP and the Act in the future; (3) to notify EPA of all renovation or demolition work performed by them in the future; and (4) to insure that their employees attend asbestos removal classes prior to performing any work on a demolition of renovation involving asbestos.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Washington Circle Theatre Corp.* D.J. No. 90-5-2-1-1317.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Columbia, 555 4th Street, NW., Washington, DC 20001, and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The Decree may also 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 request a copy of the proposed consent decree, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-24378 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—the SQL Access Group

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"). The SQL Access Group ("the Group") on August 31, 1990 has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990, the Group filed an additional written notification. The Department published a notice in the Federal Register in response to the additional notification on July 18, 1990 (55 FR 29277).

The identities of the additional parties to the Group are:

E.I. duPont de Nemours & Company, Information Systems Department, Nemours Building, Wilmington, DE 19896.

GUPTA Technologies, 1040 Marsh Road, Menlo Park, CA 94025.

Lotus Development Corporation, 1 Rogers Street, Cambridge, MA 02141.

Micro Decisionware, 2995 Wilderness Place, Boulder, CO 80301.

Microrim, 3925 159th Avenue NE., Redmond, WA 98073-9722.

Microsoft Corporation, One Microsoft Way, Box 97017, Redmond, WA 98052-6399.

Novell, Inc., 5918 West Courtyard Dr., Austin, TX 78730.

Sybase, Inc., 6475 Christie Ave., Emeryville, CA 96608.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-24381 Filed 10-16-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: November 13, 1990, 9:30 am-12:00 noon, Rm. S-2217, PHBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

PURPOSE: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION, CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC, this 11th day of October 1990.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 90-24455 Filed 10-16-90; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Advisory Panel on the Dictionary of Occupational Titles; Appointment of Members

This is to announce the appointment of members to the Advisory Panel on the Dictionary of Occupational Titles (APDOT), established under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463).

The membership of the Committee is as follows:

Ms. Dixie Sommers—Chair, Deputy Administrator, Ohio Bureau of Employment Services.

Mr. Ken Baker, Director of Marketing, Freeman White Architects.

Mr. Raymond Isaac Barnes, Resource Center Administrator, Texas Department of Commerce.

Dr. Sue Berryman, Director, Institute on Education and Economy.

Mr. Manfred Emmerich, Director, Employment Service Division, North Carolina Employment Security Commission.

Dr. Marilyn K. Gowing, Assistant Director for Personnel Research & Development, Office of Personnel Management.

Mr. Reese Hammond, Formerly, Director, Education & Training, International Union of Operating Engineers.

Dr. Carole M. Johnson, Chancellor, Minnesota State Board of Technical Colleges.

Dr. Anita Lancaster, Assistant Director of Accession Policy, Office of the Assistant Secretary of Defense, (Force Management & Personnel).

Dr. Malcolm Morrison, Director of Research & Program Development, National Association of Rehabilitation Facilities.

Dr. Kenneth Pearlman, District Manager, American Telephone & Telegraph.

Dr. Richard Santos, Professor, University of New Mexico.

Mr. Charles Tetro, President, Training and Development Corporation.

The members were selected as representatives from the user community and other interested entities in Government, vocational training education, private sector including employers, and academia and will serve until August 28, 1992. Ms. Dixie Sommers will serve Committee Chairperson.

Signed at Washington, DC, this 10th day of October 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90-24470 Filed 10-16-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Transfer of Acceptance From DuPont to AMETEK for the Dupont Series Noise Dosimeters

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is hereby notifying the mining community of the transfer of acceptances from DuPont to AMETEK for the Dupont series noice dosimeters.

FOR FURTHER INFORMATION CONTACT: Robert G. Peluso, Chief, Pittsburgh Health Technology Center, Mine Safety and Health Administration, 4800 Forbes Avenue, Pittsburgh, PA 14212, (412) 721-8256.

SUPPLEMENTARY INFORMATION: On September 12, 1978, the Mine Safety and Health Administration (MSHA)

published a final rule that became effective on October 1, 1978 and amended the mandatory health standards governing noise dosimeters (43 FR 40760). Those amendments to 30 CFR parts 70 and 71 permitted the use of personal noise dosimeters to make required noise exposure measurements in coal mines and set forth the procedures to be followed in taking such noise measurements. When noise exposure measurements and surveys required by parts 70 and 71 are taken by personal noise dosimeters, the dosimeters must be acceptable to MSHA.

The test and criteria used by MSHA to determine acceptability of personal noise dosimeters are published in "MSHA Test Procedures and Acceptability Criteria for Noise Dosimeters", MSHA Informational Report IR-1072.

On June 18, 1990, the Mansfield & Green Division of AMETEK purchased the DuPont Company's air and noise monitoring instruments product line. AMETEK has requested the transfer of MSHA acceptance if the following three dosimeters from DuPont to AMETEK: Mark-I, Mark-II, and Mark-III dosimeters. AMETEK has certified that no design changes affecting the functional performance of these dosimeters have or will be made under AMETEK's ownership without prior consultation with MSHA. This notice transfers the acceptance of the DuPont Mark-I, Mark-II, and Mark-III to AMETEK.

Dated: October 11, 1990.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 90-24436 Filed 10-16-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-70; Exemption App. No. D-8210 et al.]

Grant of Individual Exemptions; Minyard-Big Tex Employees Profit Sharing Plan and Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Minyard-Big Tex Employees Profit Sharing Plan and Trust (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 90-70; Exemption App. No. D-8210]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of improved commercial real estate (the Property) to Minyard Properties, Inc., a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is the greater of $145,000 or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 25, 1990 at 55 FR 25910.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Sedco Forex Resources, Inc. Profit Sharing Plan (the Plan) Located in New York, NY

[Prohibited Transaction Exemption 90-71; Exemption App. No. D-8270]

Exemption

The restrictions of section 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to proposed cash sale by the Plan of three promissory notes (the Notes) to Schlumberger Technology Corporation, a party in interest with respect to the Plan, for the greater of $7,072,719 or the fair market value of the Notes on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 14, 1990 at 55 FR 33187.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Baton Rouge Clinic Retirement Plan and Trust (the Plan) Located in Baton Rouge, Louisiana

[Prohibited Transaction Exemption 90-72; Exemption App. No. D-8349]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the self-directed account (the Account) in the Plan of Herbert Dyer, M.D., of certain parcels of

real property (collectively, the Properties) from Dyer Development Corporation, a party in interest with respect to the Plan, provided the Account pays the lessor of $88,500 or the aggregate fair market value of the Properties at the time of the purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 6, 1990 at 55 FR 36721/36722.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 12th day of October, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-24454 Filed 10-16-90; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8199 et al.]

Proposed Exemptions; Philippe Investment Management, Inc. (PIM) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1987) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Philippe Investment Management, Inc. (PIM) Located in New York, NY

[Application No. D-8199]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, to the acquisition, sale or redemption of limited partnership units (the Units) between pension plans (the Plans) investing in the International Small Float Fund (the Limited Partnership) and PIM, the general partner of the Limited Partnership and a party in interest with respect to the Plans, provided:

(a) A Plan pays no more or receives no less for a Unit than the Plan would have paid or received in an arm's length transaction with an unrelated party;

(b) Such acquisition, sale or redemption is expressly authorized in writing by a fiduciary of a Plan who is independent of PIM and who has acknowledged in writing that the Plan is an "accredited investor" as defined in Rule 501 of Regulation D of the Securities Act of 1933 and that the fiduciary has not relied upon the advice of PIM with respect to the acquisition, sale or redemption; and

(c) No fees or commissions are paid by any Plan by reason of the acquisition, sale or redemption of Units in the Limited Partnership.

Summary of facts and Representations

1. PIM, which maintains its headquarters at 122 East 42nd Street, New York, New York, is an investment

adviser registered under the Investment Advisers Act of 1940. PIM is also an investment manager within the meaning of section 3(38) of the Act. In this capacity, PIM selects stocks of foreign companies that, in its opinion, offer the potential for capital appreciation. PIM directs the trustee of each plan it serves as to transactions in such companies. Each plan holds a portfolio of stock in foreign companies which have been selected and managed by PIM. As of September 30, 1989, PIM's total assets and shareholder equity were $400,000 and $375,000, respectively. Also as of September 30, 1989, the total assets managed by PIM were $481 million.

PIM presently serves as investment manager to the following pension plans: Public Employees' Retirement Association of Colorado, State of Oregon Public Employees Retirement System Fund, Pension Plans of GTE Service Corporation and Associates, Iowa Public Employees Retirement System, and Pension Plans for Schlumberger Surenco, S.A. and Schlumberger Overseas, S.A. and their Affiliates. PIM expects to serve as investment manager to a maximum of fifteen large pension plans. Some of these plans are (or will be) subject to the provisions of the Act. Other plans are government plans within the meaning of section 3(32) of the Act and foreign pension plans of foreign employers.

2. Codafin (Codafin) is a Luxembourg corporation engaged in providing administrative services in Europe. Codafin is 50 percent owned by Pan Holding, S.A., a closed-end Luxembourg investment company of which the two majority owners of PIM, Alain and Beatrice Philippe (the Philippes), hold in the aggregate less than 20 percent of such entity.

3. Societe d'Analyses Economiques at Financieres (SAEF), a French corporation, is majority owned by the Philippes. SAEF will provide accounting services and management of trading activities to the Limited Partnership described herein.

4. PIM has identified a certain type of foreign security which it believes will offer the potential for capital appreciation, i.e., common stock which has a small "float". This type of security (the Small Float Stock) trades in a thin public market. Although companies which issue Small Float Stock may be relatively small, some companies may be quite large with much of their stock being privately-held. On occasion, PIM has invested the assets of plans it manages in Small Float Stock and it would like to expand this practice. However, as the number of plans advised by PIM has grown, PIM represents that administrative problems have made investing in Small Float Stock on an individual basis virtually impossible since each transaction entails duplicative directions on behalf of each plan. More importantly, because the volume of trading activity is small, PIM explains that significant problems may arise in ensuring that each plan participates equitably in PIM's selections. PIM attributes these problems to: (a) The execution, by plan trustees, of PIM's instructions at different times resulting in the payment (or receipt) by such plans of different prices for the same security; (b) limited quantities of a particular type of Small Float Stock which prevent PIM from allocating such stock among the plans in meaningful amounts; and (c) the payment by plans of higher brokerage and custodial fees stemming from the fact that shares are not acquired or sold in a single transaction.

5. To solve these problems and thus be able to expand the service of selecting and managing Small Float Stock, PIM proposes to form the Limited Partnership. Under the proposal, a Plan wishing to invest a portion of its assets in Small Float Stock will become a limited partner in the Limited Partnership provided such Plan has total assets in excess of $1 billion and qualifies as an "accredited investor" within the context of Regulation D of the Securities Act of 1933. PIM will serve as the corporate general partner of the Limited Partnership and act as its investment manager. The Limited Partnership will maintain a portfolio of Small Float Stock, and in connection with executing the Limited Partnership Agreement (the Limited Partnership Agreement), a Plan will receive a security issued by the Limited Partnership. That security will be a limited partnership unit representing an undivided interest in the Limited Partnership's portfolio. The Units, which will be valued monthly at the pro rata share of the net asset value of the Limited Partnership, will not be registered under the Securities Act of 1933. Further, PIM explains that the Units will be held by Chase Manhattan Bank (Chase), an unrelated entity, under an arrangement that complies with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

6. Once the Limited Partnership is operational, it is expected that PIM will no longer select Small Float Stock on an individual account basis for those Plans that invest in the Limited Partnership. However, during a brief transition period, PIM may continue to manage Small Float Stock investments for a plan on both an individual account basis and through the Limited Partnership. Because of restrictions that prevent a Plan from transferring Small Float Stock from an individual account to the Limited Partnership and a provision in the Limited Partnership Agreement requiring that interests in the Limited Partnership be purchased by a Plan in cash, a Plan may hold shares of the same Small Float Stock that is held by the Limited Partnership. PIM believes that this situation will not occur if market conditions improve to such an extent that PIM is able to sell Small Float Stock that is held directly by Plans in individual accounts before the Limited Partnership becomes functional.

7. PIM requests prospective exemptive relief for the acquisition, sale or redemption of Units in the Limited Partnership between it and the participating Plans since these transactions may result in prohibited transactions in violation of the Act. In particular, PIM explains that a prohibited transaction may arise from a Plan's acquisition of Units in the Limited Partnership if the Plan has previously entered into an investment management agreement with PIM and PIM is managing the plan's account on an individual basis as a fiduciary to such Plan. If a Plan wishes to change the nature of its investment from a single account investment to an investment in the Limited Partnership, PIM states that the initial purchase of Units in the Limited Partnership by the Plan would give rise to prohibited transaction because of the pre-existing service provider relationship between it and the participating Plan.

PIM also asserts that a prohibited transaction may arise upon a subsequent purchase of Units in the Limited Partnership between it and a participating Plan. Although PIM states that it is aware of the fact that a Plan's initial purchase of Units in the Limited Partnership would not be a prohibited transaction in the absence of a party is interest relationship existing between it and the Plan, PIM notes that a subsequent purchase would give rise to a prohibited transaction since the party in interest relationship would then be established.

8. The decision of any Plan to invest in the Limited Partnership will be left solely up to each independent Plan fiduciary. The participating Plan fiduciary must also acknowledge in writing that he or she is not relying upon the advice of PIM to invest in the Limited Partnership.

9. PIM represents that it does not act as an investment adviser within the meaning of section 3(21)(A)(ii) of the Act to a Plan which proposes to invest in the Limited Partnership because in each instance, the Plan trustee who makes the investment decision has agreed not to rely on PIM's advice as a primary basis for plan investments and such Plan fiduciary is specifically required to so acknowledge in every instance. PIM represents that the decision to invest in the Limited Partnership will be made by an unrelated Plan fiduciary action on the basis of his or her own investigation into the advisability of investing in the Limited Partnership.[1]

To the extent that in the ordinary course of business, PIM or any of its affiliates provide investment advice to a participating Plan within the meaning of regulation 29 CFR 2510.3–21(c) (1)(ii)(B) and recommends an investment of the Plan's assets in the Limited Partnership, the presence of an unrelated second fiduciary action on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the adviser from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition, redemption or sale of Units in the Limited Partnership to section 406(a) violations only.

10. Units in the Limited Partnership will be offered to participating Plans pursuant to a Memorandum (the Memorandum). This document describes the Limited Partnership, the parties involved and their rights, the investment objectives of the Limited Partnership with respect to Small Float Stock, the operations and management of the Limited Partnership and the fees that will be paid to PIM by the Limited Partnership. Attached to the Memorandum will be a copy of the Limited Partnership Agreement by which the independent Plan fiduciaries agree to participate in the Limited Partnership.

11. Although no minimum price has been established for a Unit, it is expected that each Plan will invest not less than $1 million in the Limited Partnership. The contribution will be paid in cash. Additional investments may be made by a Plan fiduciary in increments of $100,000. Thus, a Plan fiduciary will determine how much to contribute to the Limited Partnership and such Plan will receive a pro rata interest in the Limited Partnership based upon its capital account balance as compared to the capital account balances of the other partners.

PIM's contribution to the Limited Partnership will, at all times, equal the lesser of one percent of the total capital contributions of all Limited Partners or $500,000. In exchange for its contribution, PIM will receive a pro rata interest in the Limited Partnership based upon its capital account balance as compared to the capital account balances of the partners.

12. The Limited Partnership Agreement will provide that any Plan will be able to redeem all or part of its interest in the Limited Partnership without penalty upon 60 days prior written notice, effective as of the end of a given month. Redemption may be in cash or in kind at the option of PIM. If redemption is in kind, the Plan will receive, to the extent practicable a pro rata share of Small Float Stock and other assets contained in the Limited Partnership's portfolio. If redemption is in cash, the amount distributed will be reduced by any custodial or brokerage fees incurred in reducing such capital accounts to cash. No other commissions or fees will be paid to anyone, including PIM, with respect to any acquisition, sale or redemption by a Plan of a Unit issued by the Limited Partnership.

13. Limited Partnership Units may not be sold or transferred to a third party without PIM's consent. Because the Units will not be registered under the Securities Act of 1933, they will be subject to the restrictions on transfer imposed thereby and under applicable state securities laws. The Limited Partnership may be dissolved upon the bankruptcy or dissolution of PIM or in the event the holders in value of 66⅔ percent of the Limited Partnership Units vote to dissolve the Limited Partnership (or to remove PIM). In addition, PIM can determine at any time to dissolve the Limited Partnership.

14. As general partner of the Limited Partnership and investment manager to the participating Plans, PIM's fee for investment advisory services will be a percentage of the value of the assets under management. The same fee schedule will apply to all investing Plans. That percentage schedule will also be the same percentage schedule provided under each Plan's investment management agreement with PIM wherein PIM manages Plan assets on an individual basis.[2] In calculating the fee, each Plan's share of assets under management by PIM through the Limited Partnership will be aggregated with those under management pursuant to the Plan's current investment contract and the total fee will be payable to PIM. The fee will be paid quarterly and the fee percentage will decline as the amount of a Plan's investment in the Limited Partnership increases. Further, each Plan may elect, at the outset, and upon 60 days prior written notice, to have investment advisory fees relating to assets under management by the Limited Partnership paid out of the Plan's Limited Partnership account.

In addition, PIM intends to enter into, and pay, out of the investment management fee it receives, all expenses relating to (a) a contract for certain administrative services provided by Codafin and (b) a contract for accounting services and management of trading activities provided by SAEF. PIM states that all other expenses of the Limited Partnership will be paid out of the Limited Partnership's assets provided such expenses qualify as "direct expenses" within the meaning of regulation 29 CFR 2550.408c–2(b)(3).[3]

15. Each Plan will also be billed directly by the the Limited Partnership for its pro rata portion of custodial fees which are currently the responsibility of each Plan. The Limited Partnership arrangement will not alter this, other than to require payment of such fees by the Limited Partnership, on behalf of a custodian, rather than by each Plan directly to its own custodian. PIM believes that this arrangement will reduce overall custodial fees because trades in Small Float Stock will be made through Chase on behalf of all Plans. Brokerage fees will continue to be charged against assests, the only difference being that the assets will be in the Limited Partnership's account rather than in each Plan's individual account. Neither the custodian nor any broker will be related to PIM.[4]

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[2] An investing Plan will also pay the same investment management fee to PIM if it invests in the Limited Partnership and in an individual account managed by PIM during the transitional period that is described above.

[3] PIM represents that the fees it, Codafin, and SAEF receive for services rendered to the Limited Partnership will comply with the terms of section 408(b)(2) of the Act and the regulations promulgated thereunder. However, the Department expresses no opinion, in this notice of proposed exemption, on whether such service arrangements will meet the terms and conditions of section 408(b)(2) of the Act.

[4] PIM has advised that the custodial and brokerage fees paid by the Limited Partnership to Chase and the brokers will satisfy the terms and conditions of section 408(b)(2) of the Act. The Department expresses no opinion on whether these fees will meet the statutory requirements of section 408(b)(2) of the Act.

16. Although the Limited Partnership Agreement does not require that the Limited Partnership be audited, PIM will provide unaudited financial reports on an annual basis to the investing Plans. The books and financial records of the Limited Partnership will also be available for inspection by any Plan fiduciary at all times during regular business hours.

17. In summary, it is represented that the subject transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) Independent fiduciaries of the participating Plans will maintain complete discretion with respect to the investment of the participating Plans' assets in the Limited Partnership; (b) fiduciaries of the Plans will have the opportunity to redeem their investments in Small Float Stock pursuant to applicable provisions of the Limited Partnership Agreement and in such fiduciaries' individual discretion; and (c) the fees charged by PIM to the participating Plans are based upon a percentage of the assets under management and such fees will be the same regardless of whether a Plan's assets are invested in the Limited Partnership, in an individual account or in both investment structures.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

United Artists Communications, Inc. (Rowley United Division) Retirement Plan (the Plan), located in Dallas, Texas

[Application No. D-8395]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) from the Plan to United Artists Realty Corporation (UARC), a party in interest with respect to the Plan, provided that the Plan receives no less than either the sum of $165,000 or the fair market value of the Property at the time of the Sale.

Summary of Facts and Representations

1. The sponsoring employer of the Plan is United Artists Theater Circuit, Inc., a Maryland corporation (the Employer). It is wholly owned by United Artists Holdings, Inc., a Delaware corporation, which in turn is wholly owned by United Artists Entertainment Company, a Delaware corporation, which is a publicly held company with 56.6 percent of its voting shares owned by Tele-Communications, Inc., a Delaware corporation, also publicly held. United Artists Entertainment Company owns 100 percent of the outstanding stock of UARC, a Delaware corporation, which owns substantially all of the real estate used by the aforesaid affiliated corporations.

The principal office of Tele-Communications, Inc. is Regency Plaza One, 4643 South Ulster, Denver, Colorado. The principal office of United Artists Entertainment Company, and each of its subsidiary corporations, is One Bill Daniels Center, 2930 East 3rd Avenue, Denver, Colorado. The "Rowley United" divisional office of the Employer is at 1900 South Central Expressway, Dallas, Texas.

The Employer is a national motion picture exhibitor which operates theaters in numerous locations throughout the country. The Rowley Division of the Employer operates theaters throughout the Southwestern part of the United States.

2. The Plan is a profit sharing plan with approximately 419 participants and total assets of $3,198,327.31, as of December 31, 1989. The fiduciary of the Plan is its Board of Trustees, consisting of two individuals: Messrs. Robert Chapman, an employee of the Employer, who is a manager of a number of its theaters and Lonnie Taylor, a former employee of the Employer, who is an accountant. The Plan has been frozen as to further contributions since September 30, 1987, and proposes to liquidate and distribute its assets and terminate as soon as economically feasible. Liquidation of the assets of the Plan has been delayed because of its inability to sell the Property and because of litigation, initiated on July 26, 1983, by the Department in the United States District Court, Northern District of Texas, Dallas Division. The Department alleged violations of fiduciary duties and the prohibited transaction provisions of the Act by the former fiduciaries.[5] The case was tried, appealed, and finally settled on August 15, 1990, with the defendant fiduciaries resigning and paying the sum of $387,385.91 to the Plan for distribution to its participants and former participants.[6]

3. The Property is a parking lot located along the north side of Young Street, approximately 90 feet east of Harwood Street in Dallas, Texas. It consists of approximately 7,988 square feet of which 1,392 square feet is subject to a street easement, leaving 6,596 square feet with parking lot improvements consisting of two metal carports, asphalt paving, and concrete sidewalks and curbs. The Property was originally purchased by the Plan from Texas School Book Depository, an unrelated party, on May 1, 1950, for the consideration of $21,250. On August 19, 1985, the Plan sold the Property to CBD Properties-Dallas #28, a Texas general partnership. The consideration for the sale was $400,000. The sum of $100.000 was paid in cash and the balance of $300,000 was evidenced by a non-recourse note which provided for quarterly installment payments of $9,933.52, including an interest charge of 12 percent, with the final balance to become due and payable on September 1, 1990. The note was secured by a deed of trust on the Property. During 1987, the purchaser defaulted on the note. After a period of time, during which discussions were held and additional payments were made on the note, a foreclosure was made on August 2, 1988. The Plan was the only bidder at the foreclosure and thereby it reacquired the Property. Following the foreclosure the Plan leased the Property to an unrelated party, Parking Company of America, on a month-to-month basis for a rental of 50 percent of the gross.

Since the Property has been foreclosed and reacquired by the PLan, the Property has been continually listed for sale with Steven S. Lampinstein, formerly associated with Letwin & Company, Inc. and currently with Lampinstein Company, both commercial real estate brokers. No offers to purchase have been received by the Plan, although Mr. Lampinstein has had continuously on the Property a "for sale" sign since its listing.

4. The Property was appraised by Mr. Kevin R. Cavasos determined that the fair market value of the Property, as of December 20, 1989, was $165,000. His conclusion was represented to have been developed and prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice and the Code of Professional Ethics and the Standards of

[5] The subject Property was not involved in the litigation.

[6] Donovan vs. Rowley et al., CA 3-83-1285-T, July 26, 1983, and Dole vs. Rowley at al., Fifth Circuit No. 88-7049, August 15, 1990.

Professional Practice of the American Insitute of Real Estate Appraisers.

5. The applicant represents that the purpose of the contemplated Sale of the Property to UARC, the affiliate of the Employer, is to facilitate the liquidation and distribution of the assets of the Plan so that the Plan can be terminated. Also, the applicant represents that because of the depressed demand in the Texas real estate market, and particularly the area in which the Property is located, the Plan will suffer a significant financial loss if the Sale is not consummated with UARC. It is also represented that the Sale will permit the Plan to avoid an additional delay in finding a buyer with the probability of having to discount the appraised fair market value, which is a common occurrence in the current real estate market in Texas. Further advantages of the proposed Sale are represented to be that the purchase price will be paid in cash with no real estate broker or other expenses incurred by the Plan. Furthermore, although the Property is leased, during 1989 it was a non-producing asset for the Plan because taxes exceeded revenues generated by the rentals.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no fees or other expenses incurred by the Plan; (b) UARC will pay the greater of either the sum of $165,000 or the fair market value on the date of the sale; (c) the fair market value will be determined by a qualified, independent appraiser; and (d) the Sale will permit the Plan to expeditiously dispose of the Property and distribute benefits to the participants of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

PACCO, Inc. Profit Sharing Plan (the Plan), Located in Olympia, Washington

[Application No. D-8410]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sales by the Plan of the parcel of real property and a note to IRECO Incorporated (IRECO), a party in interest with respect to the Plan, provided the Plan receives no less than fair market value for the real property and the higher of fair market value or the principal balance plus accrued interest for the note at the time of sale.

Summary of Facts and Representations

1. IRECO, a Salt Lake City, Utah, corporation, with its various subsidiaries is a major manufacturer of explosives having worldwide sales. IRECO purchased PACCO, Inc. (PACCO), based in Olympia, Washington, through an acquisition of stock in January 1988. The Plan is a profit sharing and 401(k) salary reduction plan which originally was established by PACCO. The Plan was frozen on June 30, 1989, and was terminated effective December 31, 1989. As of April 6, 1990, the Plan had 42 participants and total assets of approximately $273,250. The four trustees of the Plan are former employees of PACCO and are currently exployed by IRECO.

2. The real property which is the subject of the proposed transaction (the Maytown Property) is a parcel of approximately 12.3 acres of undeveloped land located at the Maytown Interchange in the State of Washington. The Maytown Property is the remaining parcel of a larger tract of land which was acquired by the Plan in two parcels in December 1980. The sellers of the land were unrelated to PACCO and the Plan. The Plan initially purchased the land as an investment which was expected to appreciate in value, and the two parcels were combined since they are contiguous. The value of the combined parcel of land increased at first but later fell, according to the applicant due to a recession in the State of Washington in 1982 and a subsequent decrease in the value of raw acreage in the area of the subject land. The total cost of the Plan of acquiring and holding the combined parcel was approximately $509,000, and the Plan earned only a small amount of income from the land.[7]

The combined parcel was offered for sale at various intervals between May 1986 and February 1989. Prior to that time, earlier efforts had been to sell such real property. In February 1989, most of the combined parcel, except for the Maytown Property, was sold to Black Hills Cattle and Timber Company, Inc., a party which is unrelated to IRECO and the Plan. The selling price was $310,000 less a ten percent commission and other costs of sale. The Plan extended credit to the buyer in connection with the sale. The unpaid balance of $235,000, as of July 16, 1990, on the sale note (the Note) is payable at 12 percent interest with annual interest only payments due each February and the principal balance due in February 1999. The Note is secured by a first deed of trust on the parcel of land which was sold in the transaction.

3. The Plan obtained an appraisal on the Maytown Property from Joel P. Mills (Mills), a real estate appraiser located in Centralia, Washington. The applicant represents that Mills is independent of IRECO and the Plan. According to Mills, the site of the subject property is zoned for planned industrial development. Utilizing the market comparison approach to value, Mills estimated that as of March 1, 1990, the fair market value of the Maytown Property was approximately $85,000.

4. The Plan obtained a letter from Richard N. Shisler (Shisler) concerning the value of the Note. The applicant represents that Shisler also is independent of IRECO and the Plan. Shisler served until recently as a vice president and loan manager of Sterling Savings and Loan Association, Western Division, of Chehalis, Washington. Shisler states that he has reviewed the Note and the related deed of trust. Shisler has considered that the property securing the Note is generally unimproved, that the mode of payment is annual, and that the Note does not have an established payment history. In view of these factors as well as current interest rate trends, Shisler estimated that as of April 4, 1990, the Note had a market value of $190,000.

5. The Maytown Property has been on the market since October 1988, with very little buyer interest reported. According to Gene W. Weaver, a real estate developer in Rochester, Washington, the lack of buyer interest was due in large part to the fact that most of the Maytown Property is taken up by a large gravel pit. The Plan now proposes to sell the Maytown Property and the Note to IRECO. IRECO will pay the higher of $85,000 or fair market value at the time of sale for the Maytown Property based on an updated independent appraisal. For the Note, IRECO will pay the higher of current fair market value or the outstanding principal balance plus accrued interest

[7] The Department expresses no opinion as to whether Plan fiduciaries violated any of the fiduciary responsibility provisions of part 4 of title I of the Act in holding real property which produced little income and which was depreciating in value for an extended period of time.

at the time of sale.[8] IRECO has no use for the Maytown Property and intends to sell such property as soon as a buyer can be found. The sales of both the Maytown Property and the Note will be entirely for cash, and the Plan will pay no fees or commissions. The transactions will enable the Plan to receive cash for these illiquid assets so that the proceeds may be distributed to the participants pursuant to the termination of the Plan.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market values of the Maytown Property and the Note will be established by persons who are independent of IRECO and the Plan; IRECO will pay the higher of fair market value or the current principal balance plus accrued interest for the Note; (3) the transactions will be entirely for cash; and (4) the sales will facilitate the distribution of the assets of the Plan to its participants.

Tax Consequences of Transactions

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying les than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404, and 415.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of October, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[8] The applicant respresents that the amount by which the sales price for the Note exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the balance of the annual additions to the Plan, will not exceed the limitation prescribed by section 415 of the Code.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 19, 1990 (55 FR 38617). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Committee Meetings

Improved Light Water Reactors, October 31, 1990, Bethesda, MD. The Subcommittee will discuss and review the latest NRC staff proposal regarding the level of design detail under 10 CFR Part 52.

Advanced Boiling Water Reactors (GE), October 31, 1990, Bethesda, MD. The Subcommittee will review the physical separation and general plant layout for the GE/ABWR design.

Advanced Pressurized Water Reactors, November 1, 1990, Bethesda, MD. The Subcommittee will discuss the licensing review basis document for CE System 80+ design.

Plant Operations, November 1, 1990, Bethesda, MD. The Subcommittee will be briefed on the NRC/NUMARC effort concerning reconsitution of design basis documentation for nuclear power plants.

Thermal Hydraulic Phenomena, November 6, 1990, Bethesda, MD. The Subcommittee will discuss the status of the NRC staff's program on interfacing systems loss of coolant accidents (ISLOCA).

Joint Containment Systems and Structural Engineering, November 7, 1990, Bethesda, MD. The Subcommittees will discuss containment design criteria for future plants.

FTOL Conversion, December 5, 1990 (tentative), Bethesda, MD. The Subcommittee will discuss the FTOL conversion for Palisades.

Improved Light Water Reactors, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the EPRI ALWR Requirements Document (Roll-up) for the Evolutionary Designs.

Materials and Metallurgy, Date to be determined (December, tentative), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Joint Computers in Nuclear Power Plant Operations and Instrumentation and Control Systems, Date to be determined (December/January 1991), Bethesda, MD. The Subcommittees will discuss the use of computers and solid-state control logic in nuclear power plant operations.

Auxiliary and Secondary Systems, Date to be determined (January 1991, tentative), Bethesda, MD. The Subcommittee will discuss matters concerning fire protection and mitigation in nuclear power plants.

TVA Plant Licensing and Restart, Date to be determined (mid-late January 1991), Huntsville, AL. The Subcommittee will review the planned restart of Browns Ferry Unit 2.

Joint Plant Operations and Probabilistic Risk Assessment, Date to be determined (January/February) Bethesda, MD. The Subcommittee will begin review of the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (January/February), Bethesda, MD. The Subcommittee will continue its review of the issues pertaining to BWR core power stability.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," and an associated Regulatory Guide.

Severe Accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program (SARP).

Defueling/Fuel Pool Storage, Date to be determined, Bethesda, MD. The Subcommittee will discuss the proposed standard review plan for reviewing safety analysis reports for dry metallic spent fuel storage casks.

ACRS Full Committee Meetings

367th ACRS Meeting, November 8–10, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants (NUREG–1150) (Open)*, Continue preparation of ACRS report to the NRC regarding the merits and use of this document.

*B. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion regarding lessons learned from nuclear power plant operating experience including problems with the operability of safety systems from noncondensible gasses, loss of off-site power and main steam isolation valve closure events at the Brunswick nuclear station, and a feedwater transient and subsequent failure of the RCIC system which occurred at the Pilgrim nuclear station.

*C. *Meeting with NRC Commissioners (Open)*—Discuss safety-related issues on matters that the Committee has been or is in the process of reviewing.

*D. *10 CFR part 55, Fitness for Duty Requirements for Licensed Operators (Open)*—Review and report on the proposed final version of the Fitness for Duty Rule.

*E. *NRC Regulatory Impact Survey (Open)*—Briefing and discussion of proposed NRC actions resulting from the regulatory impact survey. Prepare ACRS report to NRC, as appropriate.

*F. *Biological Effects of Ionizing Radiation (Open)*—Briefing regarding Report V of the National Research Council Committee on the Biological Effects of Ionizing Radiation.

*G. *ACRS Subcommittee Activities (Open)*—Reports and discussion of ACRS subcommittee activities regarding assigned safety-related matters such as the proposed containment design criteria for future plants, interfacing systems LOCA, and reconstitution of design basis documentation.

*H. *Radioactive Waste Disposal (Open)*—Briefing and discussion regarding the report on Rethinking High-Level Radioactive Waste Disposal prepared by the National Research Council Board on Radioactive Waste Management.

*I. *Combustion Engineering System 80+ and General Electric ABWR Designs (Open/Closed)*—Review and report on proposed License Review Basis (LRB) for CE System 80+ design.

*J. *Standardized Nuclear Plant, Westinghouse SP/90 Design (Open/Closed)*—Review and comment on the proposed PDA for this standardized nuclear plant.

*K. *Performance of Solenoid Valves at Nuclear Power Plants (Open)*—Briefing on the status of AEOD's work on the evaluation of solenoid valve problems at nuclear power plants.

*L. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee. Proposed dates for CY 1991 ACRS full Committee meetings will also be discussed. Incomplete items from previous Committee meetings will be discussed as time and availability of information permit.

*M. *Appointment of ACRS Members (Open/Closed)*—Discuss the status of appointment of candidates recommended as nominees for appointment to the Committee.

*N. *Level of Design Detail for Standardized Nuclear Plants (Open)*—ACRS subcommittee report and discussion of the level of design detail required to license a standardized nuclear plant under 10 CFR part 52, Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Plants.

368th ACRS Meeting, December 6–8, 1990—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group Meeting on Human Intrusion, October 23, 1990, Bethesda, MD. The Working Group will examine how human intrusion at a high-level waste repository will be dealt with under 10 CFR Part 60 considerations and guidance from 40 CFR 191 Appendix B. This will include discussion of the WIPP experience and will be designed to explore the range of current thinking from various groups.

25th ACNW Meeting, October 24–25, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. The Committee will be briefed by the DHLWM staff on the "Phase I Demonstration of the Nuclear Regulatory Commission's Capability to Conduct a Performance Assessment for an HLW Repository."

*B. The Committee will be briefed on a recent report by Sandia National Laboratories which concluded that there is reasonable confidence that compliance of the WIPP facility with the EPA standards is achievable.

*C. The Committee will hear a briefing for information on Performance Assessment Methodology for an LLW site by NMSS.

*D. The Committee will be briefed by members of NRC's Nuclear Safety

Research Review Committee relative to its findings on the NRC's radioactive waste research program.

*E. The Committee will discuss the complexities and problems associated with licensing an LLW disposal facility, particularly with respect to siting and the NRC-state interface.

*F. The Committee will hear an overview of NRC's Waste Management related research program.

*G. The Committee will be briefed on progress by the Human Intrusion Working Group and may discuss upcoming plans for a Working Group on Carbon-14 release mechanisms from a high-level repository.

*H. A discussion with an ACNW consultant on developments related to the Technical Assessment Review of the Geologic and Geophysical evidence pertaining to structural geology in the vicinity of the proposed exploratory shaft facility.

*I. The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

ACNW Working Group Meeting on Carbon-14, October 26, 1990, Bethesda, MD. The Working Group will be briefed on the potential problems that could arise at a high-level repository as a result of carbon-14 release and migration. This will include a discussion of EPA release limits for this radionuclide.

ACNW Meeting scheduled for November 26-27, 1990 has been cancelled.

ACNW Working Group Meeting on Mixed Wastes, December 10, 1990, Bethesda, MD. The Working Group will review and discuss the interchangeability (if any) of EPA requirements for land burial of hazardous materials and the NRC LLW disposal site requirements, particularly as related to the disposal of mixed wastes.

ACNW Working Group Meeting on Expert Judgment, December 11, 1990, Bethesda, MD. The Working Group will review and discuss the use of expert judgment in conducting performance assessments of HLW repositories and LLW sites and potential problems that could arise with the use of expert judgment.

26th ACNW Meeting. December 12–14, 1990, Bethesda, MD. Items are tentatively scheduled:

*A. The Committee will meet with the Commissioners to discuss items of mutual interest (tentative).

*B. The Committee will be briefed by the DHLWM staff on the results of their reviews of the Study Plans for characterization of volcanic features and mineralogy, petrology, and chemistry of transport pathways (tentative).

*C. The Committee will discuss the NRC staff's Study Plan, Review Plan, and Staff Plan for reviewing the Site Characterization progress reports.

*D. The Committee will begin to consider 10 CFR Part 60, high-level waste repository subsystem performance requirements regarding their conformance with the EPA high-level waste standards.

*E. The Committee will be briefed by the Division of High-Level Waste Management and HLW staff on the Technical Position on Repository Design Thermal Loads.

*F. The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during preview meetings as time and availability of information permit.

Dated: October 11, 1990.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 90-24435 Filed 10-16-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors (GE); Meeting

The Subcommittee on Advanced Boiling Water Reactors (GE) will hold a meeting on October 31, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 31, 1990—11:00 a.m. until the conclusion of business

The Subcommittee will review the physical separation and general plant layout for the GE/ABWR design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 10, 1990.

Paul Boehnert,

Senior Staff Engineer.

[FR Doc. 90-24433 Filed 10-16-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Plant Operations; Meeting

The Subcommittee on Plant Operations will hold a meeting on November 1, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 1, 1990—1 p.m. until the conclusion of business

The Subcommitte will be briefed on the NRC/NUMARC effort concerning reconstitution of design basis documentation for nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept,

and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 10, 1990.

Richard P. Savio,

Assistant Executive Director.

[FR Doc. 90-24434 Filed 10-16-90; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 24, 1990 through October 4, 1990. The last biweekly notice was published on October 3, 1990 (55 FR 40455).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 16, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to

rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: August 23, 1990, as supplemented on September 28, 1990.

Description of amendment request: The proposed Technical Specifications (TS) changes specific titles of managers throughout the Administrative Section 6.0 to be consistent with the organization as of October 1, 1990. TS 6.5.12 deletes specific titles for members of the Plant Operations and Safety Review Committee (POSRC), denotes the areas of expertise for the POSRC members, and adds a requirement for the Plant General Manager to appoint the POSRC members. A new TS 6.5.1.3 specifies that the POSRC Chairman is appointed by the Plant General Manager. Several TS in Section 6.5 are renumbered, some removed, and changes to the POSRC functions are proposed. A new TS 6.5.1.8d is added requiring root cause analysis and recommendation of corrective actions.

The following TS Sections were added to describe the use of committees or individuals to perform selected reviews in lieu of review by the POSRC: TS 6.5.2 Procedure Review Committee including Sections 6.5.2.1 Function, 6.5.2.2 Composition, 6.5.2.3 Chairman, 6.5.2.4 Alternates, 6.5.2.7 Authority and 6.5.2.8 Records. TS 6.5.3 Qualified Review Programs including Sections 6.5.3.1 Function, 6.5.3.2 Responsibilities, 6.5.3.3 Authority, 6.5.3.4 Records and 6.5.3.5 Training and Qualification. Several TS in Section 6.8 Procedures were reorganized, renumbered, and new conditions relating to the Procedure Review Committee and Qualified Review Program were added.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and determined that operation of the facility in accordance with the proposed amendment would not:

[1] involve a significant increase in the probability or consequences of an accident previously evaluated; or

These proposed changes which will allow for a more efficient operation of POSRC, along with more extensive procedural review, will not impact existing accident conditions or assumptions and thus, will not increase the probability or consequences of a previously evaluated accident.

[2] create the possibility of a new or different type of accident from any accident previously evaluated; or

Because the proposed changes will not change operation of any plant system nor require physical modification to any requirement, a new or different type accident cannot be created.

[3] involve a significant reduction in a margin of safety.

None of the proposed changes will have a direct impact on margin of safety of any Technical Specification; however, the importance of maintaining a strong POSRC is fully recognized as being necessary for safe operation.

POSRC will continue to represent the same areas of expertise and to meet the experience and training provision of ANSI N18.1-1971. Even though supervisory personnel will no longer be required to serve as POSRC members, the proposed experience and training level requirements are the same or

greater. Furthermore, individuals will be chosen who have a broad perspective on plant operation and safety. These restrictions coupled with appointments to POSRC being made by the Plant General Manager, who has ultimate responsibility for safe plant operation, will ensure that there will be no degradation of required expertise on POSRC. Improvements are foreseen in organizational effectiveness by not requiring General Supervisors to serve on POSRC, thus allowing more time for the General Supervisors to devote to managing their individual sections. Furthermore, more emphasis can be placed on other matters of safety significance by the establishment of the Procedure Review Committee and a Qualified Review Program to review selected procedures as determined by the Plant General Manager. The Procedure Review Committee and Qualified Review Program conform to guidance contained in Chapter 13.4 of NUREG-0800, "Standard Review Plan." Both of these programs describe what is to be reviewed and how this determination is made, provide for inter-disciplinary review of subject matter, document the review, and forward the recommendation to the appropriate members of management.

All of the proposed changes are designed to strengthen POSRC and make it operate more effectively by focusing its attention on significant safety issues, and at the same time allow for a more rigorous review of selected procedures by committees or individuals not knowledgeable. As such, the proposed changes will not impact on any margin of safety either directly or indirectly.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: August 28, 1990

Description of amendment request: The proposed changes would revise Technical Specification Surveillance Requirement 4.0.2 by deleting the requirement that the combined time interval for any three consecutive surveillance intervals is not to exceed 3.25 times the specified surveillance interval. The proposed change is based on the guidance of the Nuclear Regulatory Commission's Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The supporting Bases for Technical Specification 4.0.2 are also revised to reflect the requested changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendments against the standards provided above and has determined that operation of the facilities in accordance with the proposed amendments would not:

[1] Involve a significant increase in the probability or consequences of an accident previously evaluated:

The surveillance intervals will continue to be constrained by the 25% limit of Technical Specification 4.0.2. The 3.25 surveillance interval provision was not considered in any safety analyses. Any risk associated with exceeding the 3.25 limit is outweighted by the risk associated with a forced shutdown to perform surveillances which would normally be performed during a refueling outage. In addition, for those surveillances which are routinely performed during plant operation, the flexibility to schedule surveillances to avoid plant conditions which are less conducive to surveillances represents a positive safety benefit. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2] Create the possibility of a new or different type of accident from any accident previously evaluated:

The proposed change would not result in any physical alteration to any plant system nor would there be a change in the method in which any safety-related system performs its function. The change would not result in any equipment being operated in a manner different than that in which it was designed to be operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

[3] Involve a significant reduction in a margin of safety:

Deletion of the 3.25 limit will not significantly affect the performance of equipment required to maintain the margin of safety as defined in the Technical Specification Bases and the Safety Analysis Report [Updated Final Safety Analysis Report]. Rather, it will reduce the potential for interrupting normal plant operation due to surveillance scheduling. Surveillance intervals will continue to be constrained by the 1.25 limit. The added flexibility in scheduling surveillances afforded by deletion of the 3.25 limit should have a positive safety benefit by allowing surveillances to be performed under appropriate plant conditions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: September 19, 1990.

Description of amendment request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the Cycle 4 refueling and operations for Shearon Harris Nuclear Power Plant, Unit 1 (Harris). Specifically, the proposed amendment would relocate certain numerical values for several cycle-specific core operating limits and restrictions from the Harris TS to the existing Harris Core Operating Limits Report (COLR). These cycle-specific parameters include: the moderator temperature coefficient, the heat flux hot channel factor, the normalized axial peaking factor, and the enthalpy rise hot channel factor. In addition, the proposed amendment also makes several administrative changes which clarify the definition and use of the term F sub-delta H, enthalpy rise hot channel factor, and provides descriptive phrases to better enable plant personnel to identify the location of information which has been removed from the TS and relocated to other plant documents.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of additional cycle-specific core operating limits from the [Shearon Harris Nuclear Power Plant, Unit 1] SHNPP Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operating limits, although not in Technical Specifications, will be followed in the operation of SHNPP. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. Each accident analysis addressed in the SHNPP Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are [SIC] bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes clarifying the definition and use of the term F sub-delta H and providing word enhancements to better enable plant personnel to identify the location of information which has been removed from the Technical Specifications to other plant documents are strictly administrative in nature and as such, do not significantly increase the probability or consequences of an accident previously evaluated.

Thus it is concluded that there is not a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the additional cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle specific variable[s] are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

The administrative changes clarifying the definition and use of the term F sub-delta H and providing word enhancements to better enable plant personnel to identify the location of information which has been removed from the Technical Specifications to other plant documents are strictly administrative in nature and as such, do not create the possibility of a new or different type of accident from any accident previously evaluated.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of additional cycle-specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety.

The administrative changes clarifying the definition and use of the term F sub-delta H and providing word enhancements to better enable plant personnel to identify the location of information which has been removed from the Technical Specifications to other plant documents are strictly administrative in nature and as such, do not result in a significant reduction in the margin of safety.

Therefore, the proposed changes are administrative in nature and do not impact the operation of SHNPP in manner that involves a reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 21, 1990

Description of amendment request: The proposed amendment would modify the description of the Steam Generator Low Water Level Reactor trip. The current description in the Technical Specifications describes this trip setpoint as "Not lower than the center line of the feedwater ring, which is located 6,-0" below normal water level." The feedwater ring on the replacement steam generators is located approximately four inches higher in relation to normal water level. Normal water level is not a specified level in the techical specifications; therefore, this change proposes to reference the steam generator low water level trip solely to the location of the feedwater ring. Specifically, the proposed amendment would modify Item 5, Steam Generator Low Water Level, of Table 2.3.1,

Reactor Protective System Trip Setting Limits.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. Consumers Power Corporation has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

1. not involve a significant increase in the probability or consequences of an accident previously evaluated. The change only affects the description of the low level steam generator reactor trip setpoint. The steam generator secondary water inventory below the trip setpoint is larger for the new steam generators, assuring adequate time for a safe and orderly plant shutdown and preventing steam generator dryout. The plant response to a loss of feedwater event has not been altered. Therefore, the

probability or consequences of an accident have not been affected.

2. not create the possibility of a new or different kind of accident from any previously evaluated. The loss of feedwater flow events have not been affected. The low level trip setpoint will still assure proper system response to prevent PCS overpressurization. Therefore, no new or different kind of accident is created.
3. not involve a significant reduction in the margin of safety. The trip setpoint for the new steam generators will provide for a larger secondary inventory, therefore providing greater greater [sic] time to preventing steam generator dryout in a loss of feedwater event and assuring that the PCS design pressure will not be exceeded. The margin of safety is, therefore, not affected.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 21, 1990

Description of amendment request: The proposed amendment would remove requirements that are no longer necessary due to the requirements added, in amendment 130, to section 4.0.5 of the Technical Specifications. Additionally, inappropriate bases statements that pertain to the original steam generator tube plugging criteria would be deleted. Specifically, the following changes are proposed: (1) delete TS Section 3.1.1e and revise the basis pages; (2) change Section 3.1.5 basis; and (3) delete Section 4.4 and the associated basis.

TS Section 3.1.1e contains the primary and secondary hydrostatic and leak test pressure and temperature requirements. TS Section 3.1.5 delineates Primary Coolant System Leakage Limits. TS Section 4.4 contains leak test requirements, in addition to primary coolant system post repair weld examination requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. Consumers Power Corporation has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

1. Not involve a significant increase in the probability or consequences of an accident previously evaluated. This determination is made because the leak test, hydrostatic test and NDE requirements will be governed by the provisions of Technical Specification 4.0.5 and the applicable edition and addenda of Section XI of the ASME B&PV Code as required by 10 CFR 50.55a. Furthermore, procedural controls will assure that the code allowable maximum differential pressures are not exceeded for the PCS and secondary systems. Procedures are also established to assure that the welding of PCS components are within code requirements. This Technical Specifications change does not involve any change in the probability of PCS component failure. Further, the change has no effect on engineered safety systems and therefore the consequences of an accident are not changed.
2. Not create the possibility of a new or different kind of accident from any previously evaluated. Again the ASME code requirements assure that the appropriate test pressures are established and not exceeded. In addition, there are administrative procedures and programs in place to provide assurance that this change in the Technical Specifications will not result in overpressurization of the PCS or secondary system components or degradation of components. Therefore no new or different accident from any previously evaluated will be created.
3. Not involve a significant reduction in the margin of safety. Implementation of the appropriate Code requirements specified in TS 4.0.5 and Section XI of the ASME B&PV Code will assure that maximum allowable pressures are not exceeded and ASME Code NDE requirements are met, therefore, there will be no reduction in the margin of safety with respect to the plant operation.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 20, 1990

Description of amendment request: The proposed change to the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specification (TS) Surveillance Requirement (SR) 4.6.1.5 would replace the existing requirement to periodically (once every 18 months) verify the charging capability of each Emergency Diesel Generator (EDG) starting air compressor with a requirement to periodically (once every 31 days) verify that the starting air receiver tanks are at or above the required minimum pressure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee stated that the changes do not involve a significant hazards consideration for the following reasons:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change involves a surveillance requirement for a plant accident mitigation feature support system (the EDG starting air system) and therefore does not involve an increase in the probability of [occurrence] of an accident previously evaluated. The proposed change maintains equivalent protection, in that the ability of the support system to perform its intended function is maintained, and therefore does not involve an increase in the consequences of previously evaluated accidents.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change modifies a support system surveillance requirement to address the more appropriate parameter of interest which is periodically verified to assure the support system will perform its intended function. This change has no effect on any accident precursors, and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

As the proposed change will maintain the periodic verification of the support system's capability to perform its intended function, equivalent protection to that of the existing specification will be maintained. Therefore the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Theordore R. Quay, Acting

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: August 27, 1990 and modified September 27, 1990

Description of amendment requests: These amendments would revise Section 6.0, Administrative Controls, by adding more general organizational titles and correcting a typographical error.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

The changes being proposed are administrative in nature and will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in, and maintained by, the Technical Specifications. The NRC will continue to be informed of organizational changes through controlled mechanisms. The Topical Quality Assurance Report provides a detailed description of organization and responsibilities as well as detailed organizational charts.

Changes to the Topical Quality Assurance Report are governed by 10 CFR 50.54(a)(3). Changes to the Topical Quality Assurance Report description that reduce commitments previously accepted by the NRC require NRC approval prior to implementation. FPL will continue to inform the NRC of organizational changes affecting [the] St. Lucie Plant.

Therefore, the proposed changes do not involve any reduction in a margin of safety.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes to the TS do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 6, 1990, as supplemented September 17, 1990.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station's Technical Specifications to address two administrative items. These changes are as follows:

Page 3-62a References: The reference to "FSAR" is changed to read "USAR."

Page 5-3 Composition: In order to maintain independence between

the Plant Review Committee and its auditing entities, the Manager of the Safety Review Group and the Manager of Quality Assurance and Quality Control are being replaced by the Assistant Plant Manager and a Reactor Engineer. These replacements are being added to maintain the breath and depth of technical knowledge.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed change does not involve significant hazards consideration because operation of Fort Calhoun Station in accordance with this change would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. This change is administrative only. This change should change committee membership and corrects a reference only and would not effect previously evaluated accidents.
2. Create the possibility of a new or different kind of accident from any previously evaluated. This change contains only administrative changes. No new or different modes of operation are proposed for the plant.
3. Involve a significant reduction in the margin of safety. This change contains only administrative changes and, as such, does not result in a decrease in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, DC 20036

NRC Project Director: Theodore R. Quay, Acting

Public Service Company of Colorado (PSC), Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Weld County, Colorado

Date of amendment request: September 14, 1990

Description of amendment request: FSV was permanently shutdown on August 18, 1989. One third of the spent fuel has been removed from the reactor vessel and transferred to the fuel storage wells. As the spent fuel elements were removed from the core, Defueling Elements have been placed in defueled regions to provide mechanical stability. Each Defueling Element is unfueled and is poisoned with boron carbide pins. These pins exceed the negative reactivity of the control rods that are removed from each fueled element before it is removed from the reactor.

PSC proposes to amend the Technical Specifications (TS) to allow permanent removal of the Control Rod Drive and Orifice Assemblies (CRDOAs) from defueled regions of the reactor.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR50.92(c)(1)) because the negative reactivity contribution of an unfueled and poisoned Defueling Element more than compensates for the negative reactivity lost with the removal of the control rods from that core region.

Also, the spent fuel fission products have decayed such that shutdown cooling is not significantly impacted by the changes in flow distribution with CRDOA removal.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because FSV has been permanently shutdown since August 18, 1990 and decay heat is greatly reduced. Therefore, the removal of the CRDOAs from defueled regions can not result in any changes in decay heat accident possibilities. Also, shutdown reactivity is not decreased by the proposed removal of CRDOAs. Therefore, the possibility of a inadvertent criticality is not increased.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes would still provide adequate protection of fuel remaining in the reactor core from any decay heat generated or reactivity generated accidents.

Therefore, based on its review, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 18, 1990, and May 31, 1990. These submittals supersede any previous submittals.

Description of amendment request: The proposed amendment would revise the Technical Specifications Facility Operating License Nos. DPR-70 and DPR-75 in response to the revised reporting requirements of Generic Letter 83-43, to reflect revised primary coolant specific activity reporting requirements of Generic Letter 85-19, to reflect organizational changes, and to provide editorial corrections to the technical specifications. The specific proposed changes are as follows:

1. Change definition 1.27 from "REPORTABLE OCCURRENCE" to "REPORTABLE EVENT", referencing 10 CFR 50.73. Also editorial corrections are made to definition 1.32, "STAGGERED TEST BASIS".

2. (Unit 2 only). Editorial revision of Specification 4.2.2.2(c) to incorporate the change to the relationship between the limit for fractional thermal power operation and rated thermal power, as approved in Amendment 6 to the SGS Unit 2 Technical Specifications. Revise Specification 4.2.2.2(e) and B 3/4.2.3 to reference 6.9.1.9.

3. Revision of Specifications 3.3.3.8, 3.3.3.9 and 3.11.3 to delete reference to Specification 6.9.1.9.b and to provide editorial corrections.

4. Revise Table 4.4-2, Steam Generator Tube Inspection, Specifications 4.4.5.5 and B 3/4.4.5 (Unit 1) and Specifications 4.4.6.5 and B 3/4.4.6 (Unit 2), to delete reference to Section 6.9.1 and add the reporting requirements applicable to steam generator tube degradation. Similarly revise Specification 4.6.1.6.2 for containment degradation reporting requirements.

Unit 2 Specification 4.8.1.1.4 is being revised to replace reference to Section 6.9.1 with 6.9.2 (Special Reports) for diesel generator failures.

5. Revision of Section 3.4.8 (Unit 1) and 3.4.9 (Unit 2) to eliminate those reactor coolant system specific activity limit requirement deemed unnecessary by NRC Generic Letter 85-19. The

corresponding BASES sections are revised accordingly.

6. Revision of Specifications 3.11.1.2, 3.11.1.3, 3.11.2.2, 3.11.2.3, 3.11.2.4, 3.11.4, 3.12.1, 3/4.12.2 and 3/4.12.3 to delete reference to Licensee Event Reports and/or to provide editorial corrections. Revise 3.11.2.4 to state that Specification 3.0.3 is not applicable.

7. Revision to tables 3.12-2 and 4.12-1 to change the reporting levels and lower limits of detection of radioactivity concentrations of tritium and I-131 for the radiological environmental monitoring program. The changes will allow higher activity levels provided that drinking water pathways are not involved. Also, an editorial correction to table 4.12-1 is made to change "Cs-136" to "Cs 134".

8. Change "General Manager - Nuclear Safety Review" to "General Manager - Quality Assurance and Nuclear Safety" throughout Chapter 6.

9. Revise Section 6.2.2 to delete Specification 6.2.2(c), which is redundant to Table 6.2-1; delete references to "Health Physics technician" and provide editorial corrections to Unit 1. Revise table 6.2-1 to include the minimum shift staffing requirements for the radiation protection technicians.

10. Revision of Specifications 6.2.3.1, 6.3.1 and 6.4.2 to reflect shift Technical Advisor accountability to the "Senior Nuclear" Shift Supervisor, Radiation Protection Manager qualifications, and organizational responsibility for Fire Brigade training, respectively.

Revise Section 6.4.1 to replace reference to 10 CFR Part 55, Appedix A and supplemental requirements, with a general reference to 10 CFR Part 55.

11. Revision to Specifications 6.5.1.2, 6.5.1.3 and 6.5.1.5 to change the SORC composition and rules concerning alternate members and quorum requirements, respectively.

12. Revise Specification 6.5.1.6 to simplify the SORC responsibilities with respect to internal distribution of reports. Revise 6.5.1.6(a) to require SORC review of procedure changes only if a 10 CFR 50.59 safety evaluation is required. Revise 6.5.1.6(f) and 6.5.1.6(i) to delete reference to the General Manager - Nuclear Safety Review. Revise 6.5.1.6(j), 6.5.1.6(k) and 6.5.1.6(1) to require SORC review of changes to the Security Plan, Emeregency Plan or Fire Protection Plan and their implementing proceures only if a 10 CFR 50.59 safety evaluation is required (or an evaluation under 10 CFR 50.54(p) for Security Plan or 10 CFR 50.54(q) for Emergency Plan changes). Revise Specification 6.5.3.2(d) to replace the reference to safety significant issues with a reference to 10 CFR 50.59.

Provide editorial clairification to Specification 6.5.1.8(a), with regard to SORC recommendations of approval or disapproval of items to the General Manager - Salem Operations.

13. Revise Section 6.5.2 to reflect the proposed Nuclear Safety department configuration. The Manager - Offsite Safety Review and the Manager - Onsite Safety Review will be replaced by the Manager - Nuclear Safety, who will have management responsibility for both the Offsite Safety Review (OSR) staff and the Onsite Safety Review Group (SRG).

14. Revise Specification 6.5.2.3 to clarify the use of consultants by the Nuclear Safety Department. Provide editorial revisions to Specification 6.5.2.4. Delete the miscellaneous OSR activities at the end of Specification 6.5.2.4.1. Revise 6.5.2.4.2(g) to add the phrase "that could affect nuclear safety."

15. Revision to Specification 6.5.2.4.3(i) and 6.5.2.4.3(j) to specify that either offsite fire protection engineers or independent fire protection consultants will be utilized for the fire protection and loss prevention program implementation audits, with an outside consultant being used at least once per 36 months.

16. Delete Specification 6.5.2.7 and insert new Specification 6.5.2.4.4. This will clarify that the record requirements described therein pertain specifically to the OSR staff. The proposed change will also increase the allowable time periods for forwarding reports of reviews and audits.

17. Revise Section 6.5.3 to replace "NSR" with "the OSR staff".

18. Revision of the title of Section 6.9 to delete reference to REPORTABLE OCCURRENCES. Revision to Section 6.9.1 and 6.9.2 to include the correct NRC mailing addresses and refer specifically to USNRC Region I. Revision to Specification 6.9.1.4 to delete requirements for submittal of the initial Annual Report.

19. Revise Specification 6.9.1.5a to replace "film badge measurements" with "self reading dosimeter measurements".

Addition of Specification 6.9.1.5c to include primary coolant specific activity analyses results among the annual reports.

20. Deletion of Specifications 6.9.1.7, 6.9.1.8 and 6.9.1.9 to reflect reporting requirements of 10 CFR 50.73, consistent with NRC Generic Letter 83-43. Renumbering of Specifications 6.9.1.10 and 6.9.1.11 and other editorial revisions.

21. Revision of the requirements of Specification 6.9.1.7 (formerly 6.9.1.10) regarding radiological sampling location maps submitted with the Annual Radiological Environmental Operating Report.

22. Inclusion of Specification 6.9.1.9 to revise the schedular requirements for submittal of the Radial Peaking Factor Limit Report. For Unit 2, revise B 3/4.2.3 to reference 6.9.1.9.

23. Revision of Section 6.10.1 to change "REPORTABLE OCCURRENCES" to "REPORTABLE EVENTS", to delete the five year storage requirement for reactor tests and experiments and reflect the record storage requiremnts of 10 CFR 50.59.

24. Revision of Section Section 6.10.2 to reflect the succession of the Nuclear Review Board by the Offsite Safety Review staff, to reflect the record storage requirements of 10 CFR 50.59 and to provide editorial corrections.

25. Addition of a footnote to Sections 6.12.1 and 6.12.2 to define radiation intensity as it is used to determine whether an areas is a High Radiation Area. 6.12.1 is also revised to delete reference to "Health Physicist" and to provide editorial corrections. 6.12.2 is being revised to reflect the "Senior Nuclear Shift Supervisor" title.

Revision 2 of this change request proposed adding the provisions of 10 CFR 20.203(c)(4), to Section 6.12.1. These provisions allow a high radiation area established for thirty days or less to be controlled via direct surveillance. A telephone conference call was held between PSE&G and NRC (NRR and Region I) personnel, on March 13, 1990, to discuss this proposed change. The consensus reached was that the provisions of 10 CFR 20.203(c)(4) could be applied to high radiation areas without changing the current Technical Specifications. Therefore, the change has been removed from this revision of the change request. PSE&G requests that the agreement that 10 CFR 20.203(c)(4) does not conflict with the present Technical Specifications be documented in the NRC Safety Evaluation Report for this License Change Request.

26. Revision of Section 6.15.1 to change "FSAR" to "UFSAR" and to provide editorial corrections.

27. (Unit 1 only). Revision of Section 6.16 to delete references to past deadlines for Environmental Qualification compliance.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

The proposed changes to the Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Those proposed changes which are administrative in nature do not impact any accident analyses used to support operation of the Salem Nuclear Generating Stations. Furthermore, the proposed changes do not involve any reduction in management effectiveness, nor do they adversely affect the design or operation of any systems or components important to safety. Consequently, the reliability of the performance of plant safety functions is not adversely affected.

The proposed changes to Section 3.4.8 of Unit 1 and 3.4.9 of Unit 2 delete the action statement requiring discontinuation of operation if primary coolant specific activity exceeds 1.0 [microcuries per gram] for 800 hours (or 10% of unit total annual operating time) during any 12 month period. The activity limits of Figure 3.4-1 and 100/E [microcuries per gram] will still apply. These limits are bounded by the assumptions used in the steam generator tube rupture accident analysis described in UFSAR Section 15.4.4, which bases primary coolant activity on 1% defective fuel cladding. Therefore, the Technical Specifications will continue to assure that the 2 hour exclusion area dose in the event of a steam generator tube rupture accident analysis would be a small fraction of the 10 CFR 100 limits.

Furthermore, deletion of the 800 hour limit has been endorsed by the NRC in Generic Letter 85-19. The NRC's position is predicated on promulgation of 10 CFR 50.72 reporting requirements and improvements made in fuel management subsequent to initial development of the primary coolant specific activity limits. Generic Letter 85-19 states that "[l]icensees are expected to continue to monitor activity in the primary coolant and ... maintain it at a reasonably low level (i.e., accumulated time with high iodine activity should not approach 800 hours)". PSE&G recognizes the significance of coolant activity and will continue to monitor and control accumulated specific activity levels.

The proposed increases to the reporting levels of radioactivity and lower limits of detection for tritium and I-131 (Section 3/4.12) do not increase the probability or consequences of an accident. Since the current values are based on 40 CFR 141 requirements for drinking water supplies, this proposed change revises those levels in cases where no drinking water pathways are potentially affected. The reporting levels and LLD for tritium and I-131 will continue to be a small fraction of the levels allowed by 10 CFR 20.

Therefore, it may be concluded that the proposed changes to not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not adversely affect the design or operation of any systems or components important to safety. No physical plant modifications or new operational configurations will result from these proposed changes. Therefore, it may be concluded that the proposed changes to not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

With the exception of the deletion of the 800 hour limit on primary coolant specific activity and revision of radiological environmental monitoring parameters discussed above, the changes proposed herein potentially affecting parameters defining margins for safety affect only their administrative aspects and do not allow for any reduction in a margin of safety. The proposed changes to Specification 6.9.1.9 regarding F_{xy} reporting requirements will not reduce the margin of safety associated with the heat flux hot channel factor (F_q), since the same methodology will be used to define the acceptable limits.

The proposed change to specific activity limits does not involve a significant reduction in a margin of safety. The limits of Figure 3.4-1, which are bounded by the assumption of 1% defective fuel clad for the steam generator tube rupture accident analysis, will still apply. Also, the change has been endorsed by the NRC via Generic Letter 85-19.

The proposed change to the radiological environmental monitoring program does not involve a significant reduction in a margin of safety. The program will still implement Section IV.B to 10 CFR 50, Appendix I. As stated above, the proposed changes do not affect compliance with 10 CFR 20. The proposed change deletes radioactivity concentration values associated with 40 CFR 141 in cases where it is not applicable (i.e., no drinking water pathways are involved). Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: June 29, 1990

Description of amendment request: The proposed amendment would change the Ginna Technical Specfications to incorporate additional specifications and Action Statements regarding required operability of the Ginna station auxiliary electrical systems. Offsite power system reconfiguration modifications will increase the availability margin of the offsite system by dedicating a 34.5 to 4.16 kilovolt, transformer to each of the two offsite (preferred power) transmission lines. The modified system provides a second source of preferred power in that two independent offsite power sources with separate transformers are available.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing design of the station auxiliary electrical system before modifications is less reliable in that loss of the one offsite transformer would result in immediate reliance of the onsite power system. The onsite diesel generators, used to backup the station offsite electrical system, would not be immediately relied upon

with the proposed modification and corresponding amendment.

(2) Since the reliance of the two standby onsite diesel generators are still required as backup in the proposed modification, use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Because the offsite power system meets the requirements of existing licensing commitments, the operating margin would be improved by dedicating two independent offsite sources with separate transformers. Use of the modified specification would therefore not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's analysis.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Cook, Purcell & Reynolds, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Acting Project Director: Victor Nerses

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: September 28, 1990.

Description of amendment request: Proposed Change No. 233, which was submitted by Amendment Application No. 189, proposes to revise the Technical Specifications and to add a license condition in order to address single failure problems that were recently identified by the licensee.

During the current Cycle 11 outage, the licensee is making modifications to the Safeguards Load Sequencing System (SLSS) to resolve single failure concerns. The modifications to the SLSS will require a change to the existing Technical Specifications and the licensee has proposed to make the following changes in this regard:

G7GOP2Add operability requirements in Table 3.5.1-1 of Technical Specification 3.5.1, Reactor Trip System Instrumentation, for instrumentation that senses undervoltage on both 4160 volt buses and trips the reactor.

G7GOP2Include a description of the revised SLSS actuation logic in the Basis section of Technical Specification 3.7.1, Auxiliary Electrical Supply.

G7GOP2Specify surveillance requirements for the 4160 volt electrical buses in Table 4.1.1 of Technical Specification 4.1.1, Operational Safety Items.

G7GOP2Change the definition of a SISLOP [Safety Injection Signal with Concurrent Loss of Power] condition to be a SIS and concurrent loss of respective 4160 volt bus rather than a SIS and concurrent loss of both buses in Technical Specification 4.4, Emergency Power System Periodic Testing.

The licensee has also determined that the automatic transfer switches and inverters that supply power to vital buses 1, 2, 3, and 3A must be replaced with components that provide retransfer capability in order to resolve a different single failure problem. However, replacement parts are not readily available, therefore, the licensee has proposed to add the following license condition to paragraph 3 of Provisional Operating License DPR-13:

N. Plant Modification to Eliminate Single Failure Susceptibility of Vital Bus Automatic Transfer Function

Southern California Edison Company shall modify the electrical distribution system to ensure that the availability of a power source for vital buses 1, 2, 3, and 3A is not subject to a single failure susceptibility. The plant modification shall satisfy the design requirements of the safety-related portions of the existing electrical distribution system and shall be operable prior to restart from the Cycle 12 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. Will operation of the facility in accordance with these proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Sequencer Logic Deficiency

The only accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) that are related to the proposed Technical Specification changes are a LOCA or MSLB. Safe shutdown from both of these events is assured, in part, by automatic injection of borated water into the Reactor Coolant System (RCS) by the Safety Injection System. A SIS is automatically initiated by either low pressure in the pressurizer or high containment pressure. Reliable operation of the Safety Injection System is assured by i) two separate and independent pumping trains * for delivering borated water to the RCS and ii) two emergency diesel generators for powering Safety Injection System equipment during loss of off-site power conditions.

The SLSS starts and loads the diesel generators and provides proper sequencing of the ECCS loads onto the ECCS buses. This proposed change reflects plant modifications that are being performed during the current refueling outage. The modification will change the SLSS actuation logic so that each sequencer starts and loads its respective diesel and sequences the ECCS loads upon receipt of a SIS concurrent with the loss of its respective electrical bus rather than upon a SIS and loss of both buses. In addition, separate trip signals indicative of loss of both 4160 volt buses are being created outside of the SLSS to retain the logic for reactor trip upon loss of off-site power (i.e., loss of both 4160 volt buses). These plant modifications do not affect the Safety Injection System logic initiating circuits or the probability of spurious reactor trips.

Operation of SONGS 1 in accordance with this proposed change will not increase the probability or consequences of an accident previously evaluated. Rather, the plant modifications reflected by this change assure that ECCS operation will be initiated within the time frame assumed by the MSLB and LOCA safety analyses presented in Sections 15.2 and 15.16 of the UFSAR.

Vital Bus Automatic Transfer

Due to the vital bus transfer single failure susceptibility in the SONGS 1 electrical distribution system, the consequences of a LOCA or MSLB could be more serious than previously concluded by the UFSAR accident analyses. The probability of a LOCA or MSLB occurring is unaffected by the single failure susceptibility.

If the vital buses were being powered from their backup power source, failure of that power source would lead to a temporary loss of all vital bus electrical power. Such an occurrence may prevent automatic actuation of the safeguards required to avoid core damage following a LOCA/MSLB. This possibility stems from the lack of automatic retransfer capability from the vital bus backup power source (480 volt motor control center number 2) to the primary source (DC Bus. No. 1). Electrical power could eventually be restored to the buses by the operator manually transferring to the primary source.

SCE plans to implement a design modification during the Cycle 12 refueling outage to eliminate the possibility of the above single failure scenario. In addition, SCE has concluded that operation throughout Cycle 11 with the current plant configuration does not represent a significant increase in the consequences of a LOCA/MSLB because such a series of events is highly unlikely to occur. All of the following circumstances would have to exist to temporarily lose power to one or more of the vital buses.

Occurrence of a LOCA or MSLB.

Sufficient short circuiting of unqualified electrical loads on the vital buses to cause automatic transfer to the backup power source.

Failure of the vital bus backup power source (Train B 480 volt motor control

* During ground detection activities, one pumping train may be inoperable for a limited period in accordance with Technical Specification 3.7.1, Action G.

center number 2) after an automatic transfer.

SCE has performed a PRA for this scenario to confirm that operation with the current plant configuration for a limited period does not represent a significant risk of core damage and/or adverse consequences to the public. The results of that analysis show that the risk of core damage due to this single failure susceptibility is less than 6×10^{-7} per year. Therefore, continued plant operation throughout Cycle 11 with the existing vital bus configuration does not represent a significant increase in the consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with these proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Sequencer Logic Deficiency

The proposed Technical Specification changes do not introduce the possibility for any new accidents. The plant changes that accompany this proposed change do not affect the requirements for generation of a SIS or initiation of a reactor trip. All new circuits, cabling, and terminations are being installed to satisfy seismic category A requirements and physical and electrical separation criteria for safety-related systems.

In addition, SCE has confirmed that operation of one of the two trains of the Safety Injection System in a sequenced mode (SISLOP) concurrent with the other train in a block-loaded mode (SIS only) will not result in any adverse consequences. Once the plant changes are complete, at least one safety injection train would operate upon receipt of a SIS and a concurrent loss of one of the two 4160 volt buses.

Vital Bus Automatic Transfer

The design for the plant modification that will eliminate the vital bus automatic transfer single failure susceptibility is not yet final. SCE will complete the necessary design modification in accordance with all applicable regulatory requirements to assure that the revised electrical distribution system does not introduce the possibility of any new accidents.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

Sequencer Logic Deficiency

The proposed Technical Specification changes reflect plant changes that are being performed to eliminate three single failure scenarios that potentially could have delayed initiation of safety injection after a LOCA or MSLB and concurrent loss of off-site power. In each case, the resulting delay could have been beyond the timing assumed in the analyses described in UFSAR Sections 15.2 and 15.16 for a MSLB and LOCA. The plant changes dictate that safety injection operation will be initiated upon receipt of a SIS and concurrent loss of one rather than both 4160 volt electrical buses to assure there is no reduction in a margin of safety.

Vital Bus Automatic Transfer

Interim operation during Cycle 11 with the present vital bus automatic transfer capability involves a slight chance that the plant may not be able to automatically initiate required safeguards following a LOCA/MSLB. However, SCE has concluded that the potential for this event is not significant since the probability of its occurrence is estimated to be less than 6×10^{-7} per year. The design for the plant modification that will eliminate this single failure concern will be installed during the Cycle 12 refueling outage to maintain all existing margins of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: James E. Dyer, Acting

Tennessee Valley Authority, Docket No. 50-328 Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: August 31, 1990 (TS 90-11)

Description of amendment request: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Unit 2, Technical Specifications (TSs). The proposed changes would revise Surveillance Requirement (SR) 4.6.1.2.a and the associated bases Section 3/4.6.1.2, "Containment Leakage," to delete the requirement that the third containment Type A test for Unit 2 during the 10-year service period shall be conducted during the outage for the 10-year unit inservice inspections (ISIs). SR 4.6.1.2.a requires that three Type A tests (containment integrated leak rate tests [CILRT]) be conducted at approximately 3-year intervals during each 10-year service period. Currently, the SR states that the third test of each set is required to be conducted during shutdown for the 10-year unit ISIs. This SR implements the requirements of 10 CFR 50, Appendix J, III.D.1(a) and ISIs are required by 10 CFR 10.55.a. The proposed change would allow the third Type A test and the 10-year ISIs to be uncoupled and performed during separate refueling outages.

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following information on the proposed TS changes:

The third Type A test of the first 10-year service period for SQN Unit 2 is presently scheduled to commence toward the end of the Unit 2 Cycle 5 refueling outage (May 1992).

TVA intends to conduct the SQN Unit 2, 10-year ISI during the Unit 2 Cycle 6 refueling outage (October-November 1993). ...SQN Unit 2 was shut down by TVA on August 21, 1985. SQN Unit 2 remained in a cold shutdown condition (Mode 5) over a 3-year period. Unit 2 returned to full power operation on May 31, 1988. The 3-year shutdown period resulted in adjustments to the Unit 2, 10-year ISI interval in accordance with the provisions of ASME [American Society of Mechanical Engineers Code] Section XI, Article IWA-2400(c). The adjustment in the 10-year ISI interval imposed separate timeframes for the scheduled performance of the Unit 2 CILRT and the scheduled 10-year ISI. To account for this separation, TVA is submitting the enclosed request that would allow the third Unit 2 CILRT and the 10-year ISI to be uncoupled and performed in separate refueling outages.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The uncoupling of the third Type A test schedule from the 10-year in-service inspection (ISI) schedule does not involve a change in the test and inspection methodology or acceptance criteria from those previously analyzed in the SQN Final Safety Analysis Report. The proposed change does not involve a change to the facility or modifications to equipment, components, or hardware; therefore, the probability or consequences of an accident previously evaluated have not increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change would allow separate timeframes for the required performance of the third Type A test and the scheduled 10-year ISI[s]. This separation does not introduce any new type of accident or malfunction since the surveillance test frequency, acceptance criteria, and test and inspection methods remain unchanged. Conducting the third Type A test in a separate outage from the 10-year ISI will not result in any design or hardware changes and therefore does not create the possibility for a

new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The proposed change will not reduce the margin of safety as defined in the bases of SQN TS. The bases for TS 3/4 6.1.2, "Containment Leakage," states, "The surveillance testing for measuring leakage rates are consistent with the requirements of Appendix J of 10 CFR 50." Compliance with the 10 CFR 50, Appendix J requirements would continue to be maintained with the single exception that allows the third Type A test and the 10-year ISI[s] not to be performed during a common unit outage. This uncoupling causes no reduction in the margin of safety since no changes were made to the containment test frequency or the containment leakage limits assumed in the accident analysis [and the change in the schedule for the 10-year ISIs is in accordance with the ASME code].

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 26, 1990, supplemented June 13, 1990

Brief description of amendment request: The proposed amendment would change the Rancho Seco Physical Security Plan. The proposed amendment would revise paragraph 2.C.(3) to the Rancho Seco license allowing the removal of vital areas and other modifications that would allow the licensee to reduce the size of the Rancho Seco facility's security force. The licensee based the amendment request on the following: (1) the reactor was permanently shut down on June 7, 1989, (2) the reactor was defueled on December 8, 1989 and all fuel is currently stored in the onsite spent fuel pool, (3) the premise that a radiological release would not result in a whole body dose in excess of 10 CFR Part 100, and (4) that an act of sabotage that would result in a dose in excess of these limits is not a credible event.

Date of publication of individual notice in **Federal Register:** September 21, 1990

Expiration date of individual notice: October 22, 1990

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: June 15, 1990

Brief Description of amendments: The amendments revise Technical Specifications 4.8.2.3.2.c.5 and 4.8.2.5.2.c.5 to delete the equivalent load profiles provided in table form that are associated with the battery service test. The tables are replaced with a statement requiring that the batteries be tested by subjecting them to an equivalent load profile based on anticipated breaker operations required during loss-of-offsite power and loss-of-collant accident conditions. The equivalent load profiles are defined in the Final Safety Analysis Report.

Date of issuance: October 1, 1990

Effective date: October 1, 1990

Amendment Nos.: 84 and 77

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28473) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial

Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: September 29, 1989 and February 1, 1990

Brief description of amendments: This amendment changes the Dresden Units 2 and 3 Technical Specifications to reflect modifications to the Standby Liquid Control System and the addition of a Recirculation Pump Trip, which have been installed to comply with the requirements of the Anticipated Transient Without Scram Rule (10 CFR 50.62).

Date of issuance: October 2, 1990

Effective date: October 2, 1990

Amendment Nos.: 113 and 109

Provisional and Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 1989 (54 FR 47600) The February 1, 1990 submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: July 24, 1989

Brief description of amendment: This amendment revises the Technical Specification (TS) by specifying the normal flow path for primary containment nitrogen control (vent/makeup) and pressure control when operating in operational conditions 1, 2, and 3.

Date of issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No.: 58

Facility Operating License No. NPF-43: The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36339) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: April 16, 1990

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications (TSs) to remove existing requirements on the reactor coolant resistance temperature detector (RTD) manifold instrumentation, and to replace them with requirements for fast-response thermowell-mounted RTDs.

Date of issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No. 33

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21970) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 27, 1990, as revised July 5, 1990, August 6, 1990, August 9, 1990, August 20, 1990, and September 11, 1990.

Brief description of amendment: The amendment revises the Technical Specifications (TS) and Bases by adding requirements for the operation and use of the alternate decay heat removal system (ADHRS) during future outages. In addition, the amendment requires automatic isolation of the reactor vessel and automatic initiation and injection of water into the reactor for one of the two emergency core cooling system (ECCS) subsystems required to be operable during cold shutdown and refueling to mitigate inadvertent reactor vessel drainage.

Date of issuance: September 24, 1990

Effective date: September 24, 1990

Amendment No: 70

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30296) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 25, 1990

Brief description of amendment: The amendment revised the Technical Specifications to change the organizational structure and position titles to reflect the changes brought about by the transfer of operations to Entergy Operations, Inc.

Date of issuance: October 2, 1990

Effective date: October 2, 1990

Amendment No.: 63

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34369) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 10, 1990

Brief description of amendment: This amendment updates the 18-month emergency diesel generator load testing requirements to reflect increased generating capacity. The amendment also removes surveillance requirements on block load timers in modes 5 and 6, and deletes two notes that are no longer applicable.

Date of issuance: September 24, 1990

Effective date: September 24, 1990

Amendment No.: 131

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: January 8, 1990

Brief description of amendment: Removes the 3.25 Technical Specification limit on extending surveillance intervals as proposed in NRC Generic Letter 89-14.

Date of Issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No.: 155

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 1990 (55 FR 8225) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: July 26, 1989

Brief description of amendment: Revises surveillance frequencies for two types of instruments and corrects various clerical errors in the Technical Specifictions.

Date of Issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No.: 156

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37046) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: January 18, 1990

Brief description of amendment: Corrects numerous typographical, reference, and format errors in the License and Technical Specifications.

Date of Issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No.: 157

Facility Operating License No. DPR-50. Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10534) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 19, 1990

Brief description of amendment: The amendment adds new surveillance requirements to Technical Specification 4.9.6.2 for a new frame mounted auxiliary hoist on the fuel building fuel handling platform. The new hoist will be used to move control rods between primary containment and the fuel building.

Date of issuance: September 27, 1990

Effective date: September 27, 1990

Amendment No.: 48

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21971) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 21, 1989, and supplemented by letter dated August 3, 1990

Brief description of amendment: The amendment revised the Limiting Condition for Operation Action statement, surveillance requirements and Bases for Technical Specification 3/4.7.4 relating to snubbers. The changes eliminate redundant requirements and refer to implementation of the Inservice Inspection Plan to fulfill the inspection requirements as they apply to snubbers.

Date of issuance: September 27, 1990

Effective date: September 27, 1990

Amendment No.: 49

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15828). The August 3, 1990, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 22, 1990

Brief description of amendment: The amendment revised Technical Specification 3/4.7.1.2, "Ultimate Heat Sink," to increase the allowable ultimate heat sink basin temperature from 82° F to 88° F. The change allows GSU to use the ultimate heat sink to cool plant equipment when normal service water is removed from service and when normal service water nears its design of 95° F and adequate temperature differentials are unobtainable.

Date of issuance: October 4, 1990

Effective date: October 4, 1990

Amendment No.: 50

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1990 (55 FR 35743) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: The change clarified the divisional assignments and logic arrangements of the reactor water level and high drywell pressure inputs to the CRVICS.

Date of issuance: September 25, 1990

Effective date: September 25, 1990

Amendment No.: 48

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26525) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 31, 1988

Brief description of amendment: The amendment revised the Technical Specifications by changing the iodine reporting requirements from a special report to an annual report, consistent with NRC Generic Letter 85-19. Other administrative changes were made to correct omissions or deletions of items previously approved, to clarify wording and to update surveillance requirements.

Date of issuance: September 28, 1990

Effective date: September 28, 1990

Amendment No.: 170

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30300) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 10, 1990

Brief description of amendment: The amendment modifies Millstone Unit 3 Technical Specification (TS) Table 3.3-9, "Remote Shutdown Instrumentation," to correct an editorial error and TS Table 4.3-6, "Remote Shutdown Monitoring Instrumentatoin Surveillance Requirements," to provide a footnote concerning the source range count rate.

Date of issuance: September 26, 1990

Effective date: September 26, 1990

Amendment No.: 56

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34376) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: June 1, 1990

Brief description of amendment: This amendment revised the Technical Specifications to reflect two fire protection modifications which the licensee intends to implement during the fall 1990 refueling outage. These modifications will replace the existing suppression pool water temperature indication (actually the water temperature at the suction of the 'A' Residual Heat Removal pump) at the Remote Shutdown Panel (RSP) with direct temperature indication of the suppression pool water and will provide for the control of emergency power to the Reactor Core Isolation Cooling System steam supply line inboard containment isolation valve from the RSP.

Date of issuance: September 19, 1990

Effective date: October 1, 1990

Amendment No. 45

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26288) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: October 11, 1989 and April 9, 1990

Brief description of amendment: The amendments revised the Technical Specifications to specify the number of suppression chamber to drywell vacuum breaker pairs which are required to be operable as three rather than four pairs.

Date of issuance: October 2, 1990

Effective date: October 2, 1990

Amendment No. 146 and 9

Facility Operating License Nos. NPF-39 and NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 1989 (54 FR 47607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: November 9, 1987 as supplemented by letter dated February 25, 1988.

Brief description of amendment: The proposed amendment would revise Trojan Technical Specification (TS) Section 3.9.9, "Containment Ventilation Isolation System," (CVIS), by changing the modes in which the TS would be applicable from "MODE 6" to "During CORE ALTERATIONS or movement of irradiated fuel within the Containment."

Date of issuance: October 1, 1990

Effective date: October 1, 1990

Amendment No.: 165

Facilities Operating License No. NPF-1: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36673) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 13, 1990

Brief description of amendment: The amendment revises Surveillance Requirement 4.9.F.6 to correctly identify the location of the Independent Power Supplies circuit breakers.

Date of issuance: September 27, 1990

Effective date: September 27, 1990

Amendment No.: 165

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: July 11, 1990 (55 FR 28481) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: May 21, 1990 (TS 90-14)

Brief description of amendment: This amendment modifies the Sequoyah Nuclear Plant, Unit 1, Technical Specifications (TSs). The changes revise valve nomenclature in TS Table 3.6.-2, Containment Isolation Valves. The nomenclature of 14 sampling valves in the TS table is changed from flow control valve (FCV) to flow solenoid valve (FSV). The Unit 1 valves were changed in the Unit 1 Cycle 4 refueling outage. In its application, the licensee also requested changes to Table 3.6-2 of the Sequoyah Unit 2 TSs. As requested, these changes will be issued after the valves are replaced in the Unit 2 Cycle 4 refueling outage which began in September 1990.

Date of issuance: September 20, 1990

Effective date: September 20, 1990

Amendment No.: 145

Facility Operating License No. DPR-77: Amendment revised the Unit 1 Technical Specifications.

Date of initial notice in Federal Register: June 27, 1990 (55 FR 26296) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 20, 1990 (TS 90-15)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The changes revise the Action Statement "c", for Limiting Condition for Operation (LCO) 3.9.2 on source range neutron flux monitors for refueling operations, to add a statement that the provisions of TS 3.0.4 are not applicable to LCO 3.9.2. TS 3.0.4 states that the licensee may not have the reactor enter an operational mode or other specified condition unless the conditions for the LCO are met without reliance on provisions contained in the action requirements. This provision in TS 3.0.4 does not prevent passage through operational modes as required to comply with action statement requirements. Exceptions in the TSs to TS 3.0.4 are stated in the individual specifications. The changes in the amendments provide such an exception for LCO 3.9.2 to allow the reactor to enter the refueling operational mode without meeting LCO 3.9.2 (i.e, without having as a minimum two operable source range monitors). Refueling is Operational Mode 6 with fuel in the reactor vessel and the reactor vessel head closure bolts less than fully tensioned or the head removed.

Date of issuance: September 21, 1990

Effective date: September 21, 1990

Amendment Nos.: 146 and 127

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1990 (55 FR 34382) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2 Hamilton County, Tennessee

Date of application for amendment: December 8, 1989 as supplemented by letter dated March 15, 1990 (TS 89-18)

Brief description of amendment: The amendment deletes Surveillance Requirement (SR) 4.5.2.d.1 of the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs). This SR required verification of the automatic isolation and interlock function of the residual heat removal (RHR) system which was used to protect the RHR system from the reactor coolant system pressure when the pressure is above 700 psi gauge. The autoclosure interlock function is being removed from the RHR system in the current Unit 2 Cycle 4 refueling outage.

The application also proposed changes to the Unit 1 TSs. These changes were issued in the staff's letter dated May 9, 1990 during the Unit 1 Cycle 4 refueling outage.

Date of issuance: October 1, 1990

Effective date: October 1, 1990

Amendment No.: 128

Facility Operating License No. DPR-79: Amendments revised the Unit 2 Technical Specifications.

Date of initial notice in Federal Register: January 24, 1990 (55 FR 2446) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: January 12, 1990 which superseded the application dated December 2, 1988 (TS 88-42)

Brief description of amendment: This amendment modifies the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs). The changes revise the trip setpoint and allowable value units for the intermediate range (IR) nuclear flux detectors and revise the applicability requirements for the source range (SR) nuclear flux detectors. These changes account for the fact that this equipment will be replaced at Unit 2 during the current Unit 2 Cycle 4 refueling outage. This is part of the equipment upgrade at Sequoyah to comply with Regulatory Guide 1.97.

The application dated January 12, 1990 superseded the previous application for TS Change Request 88-42, dated December 2, 1988. The proposed changes for Sequoyah Unit 1 were issued by letter dated April 27, 1990 during the Unit 1 Cycle 4 refueling outage.

Date of issuance: October 2, 1990

Effective date: October 2, 1990

Amendment No.: 129

Facility Operating Licenses No. DPR-79. Amendment revised the Unit 2 Technical Specifications.

Date of initial notice in Federal Register: February 7, 1990 (55 FR 4276) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 2, 1990

Brief description of amendment: The technical specification change revises Specification 4.0.2 and its associated Bases to modify the existing surveillance interval extension provisions as provided by Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

Date of Issuance: October 3, 1990

Effective date: October 3, 1990

Amendment No.: 41

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 8, 1990 (55 FR 32334) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1990

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 16, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 21, 1990

Brief description of amendment: The amendment changed Trojan Technical Specification Table 3.6-1 to allow the main steam to Auxilary Feedwater pump turbine-driven supply valves to be tested at power, and to correct the number designations of the valves as listed in the table.

Date of issuance: September 28, 1990

Effective date: September 28, 1990

Amendment No.: 164

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards determination: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 28, 1990.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

NRC Project Director: James E. Dyer, Acting

Dated at Rockville, Maryland, this 10th day of October 1990.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 90-24325 Filed 10-16-90; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28524; International Series Release No. 169; File No. SR-BSE-90-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Nikkei Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to allow it to trade, both on a listed and Unlisted Trading Privileges ("UTP") basis, index warrants based on the Nikkei Stock Average Index ("Nikkei"), a price-weighted index consisting of 225

stocks listed and trade on the Tokyo Stock Exchange ("TKE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE is submitting the proposed rule change in order to allow the Exchange to trade index warrants based on the Nikkei Index. The Nikkei Index is a widely used indicator of the performance of the Japanese equity market because it consists of 225 highly-capitalized, actively-traded Japanese stocks traded on the TKE. The Nikkei is continuously updated on the basis of trading activity during the TKE trading day session at one-minute intervals on a real-time basis by Nihon Keisai Shimbun, Inc. of Japan ("NKS"). The Commission previously has approved the listing of Nikkei index warrants on the American Stock Exchange ("AMEX").[1]

Such warrant issued will conform to the BSE listing guidelines as proposed in BSE filing SR-BSE-90-02,[2] which provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the financial listing criteria of the BSE; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, Nikkei Index warrants listed on another national securities exchange would be eligible for trading on the BSE.

Nikkei index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Nikkei Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in Nikkei warrants will be subject to several safeguards designed to ensure investor protection. In SR-BSE-90-02, the BSE proposed suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, the proposed amendments to the BSE's rules will make options suitability standards applicable to recommendations regarding index warrants. For warrants based on foreign indexes, the Exchange also recommends that index warrants be sold only to options-approved accounts. In addition, the proposed amendments will require a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"), to approve and initial a discretionary order in index warrants on the day the order is executed. Finally, prior to the commencement of trading, the BSE will distribute a circular to its membership calling attention to the specific risks associated with Nikkei Index warrants.

Due to the fact that the BSE is not the Designated Options Examining Authority ("DOEA") for any of its member firms, BSE members with public customers trading Nikkei Index warrants will be required to have a SROP or ROP designated and qualified in accordance with the rules of the self-regulatory organization ("SRO") that is the DOEA for the BSE member. This will ensure that BSE members with public customers trading index warrants will have an options compliance infrastructure in place to ensure compliance with the proposed account opening and suitability requirements. This requirement will also ensure that BSE members trading index warrants will be subject to oversight by an SRO experienced in regulating options.

The Commission has noted that the trading of index warrants based on a foreign index requires an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the BSE is ensuring that there will be an adequate mechanism for the sharing of surveillance information with respect to the Nikkei's component stocks.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose an inappropriate 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 were either solicited or received.

III. Date of Effectiveness of the Propsed 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

[1] See Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376.

[2] As of the date of this release, SR-BSE-90-02 has not been approved by the Commission. Approval of SR-BSE-90-02 must occur before approval of the Exchange's proposal to list warrants based on the Nikkei.

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 November 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24404 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28529; International Series Rel. No. 173; File No. SR-BSE-90-14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Deutscher Aktienindex (DAX)

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 September 4, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its rules to allow it to trade, both on a listed and Unlisted Trading Privileges ("UTP") basis, index warrants based on the Deutscher Aktienindex ("DAX"), a capitalization-weighted index of 30 leading German stocks trading on the Frankfurt Stock Exchange ("FSE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE is submitting the proposed rule change in order to allow the Exchange to trade index warrants based on the DAX. The DAX, a widely used indicator of the performance of the West German Equity Market, is comprised of 30 blue chip stocks with substantial market capitalization traded on the FSE. The DAX is continuously updated on the basis of trading activity, throughout each trading day session. It is calculated and disseminated by the FSE. Adjustments to the DAX are made by the FSE in consultation with the Federation of German Stock Exchanges and the Borsen-Zeitung.

Such warrant issues will conform to the BSE listing guidelines as proposed in BSE filing SR-BSE-90-02,[1] which provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the financial listing criteria of the BSE; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, warrants which have been approved for trading on another national securities exchange would be eligible for listing on the BSE.

DAX index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the DAX Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the DAX Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in DAX warrants will be subject to several safeguards designed to ensure investor protection. In SR-BSE-90-02, the BSE proposed suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, the proposed amendments to the BSE's rules will make options suitability standards applicable to recommendations regarding index warrants, so that members or member organizations will be required to have reasonable grounds to believe that recommended index warrant transactions are suitable for their customer, and customers, are able to evaluate and bear the risks of the proposed transactions. The Exchange also recommends that index warrants be sold only to options-approved accounts. In addition, the proposed amendments will require a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"), to approve and initial a discretionary order in index warrants on the day the order is executed. Finally, prior to the commencement of trading, the BSE will distribute a circular to its membership calling attention to the specific risks associated with index warrants.

Due to the fact that the BSE is not the Designated Options Examining Authority ("DOE") for any of its member firms, BSE members with public customers trading DAX warrants will be required to have a SROP or ROP designated and qualified in accordance with the rules of the self-regulatory organization ("SRO") that is the DOEA for the BSE member. This will ensure that BSE members with public customers trading index warrants will have an options compliance infrastructure in place to ensure compliance with the warrants account opening and suitability requirements. This requirement will also ensure that BSE members trading index warrants will be subject to oversight by an SRO experienced in regulating options.

The Commission has noted that the trading of warrants based on a foreign index requires an adequate mechanism for sharing surveillance information with respect to the index's component

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[1] As of the date of this release, SR-BSE-90-02 has not been approved by the Commission. Approval of SR-BSE-90-02 must occur before approval of the Exchange's proposal to list warrants based on the DAX.

stocks. In this regard, the BSE is ensuring that there will be an adequate mechanism for the sharing of surveillance information with respect to the DAX's component stocks.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose an inappropriate 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 were either solicited or 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 November 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 11, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24443 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28527; File No. SR-CBOE-90-22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Nominees

On July 9, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend its rules to delete the ability of an individual owner or lessee of a transferable membership to authorize a "nominee" to represent his or her membership.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28246 (July 20, 1990), 55 FR 30772. No comments have been received regarding the proposed rule change, however, the Commission did receive two comment letters on a related filing that the CBOE took into consideration when preparing the current proposal. These letters are discussed below.

I. Introduction and Background

On June 4, 1990, the Commission approved on an accelerated basis a CBOE proposal to clarify and consolidate its rules governing nominees, create a new inactive nominee membership classification and redefine the rules governing membership application procedures.[3] Specifically, the Commission approved, among others, the following rule changes. First, rule 1.1(mm) was added to define the term "nominee" as "an individual who is authorized by the owner or lessee of a regular, *transferable* membership, in accordance with rule 3.8, to conduct business on the floor of the Exchange and to represent such owner or lessee in all matters relating to the Exchange." (Emphasis added) A "non-transferable" membership is defined in § 2.5 of the CBOE's Constitution as a membership acquired pursuant to paragraph (b) of Article FIFTH of the CBOE's Certificate of Incorporation. Therefore, Chicago Board of Trade ("CBT") exerciser memberships would be "non-transferable" and unable to designate a "nominee."

Second, a new rule 3.8 (former rule 3.8 was modified slightly and redesignated as rule 3.9) was added to provide that every member organization that owns or leases a membership must designate a "nominee" to represent the organization with respect to such membership in all matters relating to the Exchange. Rule 3.8 also provides that an individual owner or lessee of a "transferable" membership has the right to use a "nominee" to represent the membership in all matters relating to the Exchange. In addition, rule 3.8 governs the guaranty by members and member organizations of obligations created by their respective nominee(s) arising out of such nominee's representation on their behalf. Finally, rule 3.8 sets forth the eligibility requirements for nominees and establishes the framework for the designation of inactive nominees.

In approving these rule changes the Commission believed that, by specifying more clearly in the CBOE's rules the procedures applicable to nominees, the Exchange community and prospective members or member organizations would be better informed of the requirements for obtaining nominee status as well as the rights and obligations of nominees. In particular, the Commission found that these rule changes were consistent with the requirements of sections 6(c)(3) and 6(b)(2) of the Act because they serve to further the ability of the CBOE to examine and verify the qualifications of an applicant to become a member and

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] Securities Exchange Act Release No. 28092 (June 4, 1990), 55 FR 23621 (order approving file No. SR-CBOE-90-09) ("original nominee filing"). The purpose for the new inactive nominee status is to provide a "parking space" for approved nominees who would be immediately available to replace effective nominees in the event of an unexpected illness, vacations or other absences. In the past, members have accommodated nominee changes by changing nominees from special to regular memberships to avoid the delays of the application procedure. On June 1, 1990, the special memberships expired. Accordingly, the CBOE proposed the creation of an inactive nominee to continue to provide a means for timely changes in nominees.

the natural persons associated with such an applicant.

After approval of the original filing, but prior to the expiration date for comment on the original filing, the Commission received two comment letters frm the CBT requesting the Commission to reconsider and rescind the rule change.[4]

In its comment letters the CBT asserted that the newly approved CBOE rule 3.8(a) impermissibly restricts the rights of CBT exercisers to use their CBOE memberships.[5] The CBT argues that, by restricting the ability to designate nominees to transferable memberships, the CBOE has violated its Certificate of Incorporation as well as the provisions of the Act which require the Exchange to follow its own rules, proscribe anti-competitive Exchange action, and prohibit discrimination among Exchange members.

Specifically, the CBT alleges that CBT exercisers who own non-transferable memberships, as defined in § 2.5 of the CBOE Constitution, have been denied the right of a full CBOE membership because under new CBOE rule 3.8 individual CBOE members who have purchased their seats outright have the ability to designate nominees, while CBT exercisers do not. Accordinly, the CBT argues that CBT exercisers are not afforded the full panoply of membership rights that regular CBOE members are entitled to, in contravention of the CBOE's rules. In addition, the CBT argues that, by the CBOE's own rules, a "nominee" applies solely to member organizations, and therefore, has no relevance whatsoever to individual CBOE members.

II. The Proposal

In the present proposal, the CBOE has proposed amendments to its rules 1.1(mm), 3.8, 3.9 and 3.10, in order to delete the ability of an individual owner or lessee of a transferable membership to authorize a nominee to represent his or her membership.[6] Upon further reflection resulting from the CBT's comments and Commission review, the CBOE decided to end its policy of allowing individual owners or lessees of transferable memberships to designate nominees to represent their memberships without equal treatment provided to individual non-transferable memberships, *i.e.* CBT exercisers. The CBOE proposes to accomplish this by eliminating the ability of any individual member (or lessees thereof) to designate a nominee. Member organizations, as necessitated by their corporate or partnership structure, will continue to be required to designate nominees.

After careful consideration of the comments received, applicable statutory provisions and the CBOE's own charter and rules, the Commission believes that the CBOE's proposal to limit the use of a "nominee" solely to "member organizations" is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and 6(b)(8) of the Act.[7] These sections provide, among other things, that the rules of the CBOE shall not be designed to permit unfair discrimination between broker/dealers and impose a burden on competition unnecessary or inappropriate in furtherance of the Act's purposes. The Commission believes that by eliminating the use of a "nominee" for all individual CBOE members, it will end the disparate treatment between transferable and non-transferable memberships in regard to nominees.

The elimination of the ability of regular, transferable, individual CBOE memberships to designate nominees will ensure that CBT exercisers have membership rights identical to regular CBOE members. The Commission finds that the CBOE's proposal to eliminate this differential treatment of CBT exercisers is consistent with the objectives and purposes of both the CBOE rules and Certificate of Incorporation, as well as the Act itself.

In addition, it is reasonable for the CBOE to restrict the ability to designate nominees to member organizations only. The CBOE needs to know which individual of a member organization will act as a nominee and represent it in matters before the Exchange. With respect to individual members, the Commission believes that it is appropriate for the CBOE to require the person to represent him or herself before the Exchange.

Finally, the Commission did not receive any comment letters on this filing from either the CBT or individual members of the CBOE. Thus, the Commission did not receive any objections to the CBOE's proposed means to address the disparity created by the original nominee filing.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–90–22), eliminating the use of a "nominee" by individual members, is accordingly approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Dated: October 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24444 Filed 10–16–90; 8:45 am]

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[4] *See* letters from Thomas R. Donovan, President and Chief Executive Officer of the CBT, to Jonathan C. Katz, Secretary, SEC, dated June 20 and 25, 1990.

[5] The CBT formed the CBOE in 1972 as a separate, independent legal entity. The CBOE recognized the "special contribution" that CBT members made to the organization and development of the CBOE by conferring special benefits upon CBT members. In particular, Article FIFTH of the CBOE's Certificate of Incorporation grants individual CBT members the right to become a full CBOE member, with all the rights and privileges afforded all other individual CBOE members, without cost, upon exercise of such right.

[6] The amendments to CBOE Rules in this filing concern the definition of a nominee (rule 1.1), the use of a nominee (rules 3.8), application procedures and approval or disapproval (rule 3.9), and the effect veness of membership applications (rule 3.10). In all cases, the amendments or revisions to the named rules clarify that only member organizations (or lessees thereof), not individual memberships, can designate a nominee.

[7] 15 U.S.C. 78f(b)(5), (b)(8) (1989).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. 34-28528; File No. SR-CSE-90-11]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice and Order Granting Accelerated Approval to Amendment No. 1 Relating to New Listing Criteria

On June 22, 1990, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend CSE Article IV, § 1.3 to provide listing guidelines to accommodate securities not otherwise covered under current CSE listing requirements.[3] Subsequently, on September 26, 1990, the Exchange submitted Amendment No. 1 to this proposal.[4]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] See Article IV, §§ 1.3(1)–(4) of the CSE Rules for the current listing criteria. The proposed listing guidelines to accommodate securities not covered under § 1.3(1)–(4) will be set forth under proposed § 1.3(5).

[4] Amendment No. 1 consists of non-substantive, stylistic changes to the specific language of the original proposal as set forth in Exhibit A to File No. SR–CSE–90–11, and adds an interpretation to the current CSE Rules in order to explicitly make the suitability rule applicable to products listed pursuant to proposed § 1.3(5). For the language of this interpretation, *see* note 11, *infra*. In addition, on October 1, 1990, the CSE submitted a letter to the Commission requesting accelerated approval of Amendment No. 1. See letter from Kevin S. Fogarty,

Continued

The proposed rule change was noticed in Securities Exchange Act Release No. 28233 (July 19, 1990), 55 FR 30769 (July 27, 1990). No comments were received on the proposal.

I. Introduction

The CSE is interested in listing and trading new securities which have features borrowed from more than one category of currently listed securities in order to accommodate the desire expressed by issuers and underwriters for new, innovative financing vehicles. These new products will be comprised of both equity and debt ("hybrid securities"), but the particular objectives being sought, as well as general market conditions, ultimately will determine the exact form of the new products.[5]

The CSE has proposed guidelines for listing these new issues.[6] Because the hybrid securities may assume different forms, however, the CSE desires listing guidelines which possess the flexibility to accommodate all such hybrid securities, avoiding any need to add new provisions to its listing crtieria in the future. The guidelines set forth in proposed § 1.3(5) are intended to provide the desired flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. The guidelines set forth in proposed § 1.3(5), however, are not intended to accommodate the listing of securities that raise new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to rule 19b–4 under the Act.[7]

II. Description of Proposal

(A) Listing Criteria

The listing requirements in proposed § 1.3(5)(b) are intended to accommodate major issuers with assets of $100 million and stockholders' equity of $10 million.[8] Such issuers generally will be expected to meet the earnings criteria set forth in § 1.3(1).[9] Issuers not meeting these criteria generally will be required to have assets in excess of $200 million and stockholders' equity of $10 million, or alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria in proposed § 1.3(5)(c) will be comparable to the current criteria in § 1.3(1) for equity issues, [10] except that when trading is expected to occur in much larger than average trading units (*e.g.*, $1,000 principal amount) a minimum of 100 holders will be expected. The aggregate market value of issues listed under subsection (5)(d) will be expected to be at least $20 million.

Additionally, under proposed subsection (5)(e), where such an instrument contains cash settlement provisions, settlement will be required to be made in U.S. dollars. Furthermore, where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

Finally, the Exchange proposes to apply the guidelines for continued listing contained in section 3. Delisting, to proposed § 1.3(5)(a) securities as appropriate, in light of the specific nature of the securities (*i.e.*, debt/equity characteristics).

(B) Membership Circular

Because securities listed for trading under proposed § 1.3(5)(a) most likely will be comprised of both equity and debt characteristics, the Exchange will determine, prior to trading, which issues require the distribution of a membership circular. The membership circular is intended to inform member firms of their compliance responsibilities with regard to the particular issue.[11] In making the determination to distribute a membership circular, the Exchange will evaluate the nature and complexity of each issue by considering, among other things, the unit size and term of the issue; cash-settlement, exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and any other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange.

III. Commission's Findings

The Commission finds that the CSE's proposal to add § 1.3(5) to article IV of its Rules is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[12] Sepecifically, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not permit unfair discrimination between customers, issuers, brokers, or dealers. In this regard, the Commission believes

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Vice President, Market Regulation, CSE, to Mary Revell, Branch Chief, Exchange Regulation, SEC, dated September 28, 1990.

[5] For example, such products may take the form of fixed face amount debt securities which incorporate an opportunity, at maturity, to receive an amount in excess of par based upon the performance of an index; equity securities issued by a U.S. subsidiary of a non-U.S. company which afford full access to dividend payments; or warrants to purchase debt securities and "out" rights issued by a listed company affiliate which allow holders to put their common stock back to the issuer at the initial public offering price on a specific date after the initial public offering.

[6] Certain of the other national stock exchanges also have recognized the growing need for the listing and trading of new, innovative financial instruments, and, therefore, have submitted proposed rule changes to the Commission to establish listing guidelines for these new products. For example, the New York Stock Exchange, Inc. ("NYSE") and the Midwest Stock Exchange, Inc. ("MSE") recently adopted specific listing guidelines covering contingent value rights ("CVRs") (See Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (order approving the NYSE proposal to provide guidelines to list CVRs); Securities Exchange Act Release No. 28143 (June 25, 1990), 55 FR 27317 (July 2, 1990) (order granting accelerated approval of MSE's proposal to provide guidelines to list CVRs)). Moreover, the Commission recently approved both American Stock Exchange, Inc. ("Amex") and NYSE proposals to provide listing guidelines to accommodate hybrid securities which are substantially similar to the CSE's proposal (See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR–Amex–89–29); Securities Exchange Act Release No. 28217 (July 18, 1990) (order granting accelerated approval to File No. SR–NYSE–90–30)).

[7] Certain of the securities that have raised significant new regulatory issues in the past include Americus Trusts (See Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR–Amex–84–35)); currency warrants See Securities Exchange Act Release No. 24555 (June 5, 1987, 52 FR 22570 (June 12, 1987) (file No. SR–Amex–87–15) (proposal to list warrants on foreign currencies); index warrants (See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR–Amex–87–27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (file No. SR–Amex–89–22) (proposal to list index warrants based on the Nikkei Stock Average)); and unbundled stock units ("USUs") (See File Nos. SR–NYSE–88–39 and 88–40 (proposals to list USUs and constituent securities which were subsequently withdrawn by the NYSE)).

[8] The requirements of proposed § 1.3(5) substantially exceed the CSE's standard listing criteria for equities. See § 1.3(1)(a) which requires net tangible assets of at least $2 million.

[9] The earnings criteria pursuant to § 1.3(1) require net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income.

[10] The standard distribution criteria pursuant to § 1.3(1) requires at least 250,000 shares outstanding with a minimum of 1,000 recordholders.

[11] Pursuant to proposed CSE rule 3.7, Interpretations and Policies .01, recommendations made in connection with products listed pursuant to Article IV, § 1.3(5) shall comply with the provisions of CSE rule 3.7(a). Further, no member shall recommend to a customer a transaction in any such product unless the member has a reasonable basis for believing at the time of making the recommendation 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 the recommended position.

[12] 15 U.S.C. 78f (1982).

that the proposed listing guidelines applicable to new, innovative securities will provide the flexibility desired by the CSE, while helping to ensure that only the more financially substantial companies are eligible to have their new issues listed on the Exchange. Proposed § 1.3(5), therefore, should provide a more efficient and expedient process for listing new securities, and will protect investors and the public interest by ensuring that the financial products listed on the CSE have met predetermined financial criteria established by the Exchange,[13] an important consideration due to the additional or contingent financial obligations created by these instruments.

In addition the Commission believes that the portion of proposed § 1.3(5) relating to the membership circular addresses the additional regulatory concerns raised by these products. Because these products combine features of equity, debt and securities derivative products, they may be more risky and complex than straight issues of stock, bonds, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities will provide the CSE with the ability to address, in a flexible manner, any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that brokers make a careful and detailed determination of a customer's suitability for a specific hybrid product prior to recommending the product to the investor.

Additionally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the CSE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure of the product.[14]

Moreover, the Commission recently approved substantially similar proposed rule changes submitted by the Amex and the NYSE which adopted listing criteria for hybrid securities.[15] The Commission believes that by allowing issuers to list hybrid securities on the CSE as well, competition between the exchanges will be enhanced, a result which will improve exchange market trading.

Finally, the Commission finds good cause to approve Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. As indicated previously, Amendment No. 1 contains, in part, nonsubstantive, stylistic change to the original proposal as set forth in Exhibit A to File No. SR-CSE-90-11.[16] The Commission believes that this portion of the amendment does not necessitate the solicitation of public comment prior to its approval Amendment No. 1, however, also seeks to add an interpretation to current CSE rule 3.7 in order to explicitly make the heightened suitability rule applicable to products listed pursuant to proposed § 1.3(5). In regard to this substantive portion of the amendment, the Commission believes accelerated approval also in warranted due to the fact that in identical proposal to amend CSE rule 3.7 already has been noticed for public comment as part of CSE's proposed rule change relating to the listing of index warrants.[17] The statutory comment period for this proposal has since expired and no comment letters were received on the proposal. Moreover, the suitability language proposed by the CSE for hybrid products is virtually identical to that of other exchanges whose filings for hybrid products have been approved by the Commission.[18]

Interested persons are invited to submit written data, views and arguments concerning the amendment to the proposed rule change. 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-90-11 and should be submitted by November 7, 1990.

It is therefore orderd, pursuant to section 19(b)(2) of the Act [19] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Dated: October 11, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24445 Filed 10-16-90; 8:45 am]

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[13] This standard, however, would not preclude the CSE from submitting specific standards for other companies to have similar securities traded on the Exchange.

[14] See note 6, *supra.*

[15] See note 5, *supra.*

[16] See note 4, *supra.*

[17] See Securities Exchange Act Release No. 28287 (July 30, 1990), 55 FR 31923 (noticing File No. SR-CSE-90-10).

[18] See note 6, *supra.* See also NYSE Rule 723 and Amex Rule 923 for the specific suitability language used by these two exchanges.

[19] 15 U.S.C. 78s(b)(2) (1982).

[20] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-28518; File No. SR-DTC-90-08]

Self-Regulatory Organizations; The Depository Trust Co.; Order Granting Temporary Approval of Proposed Rule Change Implementing Commercial Paper Program

I. Introduction

On May 8, 1990, the Depository Trust Compnay ("DTC") filed a proposed rule change (File No. SR-90-08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would permit DTC to add commercial paper ("CP") transactions to its same-day funds settlement ("SDFS") system. Notice of the proposed rule change appeared in the **Federal Register** on July 27, 1990.[2] No comments were received.[3] As

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] See Securities Exchange Act Release No. 28250 (July 20, 1990, 55 FR 30773.

[3] The Commission notes that DTC sent an initial CP proposal to its participants and others for consideration in October 1988, and received 37 written responses. After a series of meetings with some of the respondents, DTC modified and expanded the CP proposal and reissued it in July 1990. DTC received 11 written comments on the revised proposal. In general, these commentators urged DTC to proceed with its proposal to offer a CP program and encourage DTC to do so as expeditiously as possible.

discussed below, the Commission is approving DTC's proposal on a temporary basis for a period of 18 months.

II. Description.

DTC proposes to make certain issues of CP eligible for processing in the SDFS system. As with other SDFS-eligible securities, DTC will establish procedures for electronic deposit of CP, book-entry transfers of CP versus payment, maturity and redemption processing and default administration. CP transactions generally will be subject to the same procedures and safeguards currently available in the SDFS system. However, as discussed below, DTC will modify certain SDFS procedures to accommodate the issuance and processing of CP transactions in the SDFS system.

A. Eligibility Criteria

CP eligible for the DTC program will generally be CP rated on one of the top two rating categories by two of five nationally recognized CP rating agencies.[4] If only one of these agencies rates an issuer's CP in one of the two top rating categories, DTC will make such issues eligible if at least one other agency gives the issuer's program an investment-grade rating.[5] DTC will later consider whether CP other than that described above should be made eligible, but only after substantial experience with the CP program.

If, after CP becomes eligible, a ratings agency warns that a particular issuer's CP may be downgraded, DTC nevertheless will continue accepting new issuances of such CP. For SDFS collateral valuation purposes, DTC will devalue paper of that issuer in the DTC system to zero if a downgrading of one notch by the agency issuing the warning would cause the CP to fall below DTC's eligibility criteria. However, to prevent such an action from creating inquidity concerns for its participants, DTC will devalue the CP to zero on the day after such downgrading occurs. If CP is actually downgraded below the rating for eligibility, DTC will discontinue accepting new issuances of such CP, but will keep it eligible for depository services until it matures.

B. SDFS Controls.

The fundamental risk in the SDFS system is that a participant will default on its payment obligation. To minimize this risk, DTC's proposes to subject CP transactions to the same safeguard currently incorporated into the SDFS system: (1) Net debit collateralization, (2) net debit caps, (3) receiver-authorized deliveries, (4) net and net-net settlement, and (5) SDFS fund. Moreover, DTC's proposal modified certain of these controls and adds further safeguards to protect against systemic risks associated with a CP issuer's default. These safeguards are discussed below.

1. *Net Debit Collateralization.* This control requires a participant to maintain in its account at all times during the processing day until settlement is completed, collateral at least equal in value to the participant's net settlement debit. The chief source of collateral is the securities received versus payment from other participants that created the net settlement debit. Additional sources are the participant's contribution to the SDFS fund, and any securities in the participant's account other than those received versus payment that day that have been designated as collateral by the participant (*e.g.*, a dealer participant's inventory). In the event the collateral in the account is insufficient to permit completion on the proposed delivery or receipt, DTC will block the delivery and recycle the transaction until the participant has collateral with value sufficient to cover any net debit in its account. The value of collateral is based on current market values of the securities comprising the collateral less a "haircut" of generally 2%[6] with respect to transactions versus payment, DTC always stands between the deliverer and designated receiver as a purchaser of the securities, to protect deliverers and establish its legal basis to pledge the collateral securities if necessary.

2. *SDFS Fund.* The SDFS fund is primarily a ready source of cash or collateral for DTC to draw upon in the event of a participant default. Each participant in the SDFS system must contribute to the SDFS fund an amount equal to the greater of $250,000 or 5% of its average daily gross SDFS debits and credits during the prior month.[7] At a minimum, $200,000 of the deposit must be in cash, and the remainder may be made in certain types of liquid securities.[8] In addition to require deposits, participants may deposit more cash or securities in order to increase their SDFS collateral and adjustable net debit cap ("voluntary contributions"). DTC pays interest on required and voluntary cash deposits according to the rate it earns on overnight repurchase agreements, and passes through interest received on deposited securities.

In addition to providing liquidity, the SDFS fund also "self-insures" risks in the SDFS system, but only to the extent of participants' required deposits. In the event of participant default in which DTC suffers a loss, DTC may allocate the loss among certain participants by assessing the SDFS fund on a prorata basis. Participants' required deposits can be used repetitively for this purpose, and they must replace their required deposit as many times as necessary to cover the loss and restore the fund.[9]

3. *Net Debit Caps.* In order to protect against the potential risk of participant default, DTC will establish a "net debit cap" for each participant. DTC will set each participant's net debit cap at the lesser of:

(1) An adjustable fund-based cap that is:

- 15 times the participant's required and voluntary deposits to the SDFS fund; [10]and

(2) A fixed credit-based cap that itself is the lesser of:

- 75% of DTC's lines of credit;
- An amount, if any, determined by the participant's settling bank; and
- An amount, if any, determined by DTC.

[4] These ratings agencies are Standard and Poors ("S&P"); Moodys Investor Services ("Moodys"); Fitch Investor Services; McCarthy, Crisanti, Maffei; and Duff and Phelps.

[5] For example, S&P and Moodys' investment grade ratings for CP range from A-1 to A-3 and from P-1 to P-3, respectively.

[6] DTC will determine the fair market value of the CP being processed through the SDFS system on a daily basis by monitoring the interest rates at which CP is being issued on a particular day.

[7] The Commission recently approved, on a temporary basis, a proposal by DTC to cap the SDFS fund at $400 million. Under this proposal, the level of a participant's required contribution to the SDFS fund may fall below the 5% level described above in the event the dollar amount of the gross daily activity in the SDFS system exceeds $8 billion. For a more detailed explanation of this proposal and its potential effect on DTC and its participants, see Securities Exchange Act Release No. 28515 (October 3, 1990), 55 FR _____.

[8] Under DTC's rules, a participant's contribution to the participants fund may be satisfied by depositing unmatured debt obligations of the United States or instrumentalities of the United States, municipal general obligations bonds that are rated in the top two rating categories by a national statistical ratings organization ("NSRO") or non-convertable corporate debt rated in the highest category by an NSRO. However, the first $200,000 of such deposit must be made in the form of cash. See DTC Rule 4.

[9] Participants may limit their liability by withdrawing from DTC, provided they do so within the time frames and in the manner specified by DTC's rules and procedures. Participants who exercise their right to withdraw from DTC can limit their liability for pro-rata assessments to twice the amount of their required contributions to the SDFS fund.

[10] The Commission recently approved a related DTC proposal to increase the adjustable fund-based cap from 10 times a participants's required and voluntary deposits to the SDFS fund to 15 times such amount. See Securities Exchange Act Release No. 28424 (September 11, 1990) 55 FR 38428.

The adjustable fund-based cap protects against abnormal intra-day net debt peaks that are out of line with a participant's prior month's average daily activity level, the basis for the participant's required deposit to the SDFS fund. An underwriter's distribution of an unusually large new securities issue is a typical cause of such peaks. Participants whose net debits approach or reach their caps during the processing day can lower their net debits and thus stay under their caps by wiring Fed funds to DTC. Alternatively, they can raise their adjustable caps as appropriate by making voluntary deposits to the SDFS fund.

The first element of the fixed credit-based cap reduces the possibility that failures to settle by more than one participant would causes DTC to exceed its lines of credit. That element presently equals 75% of: (a) A $50 million line of credit with Bankers Trust, (b) a $50 million internal line of credit against DTC's unclaimed dividend and interest account, and (c) $127 million cash deposits to the SDFS Fund, or a total of $227 million. Participants cannot increase their fixed net debit caps.

4. *Receiver-Authorized Deliveries.* The receiver-authorized delivery ("RAD") control permit each SDFS participant to control transfers of securities and funds to its account. Under RAD, a participant may set a dollar limit on securities deliveries and payment orders which are directed to its account by any other participant. If the delivery or payment order exceeds this limit, the participant must approve this delivery or payment order before DTC posts the debit or credit to its account. A participant can get a different dollar level for each other participant, thus establishing a bilateral credit limit within SDFS. Thus, the RAD control enables the participant to exercise its own credit judgment of each other participant. It also reduces the need for the participant to reclaim (return) erroneous transactions to orginators after they are posted to its account. This, in turn, reduces the incidence and financial impact of reclamations attempted by the participant.

5. *Net and Net-Net Settlement.* The SDFS system provides three levels of debit reduction in the course of daily money settlement. On the first, participant level, a participant's gross settlement debits due to its receives versus payment from other participants are reduced by its gross settlement credits due to its deliveries versus payment to other participants. The resulting net settlement debit is that of the participant as a counterparty. On the second, participant levels, the participant's counterparty net settlement debit is reduced due to transactions not involving any other participant. These transactions are settlement progress payments made by the participant itself and, to a much lesser, sporadic extent, securities principal payments made to it by issuers' redemption agents. The resulting final net debit is the participant's settlement obligation to DTC, and is the net debit DTC would have to deal with should the participant fail to settle.

On the third, settling bank level, the participant's final net settlement debit is merged with the final net settlement debits or credits of other participants for which its settling bank settles. The resulting final net-net settlement debit is the settling bank's obligation to DTC at end of day. It is the net-net debit DTC would have to deal with should the settling bank fail to settle on time.[11]

C. Special CP Modifications

In addition to subjecting CP transactions to existing SDFS controls, DTC will modify these controls by prohibiting participants from transferring CP received-versus-payment that day in a transaction free-of-payment unless the participant either has paid its net settlement debit or is in a net credit position that day. This restriction assures DTC that CP received by a participant versus payment remains available to be resold or pledged to deliverers if the participant fails to settle with DTC. Although CP trades normally range in size from $5 million to $50 million, CP trades often can range up to $100 million to $200 million. To reduce the chance of CP transactions being blocked and recycled, DTC will limit the maximum size of valued CP deliveries, pledge and releases in the SDFS system to $50 million, the limit on government securities deliveries in the Federal Reserve's book-entry system.[12] If a participant inadvertently enters a valued transaction with a face value of more than $50 million, DTC will reject it.

D. Redemption Processing

DTC will process CP redemptions in the following manner. The night before the date CP matures, DTC will sweep maturing CP from participants' accounts and will initiate book-entry deliveries of matured CP versus payment from the accounts of participants holding the CP at the close of business on the day before maturity date to the accounts of participants acting as paying agents for that issue.[13] DTC will sweep matured CP whether or not it is pledged or segregated, but will hold in escrow the maturity proceeds collected on pledged CP unit its release from the status.

A maturity presentment will not be posted to a participant's account if the paying agent bank's collateral monitor or net debit cap does not allow it to be posted. Instead, the maturity presentment will pend in the SDFS system in accordance with the normal SDFS recycle algorithm. However, the RAD procedure will not be available to paying agent banks in connection with maturity presentment processing.

DTC will recycle maturity presentments until approximately five minutes after the cutoff time for approval of deliveries under RAD procedures. Maturity presentments not posted to participant accounts by the recycle cutoff time will be dropped from the SDFS system and reported to the affected participants. DTC will not clear matured CP from its records at the end of the processing day if it is still in presenting participants' accounts. Instead, DTC automatically will initiate valued maturity presentments of the matured CP the next day to the paying agent bank's account.

If a paying agent bank determines to refuse payment on maturity presentments because of an issuer default, the paying agent must notify DTC before 3 p.m. (Eastern Time), the traditional deadline for such decisions and DTC will inform its participants through a PTS broadcast message. In this case, or if DTC confirms an issuer's bankruptcy before 3 p.m., DTC will recredit the maturity presentments to presenting participants' accounts, thus offsetting settlement credits in those accounts, without regard to SDFS controls. In the event of an issuer

[11] Viewing daily average debits on these three levels for 1989: (1) All participants' counterparty net settlement debits were $549 million, or 32.2% of all participants' gross settlement debits of $1,707 million; (2) all participants' final net settlement debits were $177 million, or 10.4% of all participants' gross settlement debits of $1,707 million; and, (3) all settling banks, final net-net settlement debits were $54 million, or 3.2% of all participants' gross settlement debits of $1,707 million. This means that had there been an "average settlement day" in 1989 on which all debit participants had fails to settle, DTC would have had to finance and resolve their final net settlement debits of $177 million; or instead if all debit settling banks and failed to settle, DTC would have had to finance and resolve their final net-net settlement debits of $54 million.

[12] See Board of Governors of the Federal Reserve System, Interim Policy Statement Regarding Risks on Large-Dollar Wire Transfer Systems, 52 FR 29255 at 29261 (August 6, 1987).

[13] Under DTC's proposal, an issuer must designate one DTC participant as its paying agent to whom CP will be presented at maturity.

default or bankruptcy after 3 p.m. DTC will look to the paying agent, as principal, to satisfy the issuer's payment obligation. In the event the paying agent fails to satisfy its payment obligations, including the payment of the default CP issuer's maturity presentments, DTC will deem the paying agent participant to be in default, the DTC will follow special default procedures.[14] Assuming the paying agent pays DTC for the matured CP, the paying agent would be required to claim against the issuer who defaulted.

Consistent with DTC's proposed cap on the dollar value of any single delivery, when initiating maturity presentments, DTC will break down a participant's maturing position with a face value of more than $50 million into multiple maturity presentments with $50 million face values and a maturity presentment for any remaining face value, and will allot each maturity presentment's settlement value in the same proportion that each maturity presentment's face value bears to the total face value.

E. Participant Default Procedures

Under its rules, DTC will not transfer securities free or versus payment unless the deliverer's and receiver's collateral monitor will not be negative and such transfer is within their net debit caps.[15] If the transaction occurs after DTC's cutoff time (*i.e.*, after 4:30 p.m.) the counterparty must be the deliverer's or receiver's settling bank.[16]

Even if a transaction for value meets all these requirements, it will not be deemed to be final under DTC's rules until: (a) DTC determines that the receiver has a credit balance at the end of the day; (b) the receiver pays its negative settlement balance; or (c) the receiver transfer, withdraws or pledges the securities and all of the other tests described above are satisfied. Until a transaction is final, DTC retains intraday title to securities in transfer.

In general, if a DTC participant fails to pay its net settlement debit at the end of the day,[17] DTC will attempt to manage the default to reduce the potential for a cascade of other participant defaults. Among other things, DTC will attempt to cover or finance the amount of the default on the day of the default and, the next day, allocate any losses that may result if the default has not been cured. More specifically, DTC may: (a) pledge any or all net additions (*i.e.*, SDFS securities subject to incomplete transactions and SDFS securities finally credited to a participant to the extent they do not comprise its minimum amount) [18] to non-defaulting participants (up to the amount of their credit balances) or a bank to secure a loan to DTC; or (b) resell any of the defaulting participant's net additions that are subject to incomplete transactions to the deliverer, to the public or to DTC.

Even though a defaulting participant may have converted an incomplete transaction into a complete transaction by redelivering the securities, DTC may take other securities from the defaulting participant equivalent to the securities so converted ("deemed net additions") that are subject to incomplete transactions and resell them to the deliverer.[19] In this case, DTC will increase the defaulting participant's gross debit balance by the greater of (a) the settlement value of the resale; or (b) the 100% of the fair market value of such securities. After this action, DTC may buy-in the redelivered securities and charge any loss or pass through any gain to the defaulting participant.[20]

If the defaulting participant is solvent and wires Fed funds to DTC by 10 a.m. the next business day, DTC will repay the loan from the line-of-credit bank, obtain the release of any pledged SDFS securities that were pledged to the bank, restore the SDFS fund and deliver the pledged SDFS securities to the defaulting participant. DTC will charge interest to the defaulting participant and pay it to the SDFS fund (since participants earn interest on their cash deposits to the SDFS fund) and, if applicable, to the line-of-credit bank. If emergency net credit reductions were necessary on the day of default, DTC will credit the SDFS accounts of participants whose net credits were reduced the prior day and will pay interest to those participants whose net credits were reduced the prior day.

If the defaulting participant does not wire Fed funds to DTC by 10 a.m. or is insolvent, DTC will allocate any losses resulting from the default to those participants who delivered securities to the defaulting participant. DTC will effect this loss allocation by reselling to deliverers SDFS securities which are the subject of incomplete deliveries to the defaulting participant's account (to the extent DTC did not effect such resales in the prior afternoon), and will charge the deliverers' settlement accounts and credit the defaulting participant's settlement account accordingly. If necessary, DTC may pledge securities to its line-of-credit banks to fund the default pending settlement of liquidation transactions in the defaulting participant's account.

F. Concurrent Issuer and Participant Default

The particular risk to DTC in processing CP is an issuer's default combined with a participant's failure to settle deliveries versus payment of that

[14] See note 19, *infra*.

[15] See DTC Rule 10.

[16] This allows participants to raise funds by pledging securities to their settling bank.

[17] A participant fails to settle its net debit when DTC receives a refusal message from the participant's settling bank or when the settling bank fails to settle its net-net debit on time.

[18] A participant's minimum amount with respect to any issue of securities is equal to such amount as DTC may determine, or as the participant may inform DTC, constitutes customer securities. See DTC Rule 9.

[19] DTC will not invade the opening balance in the account except for those securities the participant has designated as available for collateral. DTC also will not invade securities in the segregated account.

[20] More specifically, in the event of participant default, DTC will take the following steps in order to achieve settlement: (1) Use the participant's cash deposit to the SDFS fund; (2) Use all participants' cash deposits to the SDFS fund; (3) Use mandatory and voluntary securities deposits to the SDFS fund and pledge them to a line-of-credit bank; (4) Use SDFS securities collateral in the defaulting participant's account (other than securities which are the subject of incomplete deliveries to the account that day and might be resold to deliverer the next day) and pledge it to a line of credit bank [DTC will not use securities in the participant's segregated account or minimum amount]; and (5) Finally, DTC will use SDFS securities which are the subject of incomplete deliveries to the defaulting participant's account and might be resold to deliverers the next day and pledge them to a line of credit bank.

If DTC's line of credit is not adequate to cover the default or if DTC knows the defaulting participant is insolvent, DTC will make net credit reductions for participants who initiated SDFS securities deliveries to the defaulting participant that day. DTC will limit the reduction to the amount of the net credit due to transactions with the defaulting participant.

As an alternative to net credit reductions, DTC will resell to deliverers SDFS securities which are the subject of incomplete deliveries to the defaulting participant, charge the deliverers' settlement accounts and credit the defaulting participant's settlement account. DTC will resell on a last-in, first-out ("LIFO") basis incomplete-delivery securities where all of the securities remain in the defaulting participant's account. Then, as necessary, DTC will resell incomplete-delivery securities where only a portion of the securities remain in the defaulting participant's account in a sequence based on the percentage of securities remaining and their market value.

If the resales would occur late in the day, DTC will attempt not to disrupt the SDFS settlement process by reselling securities that would transform participants' net credits into net debits, or by reselling securities to participants already in net debit positions. Instead, DTC may borrow from participants who initiated deliveries to the account of the defaulting participant that day. Such borrowing will be secured by the pledge of the securities previously delivered to the defaulting participant. DTC will take this step only after determining in accordance with the sell sequence described in the preceding paragraph that it will resell the securities or return payment orders to deliveries the next day if the partcipant has not cured its default.

issuer's CP. In this event, DTC will notify the sequence in which it allocates collateral and reduces net settlement debits in a defaulting participant's account. As described above, in the event of a participant default, DTC will resell securities and return payment orders to deliverers on a LIFO basis; in the event of an issuer default on the same day, DTC will resell and sell out securities other than a defaulting issuer's CP before reselling the defaulting issuer's CP or returning payment orders. This sequence attempts to reduce the possibility of multiple failures to settle after an issuer's default by returning to participants marketable collateral to the maximum extent possible.

Second, in an event of an issuer's default before 3 p.m. DTC will automatically recredit devalued maturity presentment CP to the presenter and new issuance CP to the issuing agent, and participants will then settle this matter outside DTC. DTC will not automatically recredit devalued secondary market CP to the delivering participant.

In the event of an issuer's default after 3 p.m., DTC will not automatically recredit devalued maturity presentment CP, new issuance CP or secondary market CP, but will expect the paying agent to pay DTC amounts due on the presented CP, even though the issuer has defaulted. If the paying agent fails to settle its payment obligation, DTC will apply its default procedures, as modified to limit the potential for other participant defaults. DTC will simulate application of the default procedures it will use the next day in the event the default is not cured. DTC will determine from this simulation whether it will be able to eliminate completely the participant's net debit the following morning by reselling to deliverers and selling out securities other than the defaulting issuer's CP or will have to resell some or all of the defaulting issuer's CP and return payment orders as well.

For the portion of the participant's net debit that DTC would be able to eliminate the next day by reselling to deliverers and selling out securities other than the defaulting issuer's CP, DTC will borrow overnight against its credit lines, secured by the pledge of those securities. If some new debit remains that DBT would be able to eliminate only by reselling the defaulting issuer's CP and returning payment orders to deliverers, DTC will borrow overnight from the deliverers, with such loans collateralized by the pledge of the defaulting issuer's CP.

If the defaulting participant settles the following morning, DTC will repay the delivering participants. If the defaulting participant cannot cure the default, DTC will allocate any loss incurred by reselling the defaulting issuer's securities to the delivering participants.

G. Phased Implementation and Disaster Recovery Capabilities

DTC's proposal recognizes that DTC cannot, at this time, assure participants that DTC's CP processing services will be available in spite of a disaster affecting DTC's primary processing site. Accordingly, the proposal would limit eligible CP to prevent participants from relying on DTC for CP services to the exclusion of existing CP clearance and settlement procedures. In this manner, existing CP clearance and settlement procedures will serve as a primary back-up to DTC facilities in the event that a disaster disables those facilities.

DTC's capacity to recover from a disaster such as a fire or flood disabling its computer center are thorough and frequently tested.[21] They involve switching external and internal communication lines for all DTC systems from its New York location at 55 Water Street to a backup facility in Philadelphia. DTC believes any catastrophe disabling its computer center should be transparent to its participants after an 18 to 24 hour recovery period required to move data files to Philadelphia. [22]

DTC has been investigating means to reduce the recovery period for the SDFS system to three hours or less by 1992. Its current approach is to build on the interim plan discussed below and function at an alternate site in New York until all DTC systems can be recovered in Philadelphia. DTC anticipates that a proposal for establishing a three hour disaster recovery capability will be ready for participant review in late 1990.

DTC will begin phasing-in CP into the SDFS system in October 1990, and will thereafter add other issuer's CP to the SDFS system on a gradual basis. Until DTC's interim SDFS system disaster recovery procedures are replaced by a permanent plan, no dealer or issuing/paying agent will be allowed to have all of its eligible CP business phased into the SDFS system. This procedure will require all issuing/paying agents to maintain the capability to process physically CP until DTC's permanent disaster recovery plan is fully implemented.

Until DTC implements a more permanent disaster recovery plan, DTC and its participants would use interim recovery procedures developed by DTC. Under these interim procedures, depending upon the time of day a disaster occurs and the volume of CP already processed in SDFS up to that time, either DTC will complete settlement for the CP transactions already completed in the SDFS system with the expectation that participants will settle any remaining business ex-DTC, or participants will settle all business that day ex-DTC.[23] DTC

[21] In the event of a power blackout, DTC's utilizes diesel powered generators and an uninterruptible power supply to maintain its transaction processing operations.

[22] DTC currently maintains a separate back-up facility in Philadelphia and tests the transfer of its operations from its main site to its back-up facility on a quarterly basis.

[23] The time of day at which a disaster strikes would determine the procedures to be followed. In general, DTC's interim disaster recovery plan calls for DTC to facilitate settlement among participants for that portion of the CP business that was posted on DTC's books up to the time of the disaster and to provide participants with the information necessary for them to process the remainder of their CP business on a physical basis outside of DTC until DTC has recovered its book-entry processing capabilities. Four disaster scenarios are examined below.

A. Disaster strikes DTC's main computer facility in the early morning hours before DTC has opened for business that day. CP cannot be processed via DTC at all on this day; the system will not be available for at least 18 hours.

1. Basically, issuance of CP would operate as it had before the initiation of the CP program. The issuer or dealer would transmit issuance data including denomination requirements to the issuing agents ("IA") which would use those instructions to issue the paper. IAs would issue physical paper and dealers and custodians would accept physical deliveries. A dealer or other participant wishing to deliver or pledge previously issued CP in its DTC account would have to issue a due bill. Releases of pledges on DTC's books also would have to be done by due bills.

2. In order for maturities to be processed outside DTC this day, DTC will provide paying agents ("PA") with a report of the owners and pledges on DTC's books at the close of the prior day's business of all CP maturing on this day or a prior day. Included on the report will be DTC's authorization and instructions for the PA to pay maturity proceeds to the participants and pledges listed therein.

B. Disaster strikes DTC's main computer facility before 1 p.m. (ET). Some, but not all, maturity presentments have been posted on DTC's books; others are recyling. Some but not all, CP issuances have been posted; others have not been entered into the system or are recycling. All DTC transaction logs at its main facility have been destroyed.

1. Any issuances entered into the DTC system before the disaster will be treated as if they never entered the system. These issuances and any other CP to be issued this day would have to be issued physically and settled outside DTC. Issuers and dealers would have to promptly communicate denomination requirements to IAs. Although IAs would have to physically re-issue any CP issued via DTC earlier in the day, the amount of this paper would be small since many IAs generally do not begin heavy issuance activity until about 1 p.m. (ET).

Continued

2. Any other deliveries entered into the DTC system before the disaster would be treated as if they never entered the system. Consequently, other deliveries, pledges and releases to be done this day involving previously issued CP on DTC's books would have to do done with due bills.

3. At this point in the day, some maturity presentments would have been posted, others would still be recycling. All would be treated as if they had never been initiated by DTC.

4. Any settlement progress payments wired to DTC's account before the disaster struck will be returned to the sending bank by DTC.

C. Disaster strikes DTC's main computer facility between 1 p.m. (ET) and 3:30 p.m. (ET). Many (or all) valued maturity presentments have been posted; others (or none) are recycling. Many (or all) valued CP issuances have been posted; others (or none) have not been entered into the system or are recycling. Final money settlement figures have not been produced by DTC. All DTC transaction logs at its main facility have been destroyed.

At this point in the day, it is too late for IAs to re-issue physically all CP issued via DTC this day. Threfore, DTC would facilitate settlement among participants for that portion of the CP business that was posted on DTC's books up to the point of the disaster.

1. DTC will make available alternate site transaction log details on hardcopy reports for pick-up by participants. The reports will list all posted transactions and, separately, transactions that were recycling or pending RAD approval at the time of the disaster. All deliveries reported as recycling or pending RAD approval, or to be done during the remainder of the day, would be done physically, if at all. Issuers and dealers would have to promptly communicate denomination requirements to IAs for all physicall issuance.

2. Any other deliveries, or pledges and releases, not on the alternate site hardcopy report of posted transactions, or reported as recycling or pending RAD approval, or to de done during the remainder of the day, would have to be done with due bills.

3. DTC will provide PAs and presenting participants with reports of all maturity presentments that were not posted on its books at the time the disaster occurred. These transactions would have to settle outside DTC.

4. DTC will work by phone with settling banks having an interim net-net debit (as derived by DTC from the transaction details on the alternate site log) to collect those funds over Fedwire, and will pay out funds over Fedwire to settling banks having an interim net-net credit (as derived by DTC from the transaction details on the alternate site log).

D. Disaster strikes DTC's main computer facility after 3:30 p.m. All valued maturity presentments have been posted; those that were recycling and did not "make" have dropped. All valued new issuances have been posted; those that were recycling and did not "make" have dropped. Final settling bank net-net settlement figures have been produced by DTC. All DTC transaction logs at its main facility have been destroyed.

1. To aid participants in determining exactly which issuances are reflected in the final settlement figures, DTC will make available alternate site transaction log details on hardcopy reports for pick-up by participants. The reports will list all posted transactions and, separately, transactions that were recycling or pending RAD approval at the time of the disaster. Any issuances that did not "make" could be identified from this information.

2. Maturity presentments that did not "make" could be identified from the alternate site transaction log report furnished to participants. Since it would be too late in the day to act on them, DTC will not provide PAs and presenting participants with reports of maturity presentments that were not posted on its books at the time the disaster occurred. These maturity presentments, if any, will be included in the reports DTC produces on the day after the disaster.

believes that this interim approach is appropriate because DTC will not have phased all eligible CP processed by any dealer or agent into the SDSF system, and participants will not have dismantled the bulk of their physical CP processing capabilities.

III. DTC's Rationale

DTC believes that its proposal is consistent with Section 17A of the Act because it will promote the prompt and accurate clearance and settlement of CP transactions.

IV. Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions.[24] In addition, Section 17A also provides that such rules must promote the safeguarding of funds and securities in the possession or control of a clearing agency, or for which it is responsible.[25] As discussed below, the Commission believes that DTC's proposal is consistent with the Act.

DTC's proposal will reduce the costs and inefficiencies associated with the physical clearance and settlement of CP transactions by bringing the benefits of centralized, automated book-entry clearance and settlement to the CP market.[26] For example, issuers will not be required to print physical CP certificates, and dealers' clearing banks will not be required to check that they received the correct number of certificates in the proper denominations and that such certificates are in good deliverable form. Second, issuers and dealers will not be required to deliver, by messenger, physical certificates to various banks within a short period of time. In addition to reducing labor costs, this also decreases the potential for loss, theft or destruction of certificates. Third, because many CP dealers already participate in the SDFS system, their CP-related money settlement obligations could be netted with their other SDFS-related money settlement obligations, thus reducing the number and dollar amount of these obligations.

The Commission also believes that DTC's proposal promotes the safeguarding of funds and securities by reducing the potential for participant default. In the current physical processing environment, CP issuers, dealers and investors are subject to a substantial degree of credit risk.[27] For example, issuing agent banks typically deliver CP before receiving payment from the dealer's clearing bank. Similarly, the dealer's clearing bank usually delivers CP to custodial banks for investors before it receives payment from these banks. This exposes these banks to the risk that intermediaries processing the CP will become insolvent before making payment to the issuing agent bank or dealer's clearing bank, or may refuse to pay these banks. By providing the means for these transactions to be effected on a delivery-versus-payment basis, DTC's proposal could reduce the credit risk exposure of CP market participants. Other safeguards built into the SDFS system, as modified by DTC's proposal, also protect CP issuers, dealers and investors against financial loss. For example, DTC establishes participation standards and prevents participants from incurring net debits that are unusually large in relation to their prior month's settlement activity by imposing adjustable net debit caps on their activity. In addition, by requiring all transactions versus payment in the SDFS system to be fully collateralized, and by maintaining a participants fund composed of cash and liquid securities,[28] DTC should have sufficient liquid collateral to draw against in the event of participant default. Finally, to mitigate the systemic risk concerns that may arise in the event a CP issuer defaults on the same day that a participant fails to pay for the issuer's CP, DTC has altered the order in which deliveries made to the defaulting participant will be repledged to deliverers on the day of default.[29]

3. Final settlement figures will be derived by DTC from the transaction details on the alternate site log so, despite the disaster, participants will settle with DTC for the day. DTC will work by phone with settling banks having a net-net debit to collect those funds over Fedwire, and will pay out funds over Fedwire to settling banks having a net-net credit.

[24] 15 U.S.C. 78q-1(b)(3)(F) (1982).

[25] *Id.*

[26] Current CP issuance, clearance and settlement procedures are costly, inefficient and labor-intensive. For example, in the case of dealer-placed CP, an issuer will typically inform the dealer of the total dollar amount of CP that it desires to sell on the morning of the day of issuance. The dealer's sales force will then sell the issuer's CP until approximately 12:30 p.m. After completing such sales, the dealer will inform the insurer's agent bank of the total dollar amount and maturity of CP sold, identify the various purchasers of the CP, and instruct the bank to deliver the CP via messenger to the dealer's clearing bank. The dealers's clearing bank will typically receive the CP by 2:15 p.m. and will deliver the CP via messengers to investors' custodial banks by 3 p.m.

[27] Credit risk is the risk that the credit quality of one party to a transaction deteriorates to the extent that it is unable to fulfill its obligations on settlement date.

[28] See note 8, *supra*.

[29] The Commission also notes that DTC's proposal may reduce the risk to the payments system created by intraday overdrafts associated

Continued

DTC's proposal to phase-in CP into the SDFS system and to tie this phase-in to DTC's progress in establishing an off-site disaster recovery facility that can become fully operational within three hours after a system failure is both prudent and appropriate. As the Commission has previously stated in its Automation Review Policy Statement ("Policy Statement"), because of the impact systems failures have on public investors and broker-dealer risk exposure, it is appropriate for self-regulatory organizations to take certain steps to ensure that their automated systems have the capacity to accommodate present and reasonably anticipated volume levels, are not susceptible to internal or external threat, and respond adequately to localized emergency conditions, such as a power outage.[30] By taking steps to establish an off-site disaster recovery facility with a three hour recovery time and by tying the expansion of the CP program to its progress in establishing such a facility, the Commission believes DTC is acting in a manner consistent with the Policy Statement.

Finally, notwithstanding the foregoing safeguards, the Commission emphasizes that it remains concerned that the cap on the SDFS fund may increase DTC's risk exposure in the event of participant default as the volume of CP processed in the SDFS system increases. As discussed in a recent order concerning, among other things, DTC's proposal to implement the cap,[31] this cap may have the practical effect of reducing the aggregate amount of readily accessible collateral available to DTC by decreasing the level of collateral each participant must maintain in relation to its average daily gross settlement activity in the SDFS system. Although all transactions versus payment in the SDFS system are fully collateralized, the Commission believes this may adversely affect DTC's ability to "self-fund" a participant default and increase DTC's reliance on third party lenders during periods of market stress. Accordingly, the Commission expects to revisit this issue with DTC at the end of the temporary approval period.[32]

V. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-90-08) be, and hereby is, approved on a temporary basis through April 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24402 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28526; File No. SR-NASD-90-51]

Self-Regulatory Organization; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Enhancements to the Order Confirmation Transaction System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on September 26, 1990 the National Association 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 Organizations Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing technical enhancements to the NASD's Order Confirmation Transaction System ("OCT") that will provide improved functionality to NASD members using the system.

II. Self-Regulatory Organizations 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 Organizations Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The NASD is seeking approval for certain technical enhancements to the Order Confirmation Transaction System ("OCT") service. The OCT service, implemented in January 1988, was designed to expand the communication facilities available to support the continuous, orderly operation of the NASDAQ marketplace, especially during volatile or unusual market conditions such as those of October, 1987. OCT facilitates the execution and processing of orders by providing an alternate method of negotiating trades when traditional telephone negotiation is difficult or infeasible. The Report by the SECs Division of Market Regulation, *The October 1987 Market Break*, noted that the communication and negotiation of over-the-counter orders during the market break was at times delayed due to the unreliability of telephone access to market makers during periods of unprecedented high volume. The OCT system was developed to address precisely this type of problem by offering an alternative means of communication between order entry firms and market makers. OCT was made available to NASDAQ participants with Level 2/3 terminals and valid clearing arrangements because OCT provided not only a vehicle for acceptance or rejection of orders, but an automated method for confirming and comparing trades for processing through clearing.

Currently, order entry participants with clearing arrangements may direct an agency or principal order to a single market maker of choice through OCT to effect an execution. After receiving the order on the NASDAQ screen, the market maker must either accept the

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with the current method of issuing and redeeming CP. For example, issuers redeem CP in the morning but are not paid for CP sold that day until later in the afternoon. This disparity in payment flows may create a daylight overdraft in the paying agent's bank account at its Federal Reserve Bank. In the interval between payment of redemption amounts and receipts of issuance proceeds, the Federal Reserve Bank is, in effect, extending credit to the paying agent bank. Thus, the Federal Reserve Bank is exposed to the risk that the paying agency bank may become insolvent before it repays the Federal Reserve Bank.

[30] See Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703.

[31] See note 7, *supra*.

[32] In this regard, DTC has noted that one of its safeguards against participant default is the quality of CP eligible for deposit at DTC. The Commission recently published for comment amendments to Rule 2a-7 under the Investment Company Act of 1940. See Investment Company Act Release No. 17589 (July 17, 1990), 55 FR 30239. Those amendments incorporate standards that are more stringent than the standards that DTC has proposed under the CP program. The Commission expects to revisit with DTC, during the next eighteen months, whether the standards DTC uses to determine which CP is eligible for deposit should conform to those standards that the Commission ultimately determines to adopt under the Investment Company Act.

order as is, decline it, or counter with a different size and/or price. Each order or counter stays in force for three minutes. If no response is made before that time, the order *"times-out"* and is removed from active status.

The market maker can counter an order only once; the order entry firm can enter an order and counter once. Both sides also have the ability to accept or decline orders, or to let orders time-out. The net result, however, is that the communications flexibility embodied in the system is far more limited than that available through voice communication. The proposed enhancements to the system are designed to remedy these current limitations by taking greater advantages of the technical capabilities inherent in this automated environment.

Proposed Enhancements to the Order Confirmation Transaction Service

The proposed enhancements to OCT are designed to improve market efficiency through enhanced system functionality and the provision of greater flexibility to market makers and order entry firms in the use of this automated support system. These enhancements are logical extensions of the OCT service that will enable orders to be entered, negotiated, executed and locked-in without resort to verbal contact between trading rooms. Specific capabilities include a broadcast feature that enables order entry firms to display an order to all market makers in an issue; improved screen negotiation, including the ability to send multiple counter offers; the potential for one or more partial executions of orders; and the addition of menu-driven functions.

The enhanced flexibility in the system allows the order entry firm to preference a specific market maker, as in current OCT, but will also permit showing the order to all market makers in the security. This feature automates the ability in today's trading environment to telephone several market makers in a security in order to execute an order. In addition to entering the normal trade information (side, size, price, etc.), the order entry firm can: (1) Increase the time in force to up to 99 minutes; (2) specify a day order; or (3) indicate whether price and/or size are negotiable or whether a specific minimum quantity is acceptable. The addition of these elements gives the recipient a maximum amount of information with which to formulate a response.

The ability to respond has also been enhanced—a market maker may accept, counter, or decline an OCT order. If a market maker counters, negotiations are considered in progress and all other counters enter a queue, to be sent to the order entry from on a first in/first out basis, after negotiations with the first party are completed. Negotiations are conducted between the two parties by exchanging counters until agreement is reached.

One of the most important general enhancements of the new design is the use of menus and function keys to limit the keystrokes necessary to interact with OCT on-screen displays. Using the menus available on the NASDAQ Workstation ™ [1] the user can, after targeting the order/counter in the new OCT area: (1) retrieve order entry and negotiation masks; (2) accept an order, (3) cancel an order or counter; (4) decline an order or counter; or (5) insert a preformatted message in the memo area or an order to counter. The menu bar encourages the system's use by pre-programming certain functions and by allowing the trader to access the system without labor intensive activity.

A scan capability is available to participants to view executed trades, unexpired counters, open orders and expired orders. Cancellation of orders and counters, as well as acceptance of orders can be made through the scan function. Several scan entry parameters (e.g., by security, or by order entry firm for broadcast orders, etc.) allow the user to view information of interest. The user can also increase the information available by registering specific securities in a watch file. This allows interested participants to view incoming orders for those securities in which they are interested.

In order to further increase efficiency and reduce risk, executed trades will be processed through the Automated Confirmation Transaction service for Risk Management calculations and for submission to the National Securities Clearing Corporation. This will assure that all OCT trades are added into the Risk Management daily thresholds, and are reported both for trade reporting and clearance purposes.

The enhanced OCT system will be available to all NASDAQ Workstation ™ and Digital Interface Service subscribers that maintain a valid clearing arrangement with a clearing agency register with the Commission pursuant to section 17A of the Act, and will be subject to the terms and conditions of the participant agreements covering each service.

The NASD believes that the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(1)(B) and (C)(i) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Sections 11A(a)(1)(B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. The OCT system provides participants with another vehicle to negotiate, execute, and compare transactions.

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.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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

[1] Due to the on-going phase out of Harris terminals that is designed to upgrade the functionality and capabilities available to market makers, the menu function for OCT will be available only on NASDAQ Workstations.

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 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 November 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24406 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28525; International Series Release No. 170; File No. SR-PHLX-90-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the TOPIX Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX is proposing to trade on a listed as well as Unlisted Trading Privileges ("UTP") basis index warrants based on the Tokyo Stock Price ("TOPIC") Index. The TOPIX is a broadbased, capitalization-weighted index consisting of all the stocks listed on the First Section of the Tokyo Stock Exchange ("TKE"). [1] In accordance with the requirements set forth in Securities Exchange Act Release No. 28268 (July 26, 1990), 55 FR 31275 ("Index Warrant Approval Order"), the PHLX has submitted this filing pursuant to Rule 19b-4 under the Act to obtain Commission approval to list these warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the Index Warrant Approval Order, the Commission approved amendments to the PHLX's rules permitting the listing of index warrants based on established market indexes, foreign and domestic.

In approving the aforementioned amendments, the Commission expressed interest in the impact of additional index products on U.S. markets and stated that the PHLX would be required to submit for Commission approval any specific index warrants that it proposed to trade. The PHLX is now proposing to list index warrants based on the TOPIX Index, an internationally recognized, capitalization-weighted index consisting of all the stocks listed and traded on the First Section of the TKE. The TOPIC Index is a widely used indicator of the performance of the Japanese Equity Market. The TOPIX Index is calculated and managed by the TKE.

Such index warrant issues will conform to the amended PHLX listing requirements set forth in the generic index warrant approval order, which provide that : (1) The issuer shall have assets in excess of $100,000,000; (2) the minimum public distribution of such issues shall be 1,000,000 warrants with a minimum of 400 public holders of those warrants; and (3) the aggregate market value of such issues shall be $4,000,000; or (4) that the warrants have already been approved for trading on another national securities exchange.

TOPIX Index warrants will be direct obligations of their issuer subject to case-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the TOPIX has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the TOPIX Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in TOPIX warrants will be subject to several safeguards approved in the Index Warrant Approval Order which are designed to ensure investor protection. First, the options suitability standard will apply to recommendations to customers of TOPIX warrants. Second, the Exchange recommends that the warrants be sold only to investors whose accounts have been approved for options trading. If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, the options suitability standard will nevertheless apply to that transaction. Third, prior to trading in TOPIX warrants, the PHLX proposes to distribute to its membership a circular describing the risks associated with trading in TOPIX warrants. Fourth, a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") will be required to approve and initial a discretionary order in index warrants on the day the order is entered. The SROP will also be required to review the acceptance of each discretionary account to determine that the ROP has a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transaction, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

The Commission notes that with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks (*i.e.*, the sharing of surveillance information between the PHLX and the exchange on which the index's component stocks are traded). Accordingly, the PHLX is currently negotiating with representatives of the TKE to secure a mutual surveillance information sharing agreement with respect to trading in securities underlying the TOPIX Index.

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[1] There are 1,165 common stocks listed on the First Section of the TKE.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the TOPIX warrants are designed to promote just and equitable principles of trade and serve to facilitate transactions in securities by offering an innovative financing technique for issuers as well as the opportunity for U.S. warrant purchasers to hedge against or speculate on stock market fluctuations in Japan. In addition, the proposed rule change is consistent with that portion of section 6(b)(5) providing that the rules of the Exchange are to be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose an inappropriate 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 were either solicited or 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 November 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24405 Filed 10-16-90; 8:45 am]

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SECURITIES EXCHANGE COMMISSION

[Rel. No. 34-28520; File No. SR-SSE-90-01]

Self-Regulatory Organizations; Spokane Stock Exchange, Inc.; Order Granting Temporary Approval of Proposed Rule Change Relating to Amendments to Its Constitution and Rules

I. Introduction

The Spokane Stock Exchange, Inc. ("SSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") on May 29, 1990, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] to revise the Exchange's Constitution and to adopt the National Association of Securities Dealers' ("NASD") Rules of Fair Practice. Amendment No. 1, which clarified certain language in proposed Article VIII, section 1, was submitted to the Commission on July 31, 1990.[3] Amendments No. 2 and 3, which amended the SSE's trading rules in proposed article XV to clarify certain language in section 13 and to add section 17 to specifically prohibit fictitious trades, wash transactions, and prearranged trades were submitted to the Commission on September 11, 1990 and September 13, 1990.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28151 (June 26, 1990), 55 FR 27736 (July 5, 1990). No comments were received on the proposal.[5]

II. The Proposal

The purpose of the amendments is to provide a formal Constitution for the Exchange. The Constitution will establish more efficient procedures for the election of Exchange members, the function of its committees, the election of its officers, the conduct of Exchange business, and for the discipline of its members and will adopt rules governing trading activities. The proposed rule change represents the first comprehensive revision to the SSE Constitution since the establishment of the Exchange in the 1930's,[6] and the first

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] See letter from Lawrence R. Small, Counsel to the SSE, Paine, Hamblen, Coffin, Brooke & Miller, to Diana Luka-Hopson, Commission, dated July 26, 1990. The amendment corrected an apparent conflict between Sections 1 and 2 of proposed Article VIII by amending Section 1 in order to clarify that the President, as provided in Section 2, shall appoint Exchange committee members, with the approval of a majority of other members of the Board.

[4] See letters from Lawrence R. Small, Counsel to the SSE, Paine, Hamblen, Coffin, Brooke & Miller to Diana Luka-Hopson, Commission, dated September 10, 1990 and September 12, 1990. Amendment No. 2 amended Article XV, Section 13 to redesignate its subsections as (a)-(g) and to revise certain language in order to clarify that any member desiring to trade for his or her own account may do so at the current market price at the time of trade. Amendment No. 2 also expanded a provision prohibiting prearranged trades, which is contained in the SSE's current Constitution, to include a prohibition against all fraudulent devices, including fictitious trades and wash transactions in new Section 17, Article XV. This provision is substantially similar to a proposal submitted by the SSE in its 1986 proposed rule change. The 1986 proposal was noticed in Securities Exchange Act Release No. 24570 (June 10, 1987), 52 FR 23120 (June 17, 1987) (File No. SR-SSE-86-01). No comments were received on the proposal. Finally, Amendment No. 2 and 3 clarified Article XV, Section 13(d)'s provision for all-or-none cross transactions in order to provide that the proposed procedures would apply to the offer as well as to the bid.

[5] A resolution approving the rule change in its entirety was adopted by the Exchange members on May 22, 1990.

[6] The Exchange initially submitted a proposal to revise its Constitution in 1977. See Securities Exchange Act Release No. 14114 (October 28, 1977), 42 FR 61344 (December 2, 1977) (File No. SR-SSE-77-01). The Exchange subsequently submitted several modifications to its filing. See letter from Lawrence R. Small, Counsel to the SSE, Paine, Lowe, Coffin, Hamblen & Brooke, to Thomas Etter, SEC, dated January 24, 1985; letter from Lawrence R. Small to Thomas Etter, SEC, dated October 24, 1984; letter from Lawrence R. Small to Thomas Etter, SEC, dated September 5, 1984; letter from Lawrence R. Small to Judith Axe, SEC, dated July 25, 1980; and letter from Lawrence R. Small to Joe Worshtil, SEC, dated April 20, 1978.

On April 13, 1986, the Exchange submitted to the Commission a proposal to revise its Constitution and to adopt Rules of Fair Practice. See Securities Exchange Act Release No. 24570 (June 10, 1987), 52 FR 23120 (June 17, 1987) (File No. SR-SSE-86-01). On two occasions, the Exchange submitted to the Commission modifications to its proposal. See letter from Lawrence R. Small to Robert Sevigny, SEC, dated May 5, 1989 and letter from Lawrence R.

Continued

Commission approval of the Exchange's Constitution.

The proposed Constitution contains many technical sections. The major substantive changes are described below.[7]

A. Board of Governors

The Exchange proposes to restructure the composition and powers of its Board of Governors ("Board"). Currently, the Board is composed of five regular Exchange members. The Exchange proposes that the Board will be composed of five members, elected annually, and one representative of issuers and one representative of investors, for a total of seven Board members. The issuer and investor representatives, who may not be associated with an Exchange member, broker or dealer, will be selected by the Board. These Board members would be officers of the Exchange and, therefore, have authority and responsibility to determine policy, rules, and regulations of the Exchange.

The Exchange also proposes certain amendments to the jurisdiction and responsibilities of the Board. Amended Article IV, Section 1 would specify that the Board shall determine, among other things, the manner in which its members are nominated and elected and shall elect a President, Vice-President, Secretary, and Treasurer and such other officers as may be necessary. In addition, Section 1 of Article IV would specify that the President, Vice President, Secretary, and Treasurer must be members of the Board.[8] Article IV, Section 1 also would provide that the Board shall appoint and dissolve Committees of the Exchange, define, alter, and regulate jurisdiction of officers as provided in the Constitution, and examine all complaints against Exchange members and take disciplinary action as required.

The Exchange proposes to add a new Section 6 to Article IV in order to delineate the Board's supervisory authority over members and member organizations in connection with their conduct or business related to the Exchange. New Section 6 of Article IV would provide that the Board shall have general supervisory authority over members, member organizations, and their offices and that the Board, through its representatives, may examine all aspects of their business conduct. The Board's supervision, as a result of this proposal, would extend to all matters relating to dealings on the Exchange and over all matters relating to the collection, dissemination, use of quotes and reports of prices on the Exchange. Moreover, Article IV, Section 6 would expressly provide that unless specifically enumerated in the Constitution or by the Act, nothing shall otherwise limit the authority of the Board to review trading and other activities of Exchange members.

The SSE proposes certain other amendments to new Article VI relating to Board procedure. Amended Article IV, Section 2, would specify that all vacancies on the Board must be filled by a majority vote of the remaining Board members, who would appoint additional members to serve until the next annual election or until their successor is elected or appointed. New Article IV, Section 5 would specify that the term of office for a Board member is one year, or until a successor is elected.

B. Officers

The Exchange proposes to revise the provisions of its Constitution with respect to the duties and responsibilities of Exchange officers. Section 1 of new Article V would provide that officers of the Exchange will hold their positions subject to the pleasure of the Board and will perform their responsibilities without compensation, other than the reimbursement of expenses, unless compensation is approved by the board.

New Article V, Section 2, formerly Article IV, would amend the executive powers of the President in order to provide that the President is responsible for implementing and carrying out the policies and goals established by the Board. In addition, Article V, Section 2 would provide that the President shall be the presiding officer for all meetings of the Board or of the Exchange membership and would have all powers and duties as customarily pertain to the office, including powers conferred upon the President by the Board. Similarly, new Section 3 of Article V, would amend the powers of the Vice President to provide that the Vice President shall have all powers and duties as customarily pertain to the office, including powers conferred upon the Vice President by the Board.

New Section 4 of Article V, formerly Article VI, would set forth the duties of the Treasurer. The Exchange proposes to specify that the Treasurer must present a report on finances at regular Exchange meetings and have such further duties as customarily pertain to the office, including those powers conferred upon the Treasurer by the Board. New section 5 of Article V, would set forth the duties of the Secretary. The Exchange proposes to amend this provision in order to remove language stating that the Secretary shall be appointed by the Board [9] and providing that the Secretary shall be the accountant to the Exchange. The Exchange also proposes to provide that the Secretary shall have all powers and duties as customarily pertain to the office.

Finally, the Exchange proposes to add a new section 6 to article V which would establish the position of Compliance/Surveillance Officer of the Exchange. Article V, section 6 would provide that although the Compliance/Surveillance Officer shall be an employee of the Exchange, he or she will have all powers of the Board in its supervision of members including the power to review member books and records upon request. Moreover, the Exchange proposes that the Compliance/Surveillance Officer monitor and investigate quotations, trading and other activities of members for compliance with the rules of the Exchange and the federal securities laws. The Compliance/Surveillance Officer would have to report to the Board or its designated committee the findings of his or her investigations of member trading for disciplinary action.

C. Elections

The Exchange also proposes to revise its procedures for the conduct of its elections and notice of its meetings. The Exchange proposes that members in good standing are entitled to vote at any meeting or election of the Exchange.[10]

D. Committees

The Exchange proposes revisions to current Article XI to establish and define the jurisdiction of five standing

Small to Robert Sevigny, SEC, dated April 28, 1989. By letter of May 24, 1990, the SSE withdrew File No. SR-SSE-86-01 and submitted the current rule filing, File No. SR-SSE-90-01. See letter from Lawrence R. Small to Chief of the Branch of Exchange Regulation, SEC, dated May 24, 1990.

[7] For example, the current SSE Constitution does not contain a definitional section. The Exchange proposes to amend and replace existing Article II, Government, in order to establish a new section on definitions. The text of the Exchange's proposal as well as subsequent amendments are available at the Commission's Public Reference Section and at the principal office of the Exchange.

[8] Currently, Article III does not require that the Secretary of the Exchange be a Board member. The SSE Constitution provides that the Secretary shall be appointed by a majority vote of the Board. *See* SSE Constitution, Article III, Section 1 and Article VII, Section 1.

[9] The Exchange now proposes to establish the office of the Secretary as an elected position.

[10] Proposed Article VI, Section 3 would define a member in good standing as a member whose dues are not delinquent and who is not subject to disciplinary action of the type that restricts the member's ability to exercise the privileges granted by the Constitution.

committees of the Exchange: The Membership Committee, the Resolution of Disputes Committee, the Listing Committee, the Auditing Committee, and the Compliance Committee.[11] Committee members would have to be Exchange members or persons associated with an Exchange member.

The Exchange proposes to replace the current Committee on Rules and Commissions with the proposed Committee on Resolution of Disputes and to revise and simplify the Committee's procedures. This Committee would investigate and decide all claims and matters of difference between members of the Exchange submitted to it by any member and between members of the Exchange and non-members submitted to the Committee at the request of the non-member. In addition, the Exchange proposes to specify, in new article VIII, that the procedures constitute a non-binding dispute resolution. As an alternative, the Exchange proposes to provide that, with respect to claims between members, a member may request that the claim be submitted to arbitration under the Securities Industry Conference on Arbitration ("SICA") Code.[12] Finally, the Exchange proposes to remove from the current Committee on Rules and Disputes the enforcement of exchange rules [13] and to delete its authority to set commission rates.[14]

The Exchange proposes to separate the current Committee on Auditing and Listing into two committees. Proposed article VIII, section 1 would establish the authority of the Listing Committee to propose rules and procedures to the Board for the listing of securities,[15] to review listing applications and recommend action on the application to the Board, to recommend that the Board suspend trading in securities, and to recommend to the Board that a corporation be delisted from the Exchange. In this way, the Exchange proposes to remove the Auditing and Listing Committee's current authority to suspend trading or delist a security and place the final authority for such action with the Board.[16] The Exchange also proposes to amend the provisions relating to the new Auditing Committee to provide that one of the three committee members must be the Exchange Treasurer and to require the assistance of an independent public accountant by the Auditing Committee in preparing its reports and recommendations to the Board.

The Exchange proposes to establish a new Compliance Committee.[17] Proposed Article VIII, section 1 would require that the Compliance Committee supervise and ensure compliance with Exchange Rules and the federal securities laws. Article VIII, section 1 also would provide that one of the Compliance Committee's members shall be the President of the Exchange. Further, article VIII, section 1 would provide that the Committee, as delegated by the Board, shall have the power to investigate and recommend disciplinary action to the Board for violations of Exchange Rules or the federal securities laws and have the power to employ counsel and a compliance officer.

The Exchange also proposes to establish certain requirements which would apply to all standing committees of the Exchange. Proposed article VIII, section 2 would provide that the President, with the approval of the majority of the Board, would appoint the members of the Exchange's standing committees. Proposed article VIII, section 3 would establish certain procedural requirements, section 4 would require that each committee have at least one member who is not an officer or governor of the Exchange, and section 5 would establish a revised procedure for appeals of standing committee decisions.[18]

The Exchange proposes to adopt new article XVII [19] to specify that the Board and Exchange committees shall have the authority to promulgate rules necessary to carry out the objectives of the Exchange and the committees, respectively. Section 3 of article XVII would provide that any rules promulgated by the Board or committees must be adopted by a majority vote of members present, and only if a quorum then exists.

E. Conflicts of Interest

The Exchange proposes to adopt Article IX, Sections 1 and 2, to address conflicts of interest.[20] The Exchange proposes to amend its current conflict of interest provision to provide that no person shall participate in the consideration of any matter in which that person or his or her firm is personally interested.[21]

F. Membership

The Exchange proposes to establish procedures for the acceptance of members of the Exchange. Currently, the SSE's membership application and eligibility requirements are set forth in article XIII of the Constitution.[22] New Article X, Section 2 would provide the procedures for membership application and review by the membership committee, establish eligibility requirements,[23] provide for approval of

[11] Currently, Article XI of the SSE Constitution provides for Committees on Membership, Rules and Commissions, Auditing and Listing, Securities, and Publicity and Entertainment.

[12] Further, Article VIII directs the Committee to encourage all non-members to submit their claims to the NASD for resolution.

[13] The Exchange proposes to transfer, and expand, this authority to the new Compliance Committee.

[14] Similarly, the Exchange proposes to delete current Article XIX which sets forth the Exchange's commission rules. Section 6(e) of the Act prohibits national securities exchanges from imposing any schedule or otherwise fixing the rates of commission charged by its members. See 15 U.S.C. 78f (1982).

[15] Currently, the SSE's listing standards are contained in the application for listing of securities on the Exchange. In reviewing a corporation's application for listing on the Exchange, the SSE appraises the applicant in light of the following general requirements: 250,000 shares publicly held and 300 stockholders. The SSE also reviews the net tangible assets and earnings record of the applicant.

[16] In addition, proposed Article VIII would establish the procedure by which the Board, acting on recommendation of the Committee, may suspend trading in securities. Revised Article VIII also deletes the Auditing and Listing Committee's discretionary authority to permit dealings in securities on a "when issued" basis.

[17] Proposed Article VIII, Section 1 would require that this Committee meet not less than once per month and otherwise at the call of the President. The proposal also would require that the Compliance Committee present a written report to the Exchange membership concerning the Committee's activities.

[18] The Exchange's current appeal procedures are found in Article XII, Sections 1 and 2. The Exchange proposes to move current Article IX, Election and Notice, to new Article VI.

[19] The Exchange proposes to delete current Article XVII, Expulsion and Suspension from Membership.

[20] The Exchange currently incorporates its conflicts of interest provision in Article III, Section 4.

[21] Proposed Article IX, Section 1 would also provide that the President or a majority of the Board of Governors, if the President is the interested member, shall designate another member to replace the interested member in the case of a conflict.

[22] Existing Article XIII provides for two classes of membership and sets forth age and citizenship requirements, limits the number of Exchange members, establishes membership fees, requires signatures of the Exchange Constitution and provides that membership is personal. The proposed Constitution provides for just one class of membership. Proposed Article X, Section 1 provides that any person who meets the requirement for a member, as defined in Article II, may become a member of the Exchange. Proposed Article II, Section 1 defines a member as a natural person who is a member of the Exchange and also provides that a member may be associated as a member with no more that one member organization. Proposed Article II, Section 1 provides that a member organization generally must be registered as a broker or dealer in securities under the Act.

[23] Proposed Article X, Section 2 provides that the Membership Committee shall determine whether

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the application by the Committee, and also provide for Board review of the application in the event that the application is rejected by the Committee. In addition, Article X, Section 2 would require that the Board notify the Commission of action to deny membership in accordance with Section 19(d)(1) of the Act.[24]

The Exchange also provides that dues would be set by the Board, which must notify members of dues for the coming year at the annual meeting, and specify that dues, fees, and other charges shall be allocated equitably among members, issuers, and other persons using Exchange facilities.

G. Disciplinary Procedures

The Exchange proposes to establish new procedures for Disciplinary Action in proposed Article XIII. The Exchange currently does not have a separate Article in its Constitution for disciplinary action. Instead, its disciplinary provisions are incorporated into current Article XVII, Sections 5 and 6, which govern expulsion and suspension from membership. Proposed Article XIII, Section 1 would provide that the Exchange, through a majority vote of Board members, will have the power to fine, suspend, expel, or otherwise discipline a member for conduct inconsistent with just and equitable principles of trade.[25] Article XIII, Section 2 would establish the requirements for a disciplinary proceeding conducted by the Board. The procedures include the requirement that the Board bring specific charges, provide notice of the charges and the opportunity to defend against such charges, and the requirement that the Secretary of the Board keep a record of all proceedings. Article XIII, Section 3 would grant the Board the power to summarily suspend a member, or a person associated with a member, who is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization. In addition, Section 3 of Article XIII would allow the Board to suspend any member who is in such financial or operating difficulty, has failed to meet his or her obligations, or is insolvent [26] so that the Board determines and notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, and other members of the Exchange. Proposed Section 4 of Article XIII would provide that any person aggrieved by a summary suspension shall be promptly afforded an opportunity for a hearing before the Board. This hearing would be conducted in accordance with the procedures outlined above in Section 2 of Article XIII and Section 6 of the Act.[27] Finally, Article XIII, Section 5 would provide rule making authority to the Board to implement the provisions of this Article.

H. Conduct of Business

The Exchange proposes to adopt new rules for the transaction and conduct of business on the Exchange in proposed Article XV.[28] Section 4 of Article XV would delete current provisions which allow a non-member to represent a member on the floor in that member's absence and instead provide that a member may designate another member, referred to as a "designated representative," to conduct trading on his or her behalf. New Section 5 of Article XV would amend current Section 6 of Article XVIII, Units of Trading, to provide that the Board shall determine, and publish, the units of trading on Board lots.[29] New Article XV, Section 7 would be amended to revise the delivery period for regular way transactions.[30]

The Exchange proposes certain revisions to its current bid and offer rules in Article XVIII, Sections, 10, 11, 12, 13, 14, 15 and 16. New Article XV, Section 8 would delete the current schedule of permissible price variance and provide that bids and offers shall be raised or lowered in accordance with a schedule set by the Board. Section 9 of new Article XV would provide that all bids made and clearly established and all offers made and clearly established in accordance with the rules of the Exchange shall be binding. New Section 10 of Article XV would amend the Exchange's rules governing precedence of bids to delete a provision which allows the priority of bid to be transferred from one member to another. The Exchange proposes to incorporate current Article XVIII, Sections 14 and 15, precedence of bids and precedence of offers, into proposed Article XV, Section 11 and current Article XVIII, Section 16, claims of priority of bids and offers, into proposed Article XV, Section 12.

The Exchange proposes to revise substantially its trading rules. Article XV, Section 13 would permit any member desiring to trade for his or her own account to do so at current market prices at time of trade. Revised Section 13 of Article XV would require that a member charge a fair and reasonable commission on agency transactions but prohibit a service fee or charge on dealer transactions. Any mark-up or mark-down of dealer transactions must be reasonable under the standards of the NASD's Rules of Fair Practice. The SSE's cross trade rules would require that the trading ticket for each transaction be acknowledged in writing by the caller,[31] Secretary of another person designated by the Board. The rules would continue to provide that it is the member's responsibility to obtain proper certification, and that the failure to do so shall subject the member to disciplinary proceedings. Article XV, Section 13 also would establish the procedure for all-or-none cross transactions and provide for a price variance schedule as adopted and published by the Board.

The Exchange proposes to adopt Article XV, Section 17 to amend current Article XVIII, Section 20 in order to prohibit wash transactions, fictitious trades, and prearranged trades. Moreover, Section 17 would provide that

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the applicant is subject to a statutory disqualification, as set forth in Section 6(c)(2) of the Act, and whether the applicant meets standards of financial responsibility as established by the Board in accordance with Section 6(c)(3) of the Act. Moreover, the applicant must meet such standards of training, experience, and competence prescribed by the Board and not be engaged in or likely to be engaged in acts or practices inconsistent with just and equitable principle of trade. The applicant also must be willing to sign the Constitution.

[24] *See* 15 U.S.C. 78s(d)(1) and (2) (1982). Section 19(d)(2) provides for Commission review of self-regulatory organization ("SRO") action which is required to be filed under section 19(d)(1).

[25] Proposed Article XIII, Section 1 would provide that any willful violation of any provision of the Act, any rule or regulation adopted thereunder, any provision of the Constitution or Exchange Rules or any refusal to submit information requested by any SRO, the SEC or an Exchange Committee shall be considered conduct or proceeding inconsistent with just and equitable principles of trade for purposes of this provision.

[26] The term obligation refers to Exchange dues or charges.

[27] Section 6(b)(7) of the Act requires that the rules of an exchange provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d) sets forth the procedural requirements for disciplinary proceedings.

[28] The Exchange proposes to move the provisions of current Article XV, Transfer of Membership, to proposed Article XII.

[29] A Board lot is the specified number of shares one must take on the bid or ask.

[30] The Exchange proposes to require that delivery be made at the office of the purchaser on, but not before, the fifth business day following the date of the transaction; however, if the seller tenders delivery before the fifth business day, acceptance shall be at the purchaser's option, and the purchaser's rejection would be without prejudice to his or her rights.

[31] The caller would keep track of the cross trades. The caller would be the executing broker doing the cross who would record the cross in his door her records. The Exchange designated official would record the transaction for the Exchange.

an Exchange member who gives, or, with knowledge executes an order for the purchase or sale of securities which would involve no change in ownership shall be deemed guilty of conduct or proceeding inconsistent with just and equitable principles of trade and disciplined as proscribed in Article XIII, Section 1 of the SSE's proposed Constitution.[32]

The Exchange proposes to amend current Section 19 of Article XVIII to prohibit a member from carrying on any business other than normal Exchange business on the floor or the Exchange. The Exchange proposes to delete references to "ex-interest" orders in current Article XVIII, Section 21 and incorporate the remaining provisions of this section into proposed Section 15 of Article XV. Finally, the Exchange proposes to amend its reporting requirements for transactions in listed securities off the Exchange floor, found in existing Article XVIII, Section 22 and proposed Article XV, Section 16 to provide that members and member firms report by the opening bell of the trading session: (1) name of issuer; (2) number of shares; (3) price per share; (4) executing brokers; and (5) whether the trade was executed on an agency or dealer basis for customer transactions.

The Exchange proposes to adopt, in new Article XVI, antifraud rules and the NASD's Rules of Fair Practice.[33] Article XVI, Section 1 would specify the Exchange members must observe just and equitable principles of trade.[34] Article XVI, Section 2 would direct the Board to adopt the NASD's Rules of Fair Practice, as applied, unless expressly amended by the Exchange, and as interpreted or construed by the NASD. Article XVI, Section 2 also would provide that the Board may amend the Rules of Fair Practice as they apply to Exchange members, without securing the approval of Exchange members, so long as the amendments would not conflict with the Constitution, the Act, or the NASD Rules of Fair Practice and interpretations. Finally, Section 3 of Article XVI, among other things, would specify that any transaction in a listed security which is not effected through Exchange facilities shall not be considered part of the trading volume or reported as a transaction on the Exchange.

III. Discussion and Conclusion

The Commission has reviewed carefully the revisions to the SSE's Constitution to determine whether the proposed modifications are consistent with the Act. The Commission believes that the proposed Constitution is consistent with the requirements of the Act, and, in particular, with Sections 6 and 19 of the Act.[35] Section 6 sets forth certain requirements for national securities exchanges regarding, among other things, Exchange membership, selection of directors, the administration and enforcement of Exchange rules, and the imposition of disciplinary sanctions on members by the Exchange.

The Exchange has been operating without an approved Constitution. At a minimum, Commission approval of this rule change represents significant improvement by providing the Exchange with a valid Constitution. In addition, the proposed rule change corrects many of the substantive inadequacies and problems of the existing Constitution, and is more consistent with the fulfillment of SSE's responsibilities as a national securities exchange.[36]

The Commission believes that the proposed modifications to the Constitutional provisions regarding the composition and powers of the Board are consistent with the Act. In particular, the Commission believes that the proposed amendments regarding the composition of the Board are consistent with section 6(b)(3) of the Act. Section 6(b)(3) of the Act requires that the rules of an exchange assure of fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors represent issuers and investors and not be associated with a member of the exchange or a broker or dealer. The Commission believes that the proposed amendments are designed to comply with this requirement by providing for two public representatives on the Board of the Exchange and ensuring adequate representation of Exchange members on the Board.

The Commission believes that the proposed amendments regarding the powers of the board are consistent with section 6(b)(1) of the Act. Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission believes that the proposed amendments are designed to comply with this requirement by expressly providing that the board shall have general supervisory authority over members, member organizations, and their offices to examine all aspects of their business conduct as well as the authority to examine all complaints against Exchange members and take disciplinary action as required.

Similarly, the Commission believes that the proposed amendments regarding the duties and responsibilities of Exchange officers are consistent with section 6(b)(1) of the Act. The Commission believes that the proposed amendments are designed to comply with the section 6(b)(i) requirements noted above by strengthening the authority of the Exchange's current officers, establishing the office of the Secretary as an elected Exchange position, and creating the position of Compliance/Surveillance Officer of the Exchange. Because the Compliance/Surveillance Officer will have all the powers of the Board in its supervision of members and will monitor and investigate quotations, trading and other activities of members for compliance with Exchange rules and the federal securities laws, the proposal should strengthen significantly the Exchange's compliance procedures and the Exchange's ability to monitor transactions executed on the Exchange.

The Commission believes that the proposed modifications to the Constitutional provisions regarding Exchange committees are consistent with the Act. In particular, the Commission believes that the proposed committees are designed to provide an operational structure for the Exchange to undertake its obligations as a national securities exchange.

The Commission believes that the proposed amendment which establishes the Committee on Resolution of Disputes is consistent with section 6(b)(5) of the Act which requires that the rules of an exchange promote just and equitable principles of trade, and, in general, protect investors and the public interest. The provision provides for a non-binding dispute resolution process conducted by the Committee. Because all exchange members are NASD

[32] *See supra* note 25 and accompanying text for a summary of the SSE's proposed disciplinary provisions.

[33] All members of the SSE currently also are members of the NASD.

[34] Currently, Sections 2 and 5 of Article XVII, which governs Expulsion and Suspension from Membership, prohibits conduct inconsistent with just and equitable principles of trade and provides for expulsion, suspension, or another form of discipline for members who violate this prohibition.

[35] 15 U.S.C. 78f and 78s (1982).

[36] The Commission is approving the proposed rule change and revisions to the SSE's Constitution because the Commission believes that it is important for the SSE to operate with a Commission approved Constitution and rules. Approval of this proposed rule change, however, does not represent a ratification of the SSE's overall performance as a national securities exchange.

members, arbitration, through the NASD, will be available to provide members and the public with an Impartial forum for the resolution of their disputes.

The Commission believes that the proposed amendment which establishes an Auditing Committee on a Listing Committee is consistent with section 6(b)(5) of the Act. Because the provision regarding the Listing Committee establishes authority for the Committee to propose rules governing the listing of securities, to review listing applications, to make recommendations to the Board, and to recommend to the Board the suspension of trading or delisting of a security, and sets forth the procedure by which the Board may suspend or delist securities, the Commission believes that the proposal is designed to promote just and equitable principles of trade by insuring independent review of listing applications, suspension of trading, or the delisting of a security while also providing for prompt Board action to suspend trading. Because the provision regarding the auditing Committee will require that one of its members be the Treasurer of the Exchange and require the assistance of an independent public accountant in preparing the Committee's reports and recommendations to the Board, the Commission believes that the proposal is designed to prevent fraudulent and manipulative acts and practices and to protect investigators and the public interest by insuring expertise as well as independent oversight in the auditing of Exchange accounts and vouchers.

The Commission believes that the proposed amendment which establishes the Compliance Committee as a standing committee of the Exchange is consistent with section 6(b)(1) of the Act. The Commission believes that the proposal is designed to comply with section 6(b)(1) by requiring that the Committee prepare and supervise compliance with Exchange rules and the federal Securities laws through its power to investigate and recommend disciplinary action to the Board and its power to employ counsel and a compliance officer.

In addition, the Commission does not believe that the proposed changes to the Constitution will impose restrictions on the Exchange's membership greater than those restrictions permitted by the Act. The Commission notes that the Exchange's proposed modifications to its membership eligibility standards (existing Article XIII, Section 1; revised Article X, Section 2) reflect the requirements in section 6(c)(2) of the Act with respect to statutory disqualification, section 6(c)(3) with respect to financial responsibility and operational capacity of a registered broker or dealer, and section 6(c)(4) with respect to the limitation on the number of Exchange members.[37] The Commission believes that the proposal also is consistent with section 6(b)(7) of the Act in that it should provide a fair procedure for the denial of membership to any person seeking membership as set forth in section 6(d)(2). Moreover, the Commission finds that the proposed revisions are consistent with section 19(d)(1) of the Act. Section 19(d)(1) of the Act requires, among other things, that exchanges notify the Commission of action to deny membership. Section 19(d)(2) provides for Commission review of exchange action which is required to be filed under section 19(d)(1).

The Commission believes that the proposed revisions to the Exchange's disciplinary procedures are consistent with section 6(b)(6) of the Act. Section 6(b)(6) of the Act requires that the rule of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of the provisions of the Act, the rules or regulations thereunder and the rules of the exchange by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction. The powers and responsibilities proposed for the Board in proposed Article XIII are designed to be consistent with the provisions of the Act in that the Board, through a majority vote of its members, will have the authority to fine, suspend, expel, or otherwise discipline a member for conduct inconsistent with just and equitable principles of trade. Further, the Board will have the ability to summarily suspend a member or a person associated with a member who is a member of and is expelled or suspended from any SRO or barred or suspended from being associated with a member of any SRO. The Board also will have the authority to suspend a member who is in financial or operating difficulty, has failed to meet his or her obligations or is insolvent. The Commission believes that this should enable the Exchange to carry out the requirement of section 6(b)(6) that the rules of an exchange provide that its members be appropriately disciplined for violations of Exchange rules or requirements under the Act.

The Commission also believes that the proposed disciplinary procedures are consistent with sections 6(b)(7) and 6(d) of the Act. Section 6(b)(7) of the Act requires that the rules of an exchange provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d) sets forth the procedural requirements for disciplinary proceedings. The Commission finds that the proposal reflects the requirements set forth in sections 6(b)(7) and 6(d)(1), including the requirement that the Board bring specific charges, provide the member or person associated with a member notice of the charges and the opportunity to defend against such charges, keep a record of the proceedings, support a determination to impose a disciplinary sanction with a statement setting forth the charges, the specific provisions of the Act or rules which are deemed to be violated, and the sanctions imposed. Similarly, the Commission believes that proposal for summary suspension by the Board incorporates the grounds for summary suspension and the opportunity for a hearing before the Board as provided under section 6(d)(3) of the Act.

The Commission believes that the proposed modifications to the Exchange's transaction and conduct of business rules are consistent with the Act. In particular, the Commission believes that the proposed revisions comply with section 6(b)(5) in that the revised rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market through more efficient and comprehensive trading rules.

The Commission believes that the Exchange's proposal to adopt the NASD's Rules of Fair Practice also is consistent with section 6(b)(5) of the Act. In particular, the adoption of the Rules of Fair Practice, as interpreted and applied by the NASD, is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. The SSE is an adjunct to the regional over-the-counter market, and is open for only a short period each day. Accordingly, it is sufficient for such a market to adopt NASD fair practice rules. Should the nature and operation of the Exchange

[37] The Commission notes that section 6(c)(1) also requires that a national securities exchange deny membership to any person, other than a natural person, which is not a registered broker or dealer or any natural person who is not, or is not associated with, a registered broker or dealer.

expand or change, it might have to adopt different or additional rules of its own. Moreover, the proposed Constitution reflects the fact that the SSE operates in a limited fashion and is exempt from transaction reporting under Section 11A of the Act.[38] Before the Exchange's operations expand or diversify, the Commission would need to review the Constitution to determine if it was sufficient to account for these changes.

The Commission notes that the proposed amendment to the Exchange's lost or stolen securities provision in new Article XVII, which specifies that all members must comply with Commission rules on this subject, requires compliance with Exchange Act Rule 17f-1 which sets forth the Commission's rules for reporting and inquiry of missing, lost, counterfeit, or stolen securities. The Commission believes that the proposal should promote section 6(b)(5)'s requirement that exchange rules prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

Finally, the Commission believes that the various clarifying modifications proposed by the Exchange with respect to the definition of terms used in the Constitution, the duties and powers of the Board, the duties and responsibilities of Exchange officers, elections and notices of meetings, vacancies in office, Exchange committees, conflicts of interest, transfer of membership, listing of securities, office addresses, partnerships, and branch offices, and other amendments to the Constitution are designed to prevent fraudulent and manipulative acts and practices, and in general to protect investors and the public interest, as required by section 6(b)(5) of the Act.

In sum, the Commission believes preliminarily that the proposed rule change is designed to correct many of the substantive inadequacies of the SSE's current Constitution. The Commission also believes preliminarily that the proposed revisions to the SSE's Constitution and the adoption of the NASD's Rules of Fair Practice by the SSE as the rules of the Exchange should result in operation of the Exchange which is more consistent with the fulfillment of the SSE's obligations as a national securities exchange. However, in order to allow the Commission sufficient time to assess the effects of the revised Constitution and adoption of the NASD Rules of Fair Practice on Exchange operations, the Commission has determined to approve the proposed rule change for a temporary three year period.

The Commission expects to review the determinations made in this Order within three years to consider whether to permanently approve the revisions to the Constitution. During this time period, the Commission will monitor and oversee SSE's operations through review of proposed rule changes,[39] notices to members,[40] and disciplinary actions[41] and through other oversight actions. In order to provide the Commission with sufficient time to review whether permanent approval of the SSE Constitution is warranted, the SSE should submit a proposed rule change to the Commission on or before June 1, 1993 containing further revisions to the Constitution, if necessary, and requesting permanent approval of the Constitution, as revised.

It is therefore ordered, pursuant to section 19(b)(2)[42] of the Act, that the proposed rule change is approved for a three year period ending on October 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24403 Filed 10-16-90; 8:45 am]

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[38] The Commission granted the SSE an exemption from the reporting requirement in former Exchange Act Rule 17a-15. *See* Securities Exchange Act Release No. 14651 (April 11, 1978), 43 FR 16852. Rule 17a-15 is now redesignated as Exchange Act Rule 11Aa3-1 under the Act. In its Release adopting Rule 11Aa3-1, the Commission stated that the redesignation of the Rule under Section 11A of the Act would not affect the status of Rule 17a-15 exemptions which do not directly conflict with a provision of Rule 11Aa3-1. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.

[39] Section 19(b) of the Act and Rule 19b-4 thereunder [17 CFR 240.19b-4 (1989)] require a national securities exchange to file with the Commission for review and approval all proposed rule changes, including changes to its Constitution, rules, and procedures.

[40] Rule 6a-3 [17 CFR 240.6a-3 (1989)] under Section 6(a) of the Act requires a national securities exchange to file with the Commission, within ten days of release, three copies of any material, including notices, circulars, bulletins, lists, or periodicals issued or generally made available to members of the exchange.

[41] Section 19(d) of the Act and Rule 19(d)-1 thereunder [17 CFR 240.19d-1 (1989)] require SROs to report to the Commission notice of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation or access to services, and summary suspensions.

[42] 15 U.S.C. 78s(b)(2) (1982).

[43] 17 CFR 200.30-3(a)(12) (1989).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28521; File No. SR-PHLX-90-19]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Execution of Orders Transmitted to the Exchange by Means of the PACE System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes the following amendments to Exchange rule 229's supplementary material.

Paragraph .05

Currently, only round-lot market orders up to 500 shares and partial round-lot orders ("PRL's") up to 599 shares are eligible for automated execution through the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system. The amended rule will allow a PHLX specialist to establish an eligible order size greater than 500 shares for PACE system automated execution.

Paragraph .06

Currently, this section provides for execution of market orders (round-lots, odd-lots and PRL's up to 1,099 shares) at the New York market opening price. The amended rule will provide for execution of market orders of a size greater than 1,099 shares and up to 5,000 shares at the New York market opening price if received at least three minutes prior to such opening.

Paragraph .07(a)

Currently, this section provides that market orders (round-lots of 500 shares and PRL's up to 599 shares) entered after the opening will be executed on the PACE quote. Since the PACE quote is composed of the best bid/ask quote among the American, Boston,

Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate, the automated execution of a round-lot market order at the PACE quote may occur at a price outside the New York market high-low for the day up to the time the order is entered. Certain users of the system wish to avoid such an occurrence. In an effort to accommodate such users, they may opt for automated execution of all orders up to 599 shares at the PACE quote except for those which would be executed at a price outside the New York market high-low for the day up to the time the order is entered. The latter orders would be executed manually rather than in an automated fashion at a price at or within the New York market high-low.

Paragraph 7(b)

Currently, this section provides that market orders (round-lots of 600 to 1,000 shares and PRL's of 601 to 1,099 shares) entered after the opening, shall not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Exchange. The amended rule will extend such provisions to cover orders of a size greater than 1099 shares which the specialist agrees to accept.

Paragraph 10(a)

Currently, this section provides that round-lot limit orders up to 500 shares and the round lot portion of PRL limit orders up to 599 shares shall be executed based on an accumulation of volume (1,000 shares) at the limit order price on any Exchange eligible to compose the PACE quote. The amended rule provides for execution of such orders based on accumulation of volume (1,000 shares) at the limit order price on the New York market. In addition, because stocks selling below $1.00 have different trading characteristics, generally are traded in fractional increments of sixteenths, are not eligible for ITS, and usually have greater sizes for which bids and offers are available, limit orders in such stocks will not be executed under the same volume formula as other stocks and, instead, will be executed under the standards set forth in paragraph .10(b).

In its rule change SR-Phlx-89-44,[1] the Exchange noted that each stock has unique trading characteristics. Because of this, specialists established order size eligibility of either 2,500 shares or 5,000 shares on a stock by stock basis. The Exchange now proposes to modify its approach by having three tiers of order size eligibility, i.e., Tier I: 1 to 599 shares; Tier II: 600 to 3,099 shares: Tier III: 4,000 to 5,000 shares. Orders in each tier will be executed under the terms of the proposed rule. Except under unusual circumstances, the specialist must remain committed to his order size eligibility elections for at least six (6) months thereby providing stability and continuity to the list of issues in the program. Under exceptional or extraordinary circumstances, the Floor Procedure Committee may grant a specialist's withdrawal from the program.

Paragraph .17

Finally, Phlx proposes to add a new Paragraph .17 which states that "(o)rders received by 4 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution. Orders received after such time will be rejected and returned to the order entry firm." The purpose of this provision is to clarify the treatment of orders which are entered by PACE users near the close.

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

By providing a more balanced and competitive order delivery and execution process for participants in the PACE system, the resulting efficiency will translate into improved reporting and reduced burdens on processing mechanisms, such as the PACE system.

The proposed rule change will result in more efficient executions and reporting of transactions. Implementation of the changes will be consistent with section 11A(a)(1) of the Act which encourages the use of new data processing and communication techniques which create the opportunity for more efficient and effective market operations and assures economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-90-19 and should be submitted by November 7, 1990.

[1] *See* Securities Exchange Act Release No. 27333 (October 3, 1989), 54 FR 41893 (October 12, 1989) (Order approving revised PACE limit order execution criteria).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24446 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17792; International Series Rel. No. 172; 812-7527]

The Emerging Germany Fund Inc.; Application

October 11, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Emerging Germany Fund Inc. (the "Fund").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemption from the provisions of section 12(d)(3) of the 1940 Act and rule 12d3-1 thereunder.

SUMMARY OF APPLICATION: The Fund seeks an order under Section 6(c) of the 1940 Act exempting it and any other registered investment company for which Dresdner Bank AG or any of its subsidiaries or affiliates may serve as investment adviser or manager from the prohibitions of section 12(d)(3) of the 1940 Act to the extent necessary to allow them to acquire securities of foreign issuers engaged in securities-related activities in accordance with the conditions of proposed amendments to Rule 12d3-1 under the 1940 Act.

FILING DATES: The application was filed on June 1, 1990 and amended on July 25 and September 21, 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 the Fund with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1990, and should be accompanied by proof of service on the Fund, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Fund, c/o ABD Securities Corporation, One Battery Park Plaza, New York, New York 10004, Attention: Martin J. Bentsen, Esq.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. The Fund is a non-diversified, closed-end management investment company registered under the 1940 Act. The Fund's investment objective is to obtain long-term capital appreciation by investing primarily in equity and equity-linked securities of medium and smaller-sized West German companies. The Fund will seek to achieve its objective primarily by investing in West German companies that are likely, in the opinion of the Fund's investment adviser, to benefit from political, legal and economic developments in East Germany and in other countries in Eastern Europe.

2. The Fund's investment adviser is Asset Management Advisors of Dresdner Bank-Gesellschaft fuer Vermoegens-anlageberatung mbH ("AMA"), a corporation organized under the laws of West Germany, and the Fund's manager and administrator is ABD Securities Corporation ("ABD Securities"), a corporation organized under the laws of the State of Delaware. Dresdner Bank AG ("Dresdner Bank"), a corporation organized under the laws of West Germany, owns 100% and 75% of the outstanding voting equity securities of AMA and ABD Securities, respectively.

3. The Fund wishes to diversify its portfolio further by being permitted to invest in securities of West German and other foreign issuers that, in their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("securities-related activities").

4. The Fund seeks an exemption from section 12(d)(3) of the 1940 Act and rule 12d3-1 thereunder to enable it to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3-1 ("Proposed Amended rule 12d3-1"). *See* Investment Company Act Release No. 17096 (Aug. 3, 1989). Proposed Amended rule 12d3-1 would, among other things, facilitate the acquisition by the Fund of equity securities issued by foreign securities companies.

5. The Fund also seeks to have any order issued on the application apply to any other registered investment company (the "Prospective Funds") for which AMA, ABD Securities or Dresdner Bank or any of Dresdner Banks' other subsidiaries or affiliates may in the future serve as investment adviser or manager.

Applicant's Legal Analysis

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3-1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Although "margin securities" by definition historically have been securities that are principally traded in the United States, certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T. In particular, any foreign equity security meeting specified qualification requirements will be eligible for marginability, provided that it appears on the list of "foreign margin stocks" to be published quarterly by the Board of Governors. Until such lists are available, however, most securities issued outside the United States will not be "margin securities" for purposes of rule 12d3-1.

3. Proposed Amended rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicant's Condition

The Fund agrees that the following condition may be imposed in any order of the SEC granting the requested exemptive relief:

The Fund and the Prospective Funds will comply with the provisions of the proposed amendments to rule 12d3-1 (Investment Company Act Release No. 17096 (Aug. 3, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 90-24399 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17784; 812-7402]

Equitable Capital Partners II, L.P., et al.; Application

October 9, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Equitable Capital Partners II, L.P. (the "Enhanced Yield Fund"), Equitable Capital Partners (Retirement Fund) II, L.P. (the "Enhanced Yield Retirement Fund") (the "Partnerships"), and Equitable Capital Management Corporation ("Equitable Capital").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) granting an exemption from sections 2(a)(19) and 2(a)(3)(D).

SUMMARY OF APPLICATION: Aplicants seek an order determining that (a) The Independent General Partners (as hereinafter defined) of each Partnership will not be "interested persons" of such Partnership or of Equitable Capital, which is the managing general partner of and investment adviser to each Partnership solely by virtue of being general partners of the Partnership and co-partners of Equitable Capital, (b) the Independent General Partners of a Partnership will not be "interested persons" of such Partnership solely by virtue of their service as independent general partners of the other Partnership or Equitable Capital Partners, L.P. and Equitable Capital Partners (Retirement Fund), L.P. (the "Equitable Capital Partners I Partnerships"), and (c) persons who become limited partners (the "Limited Partners") of a Partnership who own less than 5% of the Units (as hereinafter defined) in such Partnership will not be "Affiliated persons" of the Partnership or any of its Limited Partners solely by reason of their status as Limited Partners.

FILING DATES: The application was filed on October 2, 1989, and amendments thereto were filed on June 12, 1990 and October 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 5th Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019, Attention: James P. Pappas, Senior Vice President.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. Each Partnership is a newly-formed limited partnership organized under Delaware law that will operate as a business development company pursuant to section 54 of the 1940 Act. The Partnerships have filed a joint registration statement (File No. 33-32015) on Form N-2 under the Securities Act of 1933 (the "1933 Act") with respect to an offering of units of limited partnership interest in the Partnerships (collectively, for both Partnerships, the "Units").

2. The general partners of each Partnership will consist of the Independent General Partners (defined to be individuals who are natural persons and who are are not "interested persons" of such Partnership within the meaning of the 1940 Act) and Equitable Capital, as managing general partner (the "Managing General Partner"). The general partners, except the Managing General Partner, will be natural persons. Consistent with the requirements of section 56(a) of the 1940 Act, a majority of the general partners of a Partnership will be Independent General Partners. Each Partnership will be managed solely by the Independent General Partners thereof, except with regard to those specific activities of such Partnership for which Equitable Capital, in its capacity as the Managing General Partner or as the investment adviser of such Partnership, will be responsible. The Independent General Partners of a Partnership will provide overall guidance and supervision of Partnership operations and will assume the responsibilities and obligations imposed by the 1940 Act on directors and general partners who are not interested persons of a business development company.

3. The Managing General Partner will be responsible for purchasing investments for a Partnership which have been approved by the Independent General Partners, providing administrative services to the Partnership, and admitting additional or assignee Limited Partners to the Partnership. Equitable Capital will also act as the investment adviser to each Partnership pursuant to an investment advisory agreement between Equitable Capital and each Partnership. Under each advisory agreement, Equitable Capital will be responsible for the identification of all investments to be made by the respective Partnership and will perform other functions carried out by the investment adviser to a business development company. Equitable Capital, an indirect, wholly owned subsidiary of The Equitable Life Assurance Society of the United States is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

4. Each partnership agreement will provide that (i) The Independent General Partners may be removed either for cause by the action of two-thirds of the remaining Independent General Partners or by a majority vote of the Limited Partners and (ii) the Managing General Partner of a Partnership may be removed either by a majority of the Independent General Partners of such Partnership or by a majority vote of its Limited Partners. Each partnership agreement will also provide that the Managing General Partner will not resign or withdraw unless a successor Managing General Partner has been appointed and consented to by the Limited Partners of such Partnership in compliance with such partnership

agreement and the provisions of sections 15(a), 15(c), and 15(f) of the 1940 Act.

5. The Limited Partners of a Partnership have no right to control such Partnership's business, but may exercise certain rights and powers of a Limited Partner under the partnership agreement, including voting rights and the giving of consents and approvals provided for in such partnership agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. If a Limited Partner transfers his interest in the Partnership in a manner which is effective under the partnership agreement, the Managing General Partner will either promptly consent to take all necessary actions to insure that such purchaser, assignee, or transferee of record, as the case may be, shall become a substituted Limited Partner or, if such consent is withheld, the Managing General Partner shall be deemed to be a Limited Partner with respect to such interests and exercise the voting rights under the 1940 Act in accordance with the written instructions of the purchaser, assignee, or transferee of record, as the case may be. Each partnership agreement will obligate the general partners of such Partnership to take all such action which may be necessary or appropriate to protect the limited liability of the Limited Partners. As insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been obtained. The Independent General Partners of each Partnership will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

6. The Partnerships have been organized as limited partnerships because it is believed that the partnership form is a more appropriate investment vehicle for a closed-end entity of limited duration which will make a limited number of investments. Each Partnership will terminate upon the liquidation of their investments, but no later than December 31, 2000 (or ten years from the final closing of the sale of units of limited partnership interest in such Partnership, if later).

7. The Equitable Capital Partners I Partnerships and Equitable Capital have received an order substantially identical to the one requested hereby. *See* Investment Company Act Release No. 16444 (June 21, 1988). The Independent General Partners also serve as the independent general partners of the Equitable Capital I Partnerships.

Applicants' Legal Analysis

1. Applicants request that each Partnership and the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners otherwise would be deemed to be "interested persons" of a Partnership or of Equitable Capital as the Managing General Partner and investment adviser of a Partnership solely because such Independent General Partners are general partners of a Partnership and co-partners of Equitable Capital. Each Partnership has been structured so that the Independent General Partners are the functional equivalent of the non-interested directors of an incorporated business development company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

2. The Independent General Partners of a Partnership may be deemed to be "interested persons" of such Partnership solely by virtue of their service as Independent General Partners of the other Partnership or the Equitable Capital Partners I Partnerships. Appllicants believe that service by the same individuals as Independent General Partners of each Partnership and each Equitable Capital Partners I Partnership, a relationship similar to one in which an individual serves as a director of multiple investment companies in the same complex, will be beneficial to the Partnerships. Thus, applicants further request that the Independent General Partners of each Partnership be exempted from the provisions of section 2(a)(19) to the extent that they otherwise would be deemed to be "interested persons" of such Partnership solely by virtue of their service as Independent General Partners of the other Partnership or each Equitable Capital Partners I Partnership.

3. Applicants further request that any Limited Partner owning less than 5% of the Units of a Partnership not be deemed an "affiliated person" of the Partnership or any of its other partners under section 2(a)(3)(D) of the 1940 Act solely by reason of its status as a Limited Partner. Since such Limited Partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnerships on a footing more equal with investments in business development companies organized as corporations.

Applicants' Conditions

As a condition to the requested relief, applicants will comply with the following conditions with respect to each of the Partnerships:

1. The general partners, except the Managing General Partner, will be natural persons. A majority of the general partners will not be interested persons of the Partnership.

2. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors or general partners of a business development company. The Independent General partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors and general partners who are not interested persons of a business development company.

3. The partnership agreement will provide that the Managing General Partner will not resign or withdraw unless a successor Managing General Partner has been appointed in accordance with the partnership agreement and the provisions of sections 159(a), 15(c), and 15(f) of the 1940 Act.

4. The Limited Partners of the Partnership will be afforded all of the voting rights required by the 1940 Act. The Partnership will obtain an opinion of counsel that the voting rights provided to the Limited Partners do not subject the Limited Partners to liability as general partners under Delaware law. If a Limited Partner transfers his interest in the Partnership in a manner which is effective under the partnership agreement, the Managing General Partner will either promptly consent to take all necessary actions to insure that such purchaser, assignee, or transferee of record, as the case may be, shall become a substituted Limited Partner or, if such consent is withheld, the Managing General Partner shall be deemed to be a Limited Partner with respect to such interests and exercise the voting rights under the 1940 Act in accordance with the written instructions of the purchaser, assignee, or transferee of record, as the case may be.

5. The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the partnership agreement are permissible under section 205 of the Advisers Act and under section 15(a) of the 1940 Act. Except to the extent that the partnership agreement allocates income, gain, and loss *pro rata* to all partners in proportion to their capital contributions,

the Managing General Partner and all other investment advisers to the Partnership will not receive or be allocated any portion of capital gains or capital appreciation if, as a result, amounts distributable in respect to cumulative allocations, or payments, of capital gains or capital appreciation to such person would exceed twenty percent of cumulative realized capital gains, net of realized capital losses and unrealized capital depreciation.

6. The Partnership will obtain an opinion of counsel that the current structure of the Partnership will entitle it to be taxed as a partnership for federal income tax purposes.

7. If, under the Partnership Agreement, the Partnership is or becomes authorized to make in-kind distributions of portfolio securities to its Partners, no such in-kind distributions will be made until such time as the Partnership has obtained a no-action letter from the staff of the SEC, or alternatively, has obtained an order pursuant to section 206A of the Advisers Act permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24439 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17783; 812-7530]

Greater Washington Investors, Inc., et al.; Application

October 9, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Greater Washington Investors, Inc. ("GWI"), Greater Washington Investments, Inc. ("Investments"), and The Venture Fund of Washington, L.P. ("Venture Fund").

RELEVANT ACT SECTIONS: Sections 17(d), 57(a)(4), and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(d) and rule 17d-1 permitting GWI to engage in certain joint transactions with Venture Fund, an affiliated person of GWI, that would otherwise be prohibited by section 57(a)(4).

FILING DATE: The application was filed on June 5, 1990, and amended on September 12, 1990 and October 1, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, 5454 Wisconsin Ave., Chevy Chase, MD 20815.

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 may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. GWI was originally organized under the laws of the District of Columbia in 1959 as a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA"). In 1987, GWI completed a reorganization which included re-incorporation in the State of Delaware by merging with a newly-created Delaware corporation and restructuring its activities by transferring to a newly-created wholly-owned subsidiary, Investments, its SBIC license and certain assets and liabilities. Investments is registered under the Act as a closed-end, management investment company. GWI has elected to be regulated as a business development company pursuant to section 54 of the Act.

2. GWI and Investments share an eleven-member board of directors, the majority of whom are not "interested persons" within the meaning of section 2(a)(19) of the Act.

3. GWI is a venture capital company that invests principally in companies that offer significant long-term growth prospects. GWI also participates in the financing of later-stage companies and leveraged buy-outs in a broad range of industry segments. Investments, in accordance with SBA regulations, is restricted to investing in qualified small business concerns. It is the policy of GWI to concentrate its investments in the equity securities of portfolio companies while Investments concentrates its investments in the debt securities of portfolio companies.

4. Venture Fund is a Delaware venture capital limited partnership organized in August 1989. The limited partners are 15 institutions and other accredited investors each of whom contributed at least $20,000 to the Fund's initial capital of $13 million. Venture Fund has not registered as an investment company in reliance on the exception contained in section 3(c)(1) of the Act. The general partner of Venture Fund is American Venture Partners, L.P. ("AVP"), a Virginia limited partnership. The managing general partners of AVP are Stephen W. Ritterbush and Richard P. Whitney. Mr. Ritterbush also is a limited partner of Venture Fund. The investment policy of Venture Fund is to invest principally in the equity securities of emerging technology companies in the Washington, DC area.

5. On January 2, 1990, Mr. Rittenbush and Mr. Whitney became President and Senior Vice President, respectively, of both GWI and Investments.

6. Applicants propose, subject to receipt of an order, to allow GWI and Venture Fund to co-invest in portfolio companies under terms designed to ensure that the investments are consistent with the protection of GWI's investors and the policies and purposes of the Act.

7. Because GWI and Venture Fund may be under common control, as "control" is defined in section 2(a)(9) of the Act, the two entities may be affiliated persons of one another, as "affiliated person" is defined in section 2(a)(3) of the Act. Therefore, GWI and Venture Fund may be prohibited, under section 57(a)(4) of the Act, from engaging in joint transactions unless they receive an order under section 17(d) and rule 17d-1 allowing such joint transactions.

Applicants' Legal Conclusions

1. Applicants assert that the terms of the proposed arrangement are not less advantageous to GWI than they are to Venture Fund. The co-investment program and the transactions contemplated therein are consistent with the provisions, policies and purposes of the Act since both GWI and Venture Fund would be offered the opportunity to participate in the transactions on an equal basis. For these reasons, applicants assert that the

co-investment program meets the standards for granting exemptive relief under sections 17(d) and 57(a)(4) of the Act and rule 17d-1 thereunder.

2. Applicants submit that allowing joint investments between GWI and Venture fund is justified on the basis of the protection incorporated in the conditions set forth below and the significant potential benefits to GWI. The conditions place substantive responsibilities on the non-interested directors of GWI and ensure that these directors are provided with all the information necessary to discharge their responsibilities. The conditions are designed to ensure that Venture Fund will not be favored in the apportioning of investment opportunities.

3. Applicants state that the co-investment program will increase favorable investment opportunities for GWI. Such tandem investing will make larger amounts of capital available for portfolio companies, thus permitting GWI to invest on more favorable terms and to exert a greater influence in the management and operations of these portfolio companies. Applicants submit that the proposed co-investment program will not subject GWI to overreaching by Venture Fund or any of its affiliates or otherwise disadvantage GWI.

Applicants' Conditions

Applicants have agreed that any relief will be subject to the following conditions:[1]

1. The non-interested directors of GWI will approve co-investment transactions in advance. The directors of GWI, including the non-interested directors, will be provided with periodic information, compiled by the officers of GWI (the "Managers"), listing all venture capital investments made by Venture Fund.

2. (a) Before a co-investment transaction will be effected, the Managers will make an initial determination on behalf of GWI regarding investment suitability. Following this determination, a written investment presentation respecting the proposed co-investment transaction will be made to the directors of GWI. The Managers will maintain at GWI's office a copy of the written records detailing the factors considered in any such preliminary determination.

(b) Information regarding the manager's preliminary determinations referred to in (a) will be reviewed by the board of directors of GWI, including the non-interested directors. Such board, including a majority of the non-interested directors, will make an independent decision as to whether, and how much, to participate in an investment based on what is appropriate under the circumstances. If a majority of the non-interested directors of GWI determines that the amount proposed to be invested by GWI is not sufficient to obtain an investment position that they consider appropriate under the circumstances, GWI will not participate in the joint investment. Similarly, GWI will not participate in a co-investment transaction if a majority of its non-interested directors determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances (the non-interested directors of GWI may, however, make a determination that GWI take less than its full allocation, pursuant to condition 4 below). GWI will only make a joint investment with Venture Fund if a majority of its non-interested directors concludes, after consideration of all information deemed relevant, that the investment by Venture Fund would not disadvantage GWI in the making of such investment, in maintaining GWI's investment position, or in disposing of such investment, and that participation by GWI would not be on a basis different from or less advantageous than that of Venture Fund. The non-interested directors will maintain at GWI's office written records of the factors considered in any decision regarding the proposed investment.

(c) The non-interested directors of GWI will, for purposes of reviewing each such recommendation of the Managers, request such additional information from the Managers as the non-interested directors deem necessary to the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate to the reasonable exercise of this oversight function.

3. The directors of GWI, including a majority of the non-interested directors, will make their own decision and have the right to decide not to participate in a particular investment with Venture Fund. There will be no consideration paid to the Managers (or affiliated persons of such persons), directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction; with the exception of commitment and similar fees paid by portfolio companies to GWI and Venture Fund in proportion to their respective investment in such portfolio companies. However, the Managers will continue to receive amounts under their management fee and expense reimbursement arrangements with Venture Fund (as described in the application) or may participate indirectly in a co-investment transaction through their existing partnership interest in Venture Fund.

4. GWI and Venture Fund will be entitled to consider purchasing a portion of each co-investment transaction equal to the ratio of that entity's net assets to the total net assets of both entities. Either co-investor may determine not to take its full allocation, as long as, with respect to GWI, a majority of the non-interested directors determines that to do so would not be in the best interest of GWI. If either GWI or Venture Fund decides to participate in an investment opportunity offered pursuant to the co-investment program to a lesser extent than its full allocation, the other co-investor may increase its participation by any amount up to the amount declined by the other party. If GWI or Venture Fund declines to participate in an investment opportunity offered pursuant to the co-investment program, the other co-investing partner shall have the right to pursue such investment independently.

5. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any) and other rights related thereto, purchased at the same unit consideration and on the same terms and conditions, and the approvals will be made in the same time period.

6. GWI and Venture Fund will participate in the disposition of securities held by them as co-investments on a proportionate basis and on the same terms and conditions (a "lock-step" disposition). If Venture Fund elects to dispose of a security purchased in a co-investment with GWI, notice of the proposed sale will be given to the non-interested directors of GWI at the earliest practical time. GWI and Venture Fund will participate in the disposition of such security on a lock-step basis, unless the non-interested directors of GWI determine that GWI should not particiapte in such sale or not participate on a lock-step basis. GWI may refuse to participate on a lock-step basis in the disposition of securities sold by venture Fund only when its non-interested directors find that the retention or sale, as the case may be, of the securities is fair to GWI and that GWI's participation or choice not to

[1] These conditions are meant to apply to GWI as a consolidated entity. Therefore, even though Investments is not specifically mentioned in the conditions, it is intended that Investments, as a wholly-owned subsidiary of GWI, will participate in the co-investment program.

participate in the sale is not the result of overreaching by Venture Fund or its affiliates. If the non-interested directors of GWI do not make such a finding, then GWI must participate in such sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by GWI would be to alter the proportionate holdings of each class of securities held by GWI and Venture Fund, then the non-interested directors of GWI must determine that such a result is fair to GWI and is not the result of overreaching by Venture Fund or its affiliates. The non-interested directors will record in the records of GWI the basis of their decision as to whther to paticipate in such sale.

7. If Venture Fund determines that it should make a follow-on investment (an additional investment in the same entity) in a particular portfolio company whose securities are held by GWI and Venture Fund or that it should exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to GWI, including its non-interested diretors, at the earliest practical time. The Managers will formulate a recommendation as to the proposed participation by GWI in a follow-on investment and provide the recommendation to the non-interested directors of GWI along with notice of the total amount of the follow-on investment. GWI's non-interested directors will make the determination with respect to follow-on investments. Follow-on investments will be made available to GWI and Venture Fund based on a ratio derived by comparing the total net assets of each with the total amount of the available follow-on investment. Follow-on investments will be subject to the same approval procedures as those required for initial investments. GWI will participate in such investment only if a majority of its non-interested directors determines that such action is in the best interest of GWI. The non-interested directors of GWI will record in GWI's records the Manager's recommendation and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.

8. A decision by GWI (a) Not to participate in a co-investment transaction, (b) to take less or more than its full allocation, or (c) not to sell, exchange, or otherwise dispose of a co-investment in the same manner and at the same time as Venture Fund shall include a finding that such decision is fair and reasonable to GWI and not the result of overreaching of GWI or its stockholders by Venture Fund. The non-interested directors of GWI will be provided quarterly for review all information concerning co-investments made by GWI and Venture Fund, including co-investments in which one or both entities declined to participate, so they may determine whether all investments made during the preceding quarter, including those investments they declined, compiled with the conditions set forth above. In addition, at least annually, as well as during any quarter in which a co-investment was made, the non-interested directors will consider the continuing appropriateness of the standards established for investments by GWI. The non-interested directors will consider whether use of such standards continues to be in the best interest of GWI and its shareholders and does not involve overreaching of GWI or its shareholders on the part of any party concerned.

9. No non-interested director of GWI will have any relationship with Venture Fund or its affiliates except for their co-director relationship with the Managers of GWI.

10. Any exemptive relief granted by the SEC on this application will pertain only so long as Investments remains a wholly-owned subsidiary of GWI.

11. The non-interested directors of GWI will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of such Act, and will otherwise maintain all records required by the Act. All records referred to or required under these conditions will be preserved permanently and available for inspection by the SEC.

12. No director of GWI nor any affiliate of any Manager of GWI other than Venture Fund (pursuant to any order issued in this application) will participate in a transaction with GWI unless a separate exemptive order with respect to such transaction has been obtained. For this purpose, the term "participate" shall not include either the Managers' existing partner interests in, or their normal management fee and expense reimbursement arrangements with, Venture Fund.

13. No co-investment transaction will be made pursuant to the requested order respecting portfolio companies in which Venture Fund or any affiliated person of any applicant has previously acquired an interest, provided that this prohibition shall not be applicable to any previous investment specifically permitted by an order of the SEC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 90-24440 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17785; 812-7392]

MarketMaster Trust, et al.; Application

October 9, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: MarketMaster Trust (the "Trust"), Sovran Bank, N.A. ("Sovran"), and TBC Funds Distributor, Inc. ("TBC").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order to permit portfolios of the Trust to sell two classes of shares representing interests in the same portfolio, which classes would be identical except for the allocation of certain expenses attributable to a Shareholder Servicing Plan, voting rights, exchange privileges, and class designation. Future portfolios of the Trust would be entitled to rely on any relief granted on the application subject to the same representations and conditions as applicable to the existing portfolios.

FILING DATES: The application was filed on September 18, 1989, and amended on April 6, 1990, August 16, 1990, and September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 2, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: MarketMaster Trust,

Bellevue Park Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809; Sovran Bank, N.A., Sovran Center, 12th and Main Streets, Richmond, Virginia 23219; and TBC Funds Distributor, Inc., One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Trust offers shares representing interests in the following investment portfolios: Money Market Fund, Tax Exempt Fund, and Government Fund (hereinafter referred to as the "Money Market Funds"), and Value Fund, Managed Bond Fund, Virginia Municipal Bond Fund, and Maryland Municipal Bond Fund (hereinafter referred to as the "Non-Money Market Funds") (the Money Market Funds and the Non-Money Market Funds are collectively referred to as the "Funds"). Shares of the Funds are or will be sold by TBC, a registered broker/dealer. Sovran or a affiliate serves or will serve as the Funds' investment adviser. Provident Institutional Management Corporation ("PIMC") serves as the subadviser to the Tax Exempt Fund. The Boston Company Advisors, Inc. ("Boston Advisors") or Provident Financial Processing Corporation ("PFPC") serves or will serve as administrator for each Fund. Provident National Bank ("Provident") serves or will serve as each Fund's custodian.

2. The Trust proposes to offer two classes of shares in the indicated Funds. One class of shares ("Investor Shares") would be sold pursuant to a Shareholder Servicing Plan (the "Plan"), while the other class of shares would have no such plan ("Trust Shares").

3. Trust Shares are or will be sold primarily to Sovran and its affiliated and correspondent banks (the "Banks") acting on behalf of their respective customers at net asset value without the imposition of a sales load. Investor Shares are or will be sold to the public through financial institutions which may be banks, brokers, or dealers. Investor Shares in the Money Market Funds will be sold at their net asset value per share without the imposition of a sales load. Investor Shares in the Non-Money Market Funds are or will be sold at their net asset value plus a front-end sales load ranging from 0.5% to 4.5% of the offering price per share (depending on the size of the purchase).

4. As a result of increased competition for the assets of public investors, the Trust proposes to tailor certain shareholder services and related expenses to the investment needs of particular investors. In order to accomplish this, and to expand its marketing alternatives, the Trust intends to adopt the proposed Plan for its Investor Shares. The Plan would be adopted by the Trust pursuant to procedures under rule 12b-1, except that shareholders would not enjoy the voting rights specified in rule 12b-1. Upon implementation of the Plan, the dividends and distributions and net asset value per share of the Investor Shares would be calculated by the same method (with the necessary adjustments described below) and be determined at the same times as the dividends and distributions and net asset value per share of the respective Trust Shares of the same Fund. Unlike the Trust Shares, however, the Investor Shares would bear the expenses incurred under the Plan. Investor Shares and Trust Shares in each Fund also would have different exchange privileges: Investor Shares would be exchangeable only for Investor Shares in another Fund, while Trust Shares would have no exchange privileges.

5. Pursuant to the Plan, the Trust would enter into servicing agreements ("Servicing Agreements") with financial institutions ("Service Organizations") requiring them to provide administrative services to their customers who beneficially own Investor Shares. Administrative shareholder support services under the proposed Plan would not duplicate the services provided to the Funds by Sovran, PIMC, Boston Advisors, PFPC, TBC, and Provident (the "Service Contractors"). Services provided by the Service Contractors relate to the internal operations of the Funds, such as portfolio management, custody of assets, maintenance of books and records, or to the Funds' relationship with its holders of record, such as forwarding proxies and shareholder reports, processing purchase and redemption orders, and distribution of prospectuses. In contrast, the administrative shareholder support services to be provided by Service Organizations would constitute services to the beneficial owners of Investor Shares.

6. Under the Plan, a Fund would pay a Service Organization for its administrative services according to the Plan and the related Servicing Agreement ("Service Payments"). The Plan presently provides for Service Payments not exceeding .25% of the average daily net asset value of each Fund's Investor shares on an annualized basis.

7. Trust Shares will not be subject to any Plan and are purchased by the Banks in their capacity as fiduciaries for certain accounts, such as living trusts, irrevocable trusts, foundations, endowments, retirement plans, and agency or custodial accounts. The Bank, in turn, provide services for the beneficial owners of Trust Shares, such as determining the appropriateness of investments, working with attorneys or accountants under the terms of fiduciary relationship, providing tax information, preparing and sending account statements, responding to inquiries, forwarding shareholder communications, and establishing and maintaining account records. The Trust and its Service Contractors do not provide any service to holders of Trust Shares that they do not provide to holders of Investor Shares.

8. Since the Investor Shares of the Non-Money Market Funds would bear the Service Payments, the net income of and the dividends payable to the Investor Shares would be lower than the net income of and the dividends payable to the Trust Shares of the same Fund. Similarly, because of such Service Payments, to the extent that a Non-Money Market Fund had undistributed net income, the net asset value of its Investor Shares would be lower than the net asset value of its Trust Shares. Dividends paid to each class of shares of a Non-Money Market Fund would, however, be declared and paid (and the net asset value of each class would be determined) on the same days and at the same times, and, except as noted with respect to the expenses of Service Payments, would be determined in the same manner and paid in the same amounts.

9. With regard to the Money Market Funds, the net asset value of all outstanding shares representing interests in the same Money Market Fund would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to such Money Market Fund, subtracting the liabilities charged to such Money Market Fund, and dividing the result by the number of

outstanding shares. Since it is expected both classes of shares of the Money Market Funds will be valued at $1.00 per share, the gross income would be allocated on a *pro rata* basis to each outstanding share in the Money Market Fund regardless of class, and all non-class expenses (such as advisory, administrative, custodial, and transfer agency fees) incurred by the Money Market Fund would be borne on a *pro rata* basis by such outstanding shares, except for the Service Payments that are borne solely by the Investor Shares. Therefore, the net income of (and dividends payable to) the Investor Shares would be somewhat different than the net income of (and dividends payable to) the Trust Shares in the same Money Market Fund. Dividends paid to each class of shares in a Money Market Fund would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the Service Payments, would be determined in the same manner and paid in the same amounts.

Applicants' Legal Analysis

10. The Trust requests an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed implementation of the Plan with respect to the Investor Shares might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1) of such Act; and (2) to violate the equal voting provisions of section 18(i) of the 1940 Act. The implementation of the Plan and differing transfer agency expenses may result in stock of a class having "priority over (another) class as to distribution of assets or payment of dividends" and having unequal voting rights because Investor Shares would bear the expense of Service Payments and would enjoy exclusive voting rights, if any, with respect to matters concerning the Plan as described herein. The Trust asserts that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. Investors purchasing Investor Shares would bear the costs associated with Plan services, but would enjoy exclusive shareholder voting rights with respect to matters affecting the Plan. Conversely, investors purchasing Trust Shares would not bear those expenses or exercise those voting rights. Moreover, all holders of Shares are expected to benefit from the proposed arrangement since certain of the Funds's fixed costs will be spread over a greater number of shareholders.

11. The Trust believes that by implementing the Plan with respect to the Investor Shares, the Funds may achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If the Plan is implemented, the expense of Service Payments would be borne by those shareholders who benefit from such services and not by the holders of Trust Shares. This objective might be achieved by creating additional investment portfolios each of which would duplicate a Fund and be designed for customers of Service Organizations, but the Trust believes that this alternative would be inefficient and unnecessary because it would incur unnecessary accounting and bookkeeping costs and effective investment management of the additional portfolios would be impaired. The Trust submits that unless the additional portfolios grew at a sufficient rate and to a sufficient size, they could be faced with liquidity and diversification problems.

12. The Trust also asserts that the proposed arrangement would not involve borrowings and would not affect the Funds' existing assets or reserves. Nor would the proposed arrangement increase the speculative character of the shares in a Fund, since all shares would participate *pro rata* in the Fund's income and expenses, with the exception of the proposed Service Payments. Accordingly, the Trust submits that the requested exemption is appropriate in the public interest and consistent with the protection in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

The Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund's Investor Shares and Trust Shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Investor Shares and Trust Shares of the same Fund will relate solely to: (a) Priorities with respect to the payment of dividends and distribution and such priorities will reflect only the impact of the Service Payments made under the Plan and Servicing Agreements, and any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the Commission pursuant to an amended order, (b) differing net asset values between Investor Shares and Trust Shares of Non-Money Market Funds resulting from the allocation of Service Payments and of Fund non-class expenses and income in proportion to each class' net asset value, (c) voting rights on matters which pertain to the Plan and Servicing Agreements, (d) different exchange privileges of the Investor Shares and Trust Shares, and (e) designation of each class of Shares of a Fund.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the different classes of shares (the "Multi-Class System"). The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders and such minutes will be available for inspection by the SEC staff and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Funds' investment adviser and distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Funds' investment adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Plan, the Trustees will specifically consider whether (a) The Plan is in the best interest of the Investor Shares and their shareholders, (b) the services to be performed pursuant to the Plan are required for the operation of the Investor Shares, (c) the Service Organizations can provide service at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges

made by other entities, especially non-affiliated entities, for services of the same nature and quality.

5. Each Servicing Agreement entered into pursuant to the Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its customers' assets in a Fund (a) Will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

6. Each Servicing Agreement entered into pursuant to the Plan will provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, each Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

7. The Trustees of the Trust will receive quarterly and annual statements concerning shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the servicing of a particular class of shares will be used to justify any servicing fee charged to that class. Expenditures not related to the servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

8. Dividends or other distributions paid by a Fund with respect to each class of its shares will be calculated in the same manner, at the same time, on the same day, and will be in proportion to each share class' respective net asset value, except that any Service Payments relating to a class of Investor Shares under the Plan and Servicing Agreements will be borne exclusively by such Investor Shares.

9. The methodology and procedures for calculating the net asset value and dividend/distributions of Investor Shares and Trust Shares in a Fund and the proper allocation of expenses between Investor Shares and Trust Shares in each Fund have been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the SEC staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of Investor Shares and Trust Shares of a Fund and the proper allocation of expenses between Investor Shares and Trust Shares of each Fund, and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The Distributor will adopt compliance standards, substantially in the form of Exhibit E to the application, as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the Plan and Servicing Agreements and the Multi-Class System will be set forth in guidelines which will be furnished to the Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

15. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that each Fund may make pursuant to its Plan in reliance on the exemptive order.

16. The Money Market Funds and any future portfolio of the Trust that allocates non-class expenses *pro rata* to each share regardless of class will have more than one class of shares outstanding only when and for so long as they declare dividends on a daily basis, accrue Service Payments daily, and have received undertakings from the Service Organizations that are entitled to receive Service Payments waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by Investor Shares on any day do not exceed the income to be accrued to such Investor Shares that day. In this manner, the net asset value per share for both Investor Shares and Trust Shares in the Money Market Funds and any such future portfolio will remain the same.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24441 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-25163]

Public Utility Holding Company Filings

October 5, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 29, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/permitted to become effective.

Allegheny Generating Co. (70-7548)

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, New York 10022, a subsidiary of Allegheny Power System, a registered holding company has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

By prior Commission order in this matter (HCAR No. 24769, December 5, 1988), AGC was authorized to issue and sell in one or more transactions, from time-to-time through December 31, 1990, an aggregate principal amount not exceeding $150 million of its medium-term notes ("Notes") with maturities from nine months to ten years. No Notes have been sold pursuant to the December 5, 1988 order, which expires on December 31, 1990. AGC requests that the authority previously granted by the Commission be extended to December 31, 1992.

Indiana Michigan Power Co. (70-7714)

Indiana Michigan Power Company ("I&M"), 1 Riverside Plaza, Columbus, Ohio 43215, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

I&M proposes to issue and sell, from time-to-time through December 31, 1991, up to $80 million aggregated principal amount of unsecured promissory notes with a maturity not less than nine months nor more than fifteen years ("Notes") to one or more commercial banks or other financial institutional pursuant to a proposed term loan agreement ("Term Loan Agreement"). The Term Loan Agreement would provide that the Notes bear interest at either a fixed rate, floating rate or combination thereof. I&M proposes to issue and sell the Notes under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder.

Any proceeds realized from the sale of the Notes will be used by I&M to pay unsecured short-term indebtedness or for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24438 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17793; 811-5180]

The Seagate Funds; Application

October 11, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Seagate Funds.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 20, 1990, and amended on September 21, 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 November 5, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1900 East Dublin-Granville Road, Columbus, Ohio 43229, Attn: Cynthia Lee Lindsey.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272-3567 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-2382 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant was organized as a Massachusetts business trust on May 15, 1987. Applicant registered under the 1940 Act and filed a Registration Statement on Form N-1A under the 1940 Act and the Securities Act of 1933 on May 21, 1987. The registration statement became effective with respect to the offering of an indefinite number of its shares on August 7, 1987.

2. On November 20, 1989, the board of Trustees of Applicant (including a majority of the Trustees who were not interested persons under section 2(a)(19)) approved and recommended to the shareholders of Applicant an Asset Purchase and Liquidation Agreement (the "Agreement") by and between Applicant and The Emblem Fund ("Emblem"), a registered open-end, diversified, management, investment company (File No. 811-4852). The Agreement, approved by the Trustee in accordance with the requirements of rule 17a-8 under the 1940 Act, provided for: (a) The transfer of the portfolio securities and other assets of Applicant's seven investment portfolios, subject to all liabilities, in kind to Emblem in exchange for shares of the corresponding Emblem portfolios having an aggregate net asset value equal to the

aggregate net asset value of the assets so transferred, and the distribution of such Emblem shares to applicant's shareholders in liquidation of Applicant so that each shareholder of Applicant's portfolios would receive shares of corresponding Emblem portfolios with an aggregate net asset value equal to the aggregate net asset value of such shareholder's shares of Applicant's portfolios, and (b) the termination of Applicant.

3. A combined Proxy Statement/Prospectus was mailed to Applicant's shareholders on or about April 3, 1990. On May 9, 1990, the required majority of Applicant's shareholders approved the Agreement and the transactions to be effected thereunder.

4. On May 18, 1990, pursuant to the Agreement, Applicant transferred all of the assets and liabilities of its respective investment portfolios, including all securities of each portfolio, to corresponding investment portfolios of Emblem in exchange for shares of those Emblem portfolios. Applicant thereafter liquidated its portfolio by distributing shares of Emblem's portfolios, such that shareholders of Applicant's portfolios received that number of shares of the corresponding Emblem portfolio with an aggregate net asset value equal to the aggregate net asset value of his or her shares of Applicant's portfolios.

5. As of the close of business on May 18, 1990, there were outstanding 136,627,301.69 shares of the Seagate Treasury Obligations Fund having an aggregate net asset value of $136,627,301.69 ($1.00 per share); 79,844,697.01 shares of the Seagate Prime Obligations Fund having an aggregate net asset value of $79,844,697.01 ($1.00 per share); 43,303,899,83 shares of the Seagate Tax-Exempt Fund having an aggregate net asset value of $43,303,899.83 ($1.00 per share); 1,267,754.558 shares of the Seagate Stock Fund having an aggregate net asset value of $14,591,854.97 ($11.51 per share); 3,197,101.471 shares of the Seagate Intermediate Government Obligations fund having an aggregate net asset value of $32,130,869.79 ($10.05 per share); 644,091.054 shares of the Seagate Tax-Free Bond Fund having an aggregate net asset value of $6,370,060.052 ($9.89 per share); and 1,030,662.489 shares of the Seagate International Growth and Income Fund having an aggregate net asset value of $10,533,370.64 ($10.22 per share).

6. Applicant's shareholders received an aggregate of 136,627,301.69 shares of the Emblem U.S. Government Portfolio having a net asset value on May 18, 1990 of $136,627,301.69 ($1.00 per share); 79,844,697.01 shares of the Emblem Prime Obligations Portfolios having a net asset value on May 18, 1990 of $79,844,697.01 ($1.00 per share); 43,303,899.83 shares of the Emblem Tax-Exempt Portfolio having a net asset value on May 18, 1990 of $43,303,899.83 ($1.00 per share); 1,379,192.341 shares of the Emblem Relative Value Equity Portfolio having a net asset value on May 18, 1990 of $14,591,854.97 ($10.58 per share); 3,231,086.98 shares of the Emblem Government Obligations Portfolio having a net asset value on May 18, 1990 of $32,130,869.79 ($10.00 per share); 637,006.052 shares of the Emblem Ohio Tax-Free Bond Portfolio having a net asset value on May 18, 1990 of $6,370,066.52 ($10.00 per share); and 1,053,337,064 shares of the Emblem International Growth and Income Portfolio having a net asset value on May 18, 1990 of $10,533,370.64 ($10.00 per share) in exchange for Applicant's assets. These shares of Emblem were thereafter distributed by Applicant to its shareholders in liquidation of Applicant.

7. The expenses incurred under the Agreement (including, without limitation, legal and accounting fees and expenses and the costs of preparing, printing and mailing proxy material to the shareholders of the Applicant) were borne by The Winsbury Company, which serves as the Manager, Administrator, and Distributor of Applicant, and the Society National Bank, which serves as the investment adviser to nine of the ten Emblem portfolios and sub-adviser to the tenth.

8. Applicant is not a party to any litigation or administrative proceedings; Applicant has no assets, debts or other liabilities.

9. Applicant has no shareholders, and is engaged only in those business activities necessary for the winding up of its affairs. On or before the effective date of the order requested, Applicant will be terminated pursuant to the provisions of its Declaration of Trust and Massachusetts law. Applicant represents that it will continue to file with the SEC all reports required by rules 30a-1 and 30b-2 under the 1940 Act until the order requested is granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-24400 Filed 10-16-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—17782; 812-7452]

Transamerica Cash Reserve, Inc. and Transamerica Current Interest, Inc.

October 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Transamerica Current Interest, Inc. ("Current Interest"), on behalf of one of its portfolios known as Transamerica Premium Cash Account ("PCA"), and Transamerica Cash Reserve, Inc., a Maryland corporation ("TCR") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 17(b) for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting TCR to acquire substantially all of the assets and certain liabilities of PCA in exchange for shares of TCR.

FILING DATE: The application was filed on June 21, 1990 and amended on September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 1, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SAC, 450 5th Street NW., Washington, DC 20549. Transamerica Cash Reserve, Inc., Box 2438, Los Angeles, California 90051. Transamerica Current Interest, Inc., 1000 Louisiana, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Esq., Staff Attorney, at (202) 272-3026, or Max Berueffy, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier

at (800) 231-3282 (in Maryland (310) 738-1400).

Applicant's Representations

1. TCR and Current Interest are each registered under the Act as open-end, diversified, management investment companies. PCA is one of three diversified portfolios of Current Interest.

2. Subject to, and contingent upon, the affirmative vote of the holders of at least a majority of the outstanding shares of PCA, TCR proposes to acquire the assets of PCA in exchange for shares of TCR (the "Reorganization"). Pursuant to the terms of an agreement and plan of reorganization by and between TCR and Current Interest (the "Agreement"), TCR would acquire all of the assets and liabilities of PCA in exchange for shares of TCR having an aggregate net asset value equal to the aggregate value of the net assets of PCA being exchanged. PCA would then distribute the TCR shares to the PCA shareholders on a pro rate basis in liquidation of PCA. PCA will endeavor to discharge all of its known liabilities and obligations prior to the date of the proposed exchange (the "Exchange Date"). TCR will assume all liabilities of PCA reflected on an unaudited statement of assets and liabilities prepared in accordance with generally accepted accounting principles dated as of the close of business on the Exchange Date. TCR will not assume any other liabilities of PCA, whether absolute or contingent, known or unknown, accrued or unaccrued.

3. Under the Agreement, each Applicant will bear all of its own expenses of the proposed transaction, except to the extent that such expenses may be assumed by their respective investment advisers.

4. The consummation of the Reorganization is subject to certain conditions, including that Applicants shall have received all necessary consents, permits, and orders from federal, state and local regulatory authorities (including the SEC).

5. The prospectus/proxy statement to be sent to shareholders of PCA will include a description of the material aspects of the Reorganization, information about TCR, a comparison of Applicants and pertinent financial information regarding Applicants. The Agreement will be appended as an exhibit to the prospectus/proxy statement.

6. Transamerica Investment Services, Inc., a Delaware corporation ("TCR Adviser"), serves as the investment adviser to TCR. TCR Adviser is a wholly-owned subsidiary of Transamerica Corporation, a Delaware corporation ("Transamerica"). Transamerica Financial Resources, Inc., a Delaware corporation ("TCR Distributor"), serves as the distributor of shares of TCR. TCR Distributor is a wholly-owned subsidiary of Transamerica.

7. Transamerica Fund Management Company, a Delaware corporation ("PCA Adviser"), serves as the investment adviser to PCA. PCA Adviser is a wholly-owned subsidiary of Transamerica Criterion Group, Inc., a Delaware corporation ("Criterion Group"), which in turn is a wholly-owned subsidiary of Transamerica. Transamerica Fund Distributors, Inc., a Maryland corporation ("PCA Distributor"), serves as the distributor of shares of PCA. PCA Distributor is a wholly-owned subsidiary of PCA Adviser.

8. TCR may change its investment advisory arrangements upon consummation of the proposed Reorganization. The Board of Directors of TCR has approved agreements pursuant to which PCA Adviser would serve as the investment adviser of TCR and TCR Adviser would serve as the sub-investment adviser of TCR, subject in each case to the receipt of the necessary approval by TCR shareholders. TCR expects to seek and obtain these approvals prior to the Exchange Date.

Applicants' Legal Analysis

1. As of April 30, 1990, Transamerica, through companies controlled by it, owned approximately 68.9% of TCR's shares and approximately 2.5% of PCA's shares.

2. The exchange of PCA's assets for TCR shares in connection with the Reorganization could be deemed to be an affiliated transaction prohibited under section 17 of the Act absent a prior exemption from that section by the SEC. For example: (a) TCR and Current Interest may be deemed to be under the common control of Transamerica and, therefore, "affiliated persons" of one another; (b) TCR may be deemed to be an "affiliated person of an affiliated person" of PCA; or (c) TCR may be deemed to be an "affiliated person" of the principal underwriter of Current Interest to the extent that TCR and PCA Distributor are deemed to be under the common control of Transamerica. Similarly, Current Interest may be deemed to be an "affiliated person" of the principal underwriter of TCR to the extent that Current Interest and TCR Distributor are deemed to be under the common control of Transamerica.

3. Applicants believe that the proposed Reorganization meets the standards for an exemption from the provisions of section 17 of the Act. In support of this belief, they state that the terms of the Reorganization are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the Reorganization is consistent with the investment policies of each Applicant, as well as the general purposes and policies of the Act for the reasons stated below.

4. The directors of Current Interest and TCR, including the non-interested directors of each, have decided to adopt the Agreement and in the case of the Current Interest Board, recommend its approval by shareholders of PCA. In reaching this decision, the respective boards determined that the proposed transaction would be in the best interests of the shareholders of each of the Applicants and that the consummation of such transaction would not result in the dilution of the interests of any of the existing shareholders of either Applicant. Among the factors considered by the boards were: the compatibility of the Applicants' investment objectives; the advantages to Applicants of eliminating the competition and duplication of effort involved in offering shares of open-end investment companies having similar investment objectives; the comparative performance and expense ratios of Applicants; and, the costs and tax consequences of the proposed transaction. Since each Applicant has different non-interested directors, Applicants submit that the foregoing factors were fully considered from the perspective of each Applicant.

5. Shareholders of PCA will benefit from the flexibility and greater diversity of investments available from a portfolio of TCR's size. Shareholders of TCR should benefit from the proposed transaction through the increase in TCR's total net assets, as well as from the increase in the investment diversification of TCR that can be obtained therefrom. In addition, the Reorganization will not affect the rights of TCR shareholders.

6. While Applicants do not believe that the present transaction fits within the specific exemption provided by rule 17a-8, since they may be affiliated persons for reasons other than those set forth in the Rule, Applicants submit that the policy considerations which support exempting the type of transaction contemplated by rule 17a-8 from the provisions of section 17(a) on the grounds of general consistency with the policy of section 17(a) on the grounds of general consistency with the policy of the Act are equally applicable to the proposed transaction. Applicants

represent that the directors of each Applicant including the non-interested directors, have made the findings required by that Rule.

Conditions to the Requested Relief

If the requested order is granted, Applicants expressly consent to the following conditions:

1. The number of shares of TCR to be issued in exchange for PCA's assets will be determined on the basis of the aggregate value of the assets and liabilities of PCA to be transferred and the net asset value per share of TCR, both fixed as of the close of business on the New York Stock Exchange on the Exchange Date. The aggregate value of the assets and liabilities of PCA to be acquired by TCR and the net asset value of the TCR shares to be issued therefor will each be determined in accordance with the procedures set forth in TCR's then current prospectus and statement of additional information.

2. The Reorganization will conform to the requirements of rule 17a–8 under the Act, to the extent that: (a) The directors of TCR and Current Interest, including a majority of the directors who are not interested persons of TCR or Current Interest, shall have determined that participation in the Reorganization is in the best interest of TCR and PCA, after considering all relevant factors including, among other things, that the interests of the existing shareholders of TCR and PCA shall not be diluted as a result of effecting the Reorganization, and (b) such findings, and the bases upon which the findings were made, shall have been recorded fully in the minute books of TCR and Current Interest.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–24442 Filed 10–16–90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 16, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Small Business Development Center Counseling Evaluation Form
Form No.: SBA Form 1419
Frequency: Annually
Description of Respondents: Recipients of SBDC Counseling Services
Annual Responses: 7,000
Annual Burden: 8,470

Title: Request for Counseling
Form No.: SBA Form 641
Frequency: On occasion
Description of Respondents: Recipients of SBA Score Counseling
Annual Responses: 450,000
Annual Burden: 54,000

Title: Counselor's Case Report
Form No.: SBA Form 641A
Frequency: On occasion
Description of Respondents: SBI and SCORE Counselors
Annual Responses: 450,000
Annual Burden: 90,000

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–24355 Filed 10–16–90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Monday, November 15, 1990, at the U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Raymond R. Arruda, Special Assistant to the Regional Administrator, U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts 02110, telephone (617) 451–2030.

Dated: October 5, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–24356 Filed 10–16–90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9 a.m. on Thursday, November 15, 1990, at the Dallas/Fort Worth International Trade Resource Center, World Trade Center, 2050 Stemmons Freeway, Suite 150, Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, room 3C36, Dallas, Texas 75242, phone (214) 767–0605.

Dated: October 5, 1990.

Jean M. Nowak,

Director, Office of Advisory Council.

[FR Doc. 90–24357 Filed 10–16–90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, will hold a public meeting at 9 a.m. on Thursday, November 1, 1990, at the North Star Executive Center, 7400 Blanco Road, Suite 200, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, North Star Executive Center, 7400 Blanco Road, Suite 200, San Antonio, Texas 78216–4300 phone (512) 229–4501.

Dated: October 5, 1990.

Jean M. Nowak,

Director, Office of Advisory Council.

[FR Doc. 90–24358 Filed 10–16–90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 90-24]

Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of three meetings of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The meetings will be held on Thursday, November 8, 1990; Thursday, November 29, 1990; and Thursday December 13, 1990. The meetings will be held at the New Orleans-Baton Rouge Steamship Pilots Association office, 3900 River Road Suite 7, Jefferson, Louisiana. The meetings are scheduled to begin at 10:30 a.m. The agenda for the meetings consists of the following items:

1. Call to order.
2. Recommendations for a proposed New Orleans Vessel Traffic Service.
3. Adjournment.

The meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: October 10, 1990.

J.M. Loy,

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

[FR Doc. 90-24427 Filed 10-16-90; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

[Docket S-870]

American Maritime Transport, Inc.; Application for a Waiver of Section 804 of the Merchant Marine Act, 1936, as amended, to Permit the Acquisition of an Interest in or Charter of Foreign-Flag Vessels

By application of September 26, 1990, American Maritime Transport, Inc. (AMT) requests the waiver to permit acquisition of an interest in or chartering of nine foreign-flag crude product, combination or dry bulk vessels. AMT requests that the waiver extend through October 9, 1994, the termination date of its last Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-166.

AMT believes that its request is consistent with previous grants of waivers of section 804 and thus states that it will provide every reasonable assurance that neither operating-differential subsidy monies received up to now nor those due during the remaining period of the ODSA contract will be used in any way that would violate the intent of the subsidy program.

AMT currently operates a fleet of three subsidized vessels: GOLDEN ENDEAVOR, ULTRAMAR, and ULTRASEA. These vessels range in DWT from 82,199-91,847 and were built in 1973-74. The vessels currently serve the worldwide liquid and dry bulk market.

In support of its instant application, AMT contends that its request for consideration is to enable AMT to explore new shipping opportunities that will promote growth and expansion. As it is unable to effectively compete in foreign trade with its present fleet, and the opportunities to secure construction/operational subsidies for future U.S.-flag vessels appears unlikely, AMT sees no alternative but to pursue modern, competitive tonnage in the foreign-flag market.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on October 31, 1990.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: October 12, 1990.

James E. Saari,

Secretary.

[FR Doc. 90-24452 Filed 10-16-90; 8:45 am]

BILLING CODE 9410-81-M

National Highway Traffic Safety Administration

Denial of Petition for a Defect Investigation

This notice sets forth the reasons for the denial of a petition submitted to NHTSA pursuant to section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Act), 15 U.S.C. 1381 *et seq.*

On June 25, 1990, the Institute for Injury Reduction, Public Citizen, and the Center for Auto Safety, petitioned NHTSA to undertake a defect investigation of Jeep CJ-5 and CJ-7 utility vehicles manufactured by American Motors Corporation (AMC), or to re-open prior NHTSA investigations. The petition requested NHTSA to investigate the alleged "undue, unnecessary, and defective propensity of the CJ vehicles to roll over," AMC's knowledge of an alleged "suspension system defect, i.e., a failure-prone shackle pin;" and the adequacy of the rollbar assembly on the vehicles.

NHTSA has decided to deny the petition. After an extensive injury—involving the expenditure of far more agency resources and effort than in most formal investigations—the agency has concluded that there is no reasonable possibility that further investigation would lead to a determination of the existence of a safety-related defect with respect to any of the allegations referred to in the petition and that it would be inappropriate to expend further agency resources on these allegations.

NHTSA's Office of Defects Investigation has prepared a full report that describes in detail the alleged defects, the agency's analysis of those allegations, and the basis for its decision to deny the petition. Interested persons may obtain copies of that report by contacting the Technical Reference Division, NAD-52, room 5108B, 400 7th Street SW., Washington, DC 20590, (202) 366-2768. A brief summary of that report is set forth in this notice.

Background Information

There were 609,356 CJ-5 and CJ-7 vehicles sold from 1972 through 1986 (281,253 1972 through 1983 CJ-5 vehicles and 328,103 1976 through 1986 CJ-7 vehicles). NHTSA estimates that approximately 420,000 CJs are still

registered for highway use. The CJ-7 is similar to the CJ-5, but it has a 10 inch longer wheelbase to accommodate an automatic transmission.

The agency considered the rollover propensity of the CJ-5 during 1980 and 1981 in response to two separate petitions for a defect investigation alleging an unreasonably high off-road (DP80-002) and on-road (DP81-018) rollover propensity in those vehicles. The petitions were denied because there was no evidence of a safety defect in the vehicles that would cause them to roll over.

Analysis of Rollover Propensity

NHTSA's National Center for Statistics and Analysis (NCSA) evaluated the rollover experience of the CJ vehicles relative to other light utility vehicles using data from four states (Maryland, Utah, New Mexico, and Michigan) that had the most accurate and usable data. NCSA used logistic regression, focussing primarily on a comparison of the ratio for each vehicle of single vehicle, first-event rollovers to all single vehicle accidents. (A "first-event rollover" is an incident in which the first harmful event was a rollover.) This analysis was selected because it normalizes the rollover involvement for the vehicles in terms of vehicle population and inherently minimizes driver influences. The data was adjusted to eliminate the effects of environmental and demographic factors, such as the location of the crash (rural vs. urban; straight road versus curved road) and driver characteristics, such as age and sex. While the CJs' rollover frequency is at the high end of the range, they do not stand out significantly when compared to many other similar vehicles.

The CJ fleet was divided into "early" (pre-1981) and "late" (1981 and later) fleets. This was done to reflect the fact that AMC made two changes in the early 1980s—making stabilizer bars standard equipment for all CJs and widening the track width of the CJ-7—that would be expected to reduce the likelihood of rollover. While the later model CJs had a somewhat lower likelihood of rollover than the earlier versions, the data demonstrates that neither group stood out from the other similar vehicles to an extent that would justify further investigation by the agency.

This conclusion is supported by a recent ODI survey of utility vehicles that revealed that CJs have been modified by their owners far more frequently than other light utility vehicles. Indeed, over 65% of CJ5s and over 50% of CJ7s have been modified significantly. In many cases, these modifications, such as larger tires and wheels and higher suspensions than those furnished by AMC, would increase the rollover propensity of the vehicle. Thus, even if the accident data had indicated that CJs were significantly more likely to experience a rollover than other utility vehicles, the fact that they have been modified far more than their peers would cast doubt as to whether that data indicated the existence of a safety-related defect that cold be attributed to the vehicle as it was manufactured by AMC.

Shackle Pins

Shackle pins connect one end of the vehicle's springs to the body. The petition alleges that the shackle pins used in early CJs, prior to a design change implemented by AMC in mid-1982, would break in a side impact, with a resultant rollover. In support of this allegation, the petition pointed to incidents where shackle pins broke on two assembly lines due to over-torquing and during side impact tests of pre-production model year 1982 CJ7s, which were equipped with new, longer axles.

NHTSA's review of all available information, including accident reports, testing, laboratory investigations, and design changes, does not indicate the existence of a safety-related defect. For example, NCSA analyzed the state accident data to see if Cjs equipped with the original shackle pin have rolled over more frequently than other comparable vehicles after being struck in the side by another vehicle. Although there is much less relevant data available, the data indicates that there is no basis to believe that any shackle pins are breaking in use or that the vehicles equipped with the original shackle pins are more likely to roll over after being struck in the side than other, similar vehicles.

Rollbar

NHTSA has previously conducted an extensive investigation of the adequacy of the rollbar in 1973-1978 CJs. That investigation (EA78-072) was closed because the information and evidence available to the agency did not warrant a determination of a safety-related defect. Although the petitioners did not submit any additional information on this issue with their petition, we have reviewed updated information supplied by Chrysler Corporation in response to our current inquiry. This additional data does not suggest the existence of a defect, and there is still no basis for the agency to open a defect investigation regarding the CJ's rollbar.

Conclusion

The decision to deny the petition for a defect investigation should not be read as a determination by this agency that CJs are "safe" or that drivers of CJs need not be concerned about the possibility of rollover. All light utility vehicles are much more likely to roll over than passenger cars. For this reason, NHTSA requires manufacturers of these vehicles to permanently attach a conspicuous sticker to the vehicle to alert the driver that its handling and maneuvering characteristics require him or her to exercise special care to avoid a rollover or other loss of control. In addition, the data demonstrates that, within this class of vehicles, the CJ rollover propensity is higher than average, particulary when equipped with certain common modifications. These facts, however, while they are properly of concern to drivers and owners of CJs, could not in themselves support a determination by NHTSA of a safety-related defect under the Safety Act. Therefore, the agency has no basis on which to grant the petition for an additional investigation.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 11, 1990.

Michael B. Brownlee,

Acting Associate Administrator for Enforcement.

[FR Doc. 90-24364 Filed 10-16-90; 8:45 am]

BILLING CODE 4910-59-M

Office of Hearings

[Docket No. 47090]

United States-United Kingdom Regional Airport Case; Erratum

The Notice of Revised Hearing Date issued on October 5, 1990 [1] states an incorrect time. The hearing will start on October 15, 1990 at 10 a.m. (local time) in room 5332, 400 7th Street, SW., Nassif Building, Department of Transportation, Washington, DC. On subsequent days there may be an earlier starting time.

If the state of budget negotiations allows an uninterrupted hearing, all of the proceedings will occur at the above address.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 90-24386 Filed 10-16-90; 8:45 am]

BILLING CODE 4910-62-M

[1] Note: This document was published in the Federal Register issue of Friday, October 12, 1990 (55 FR 41633).

UNITED STATES INFORMATION AGENCY

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, "Paul Strand" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. 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 December 2, 1990, to on or about February 3, 1991; at the Art Institute of Chicago, Chicago, Illinois, beginning on or about May 26, 1991, to on or about July 21, 1991; the Saint Louis Art Museum, St. Louis, Missouri, beginning on or about August 11, 1991, to on or about October 6, 1991; the Museum of Fine Arts, Houston, Texas, beginning on or about November 10, 1991, to on or about January 12, 1992; the Whitney Museum of American Art, New York, N.Y., beginning on or about March 12, 1992, to on or about May 15, 1992; and the M. H. de Young Memorial Museum of the Fine Arts Museums of San Francisco, San Francisco, California, beginning on or about June 14, 1992, to on or about August 16, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: October 15, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-24649 Filed 10-15-90; 4:22 pm]

BILLING CODE 8230-01-M

[1] A copy of this letter may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 201
Wednesday, October 17, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 10, 1990.

TIME AND DATE: 10:00 a.m., Thursday, October 18, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Price and Vacha v. Jim Walter Resources*, Docket No. SE 87-128-D (Issues include consideration of Jim Walter Resources' Motion for Reconsideration.)

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629, (202) 708-9300 for TDD Relay, 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-24552 Filed 10-15-90; 9:45 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 41308, October 10, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, October 15, 1990.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of issues related to legislative matter. [This item was originally announced for a closed meeting on September 28, 1990.]

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: October 15, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-24648 Filed 10-15-90; 3:47 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 23, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last three items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Collision of Amtrak Passenger Train with Tractor Semitrailer, Stockton, California, December 19, 1989.
2. Recommendations to FAA and NASA: Incidents of NASA Airplanes Descending Through ATC-Assigned Altitudes and Conflicting with Other Aircraft.
3. Opinion and Order: Administrator v. Smith, Docket SE-8577; disposition of respondent's and Administrator's appeals.
4. Opinion and Order: Administrator v. Trockmorton, Docket SE-8808; disposition of appeals of Administrator and respondent.
5. Opinion and Order: Administrator v. Hrobak, Docket SE-8950; disposition of the Administrator's appeal.

New Media Contact: Mike Benson 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty. (202) 382-6525.

Dated: October 12, 1990.

Bea Hardesty,
Federal Register Liaison Officer.

[FR Doc. 90-24553 Filed 10-15-90; 9:45 am]

BILLING CODE 7533-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: Subcommittee meetings 7:00 p.m., October 28, 1990 Full Board 8:00 a.m., October 29, 1990.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

7:00 p.m. Subcommittee Meetings—Reports on Planning & Oversight
8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—September 24, 1990; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medicine Education Institute; (6) Report—Oversight and Planning Committees; (7) Report—President, USUHS; (8) Comments—Members, Board of Regents; (9) Comments—Chairman, Board of Regents

New Business

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

Dated: December 12, 1990.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-24548 Filed 10-15-90; 9:26 am]

BILLING CODE 3810-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: Executive Committee of the Board of Regents, 8:00 a.m., Monday, October 15, 1990.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Executive Committee—Board of Regents

(1) Faculty Matters; (2) Review of University Reorganization Plan; (3) Review of Action Necessary in Event of Financial Exigency; (4) Comments—Chairman, Board of Regents; (5) Comments—Members, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

Dated: October 12, 1990.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-24549 Filed 10-15-90; 8:45 am]

BILLING CODE 3810-01-M

Corrections

Federal Register
Vol. 55, No. 201
Wednesday, October 17, 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 COMMERCE

National Oceanic and Atmospheric Administration

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

In the correction to notice document 90-19964 appearing on page 38004 in the issue of Friday, September 14, 1990, make the following correction:

In the second column, in the fourteenth line, the page number "34725", should read "34726".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC90-19-000, et al.]

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

Correction

In notice document 90-21956 beginning on page 38380 in the issue of Tuesday, September 18, 1990, make the following correction:

In the third column, under "**4. Wisconsin Power and Light Co.**" the docket line should read "[Docket No. ER 90-573-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TQ91-1-63-000 and TM91-1-63-001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 90-23691 beginning on page 41129 in the issue of Tuesday, October 9, 1990, the docket line was omitted and should read as set forth above.

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0687]

Truth in Lending; Home Equity Disclosure and Substantive Rule

Correction

In rule document 90-21974 beginning on page 38310 in the issue of Tuesday, September 18, 1990, make the following corrections:

§ 226.5b [Corrected]

1. On page 38312, in the second column, under § 226.5b(f)(3)(i), in the second line "extension" should read "extensions".

§ 226.9 [Corrected]

2. On the same page, in the same column, under § 226.9(c)(3), in the fourth line from the bottom of the page, "actions" should read "action".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AB40

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits, Overpayments and Underpayments—Overpayment Defined

Correction

In rule document 90-19411 beginning on page 33667 in the issue of Friday, August 17, 1990 make the following corrections:

1. On page 33667, in the second column, in the second full paragraph, in line 14 "Countable" should read "countable" (lowercase), and in the third from last line of that same paragraph, "willful" was misspelled.

§ 416.570 [Corrected]

2. On page 33669, in the first column, under § 416.570, in the fifth line from the bottom of the page, and in the second column, in the third line from top of the page, "XIX" should read "XVIII".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Under Secretary

[Docket No. D-90-930; FR-2837]

Redelegation of Authority to Chief Financial Officer Regarding Audit Management Functions

Correction

In notice document 90-21837 beginning on page 38163, in the issue of Monday, September 17, 1990, make the following correction:

On page 38164, in the first column, in the fifth paragraph, in the first and second lines "expected" should read "excepted".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-30-AD; Amdt. 39-6741]

Airworthiness Directives; Christen Industries, Inc., Model A-1 (Husky) Airplanes

Correction

In rule document 90-21841 beginning on page 38049, in the issue of Monday, September, 17, 1990, make the following correction:

On page 38049, in the second column, the docket line, should read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
October 17, 1990

Part II

Department of Education

34 CFR Part 770

Library Services and Construction Act State-Administered Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 770

RIN 1850-AA39

Library Services and Construction Act State-Administered Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the Library Services and Construction Act State-Administered Program. These proposed regulations would implement the Library Services and Construction Act (LSCA) Amendments of 1990 (Pub. L. 101-254).

DATES: Comments must be received on or before December 3, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Robert Klassen, Director, Public Library Support Staff, U.S. Department of Education, 400 Maryland Avenue SW., (Capitol Building, room 402L), Washington, DC 20202-5571.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Robert Klassen, Telephone: (202) 357-6303.

SUPPLEMENTARY INFORMATION: The LSCA Amendments of 1990 (Pub. L. 101-254), enacted on March 15, 1990, authorizes Federal assistance through fiscal year 1994 for titles I through III of the Act, and makes other changes.

1990 Amendments to the Statute

(1) Title I (Library Services) is amended by expanding specific purposes to include intergenerational programs that match older adult volunteers with school children after school to help then improve their reading skills, mobile library programs for child-care centers, library literacy center coordinated by the State library agency, and materials and programs aimed at preventing and eliminating drug abuse. Other amendments allow the State to make subgrants to library systems or networks that include libraries other than public libraries, and assist libraries in making effective use of technology to improve services. Ratable reductions of grants to major urban resource libraries, to the extent that Federal allocations to the State are reduced, or the 1990 Census shows the population of the city has decreased, are allowed, along with ratable reductions of maintenance-of-effort for institutional library services and library services to the physically handicapped to the extent that the populations served have declined.

(2) Title II (Public Library Construction) amendments allow libraries to acquire substantial technological equipment, whether or not it is part of the construction of a library facility. They also add a requirement that grantees follow policies and procedures in the construction of public libraries that will promote the preservation of resources to be used in the facilities.

(3) Title III (Interlibrary Cooperation and Resource Sharing) amendments allow for the development of the technological capacity of libraries for interlibrary cooperation and resource sharing and provide that public and school libraries that cooperate to make school library resources available to the public when school is not in session may be reimbursed for those expenses. A new section 305 authorizes the use of title III funds for preservation programs which are to be based on a statewide preservation cooperation plan that identifies preservation objectives and specifies methods by which the State library agency will work with libraries and other organizations concerned with preservation to develop plans, training, and service programs to ensure that endangered resources are preserved systematically.

Major Changes to the Regulations

The following proposed regulatory amendments reflect changes in the authorizing statute. As a result of these changes, various sections or paragraphs have been renumbered. Some of the revisions are minor; others are more significant. Among the provisions in the regulations implementing changes in the authorizing statute are the following:

- The definition for handicapped would be deleted because the Act now contains a definition for "handicapped individuals."
- The regulations would specify many new activities for which the Secretary may provide assistance under the Act, including the following:
  - —Intergenerational projects using adult volunteers to help latchkey children develop reading skills;
  - —Library services to child-care centers;
  - —Model library literacy centers to reduce the number of illiterate individuals and enhance their employment opportunities;
  - —Materials and projects aimed at preventing and eliminating drug abuse; and
  - —Making effective use of technology.
- The regulations would describe new preservation projects that the Secretary may fund under title III, and would permit a State to include in its long-range program a Statewide preservation cooperation plan.
- The regulations would permit Title I grantees to make subgrants to library systems or networks that include libraries other than public libraries.
- The regulations would permit use of Title II grant funds for remodeling to ensure safe working environments.
- The regulations would also require an assurance that libraries receiving any funds under the Act will not discriminate in providing space for public meetings.
- The regulations would permit ratable reductions in expenditures for State institutional library services and library services for the physically handicapped, and in maintenance of support for major urban resource libraries in certain circumstances.
- The regulations would modify the maintenance-of-effort requirements under title I of the Act. In essence, these changes would add specificity by identifying two discrete categories of expenditure requirements: State aid to public libraries and library systems and State funds expended for statewide development of public library services.

In addition, the regulations provide criteria for waiver of the maintenance-of-effort requirements in the preceding paragraph.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under this State-Administered program, grants for public library services, for public library construction and technology enhancement, and for interlibrary cooperation and resource sharing are available only to States and State library administrative agencies. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. To the extent that these regultions have an impact on small entities, they implement statutory requirements. The regulations concerning this program do not impose any non-statutory requirements that will

have a significant economic impact on the small entities affected.

Paperwork Reduction Act of 1980

Sections 770.20, 770.21, 770.22, 770.23 and 770.24 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

States are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 31 hours per response for 54 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and to the regulations in 34 CFR part 79. The objective of this Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that Federally recognized Indian tribal governments are not subject to Executive Order 12372.)

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

The Secretary particularly requests comments on § 770.41(b) to determine if the guidance provided is sufficiently clear concerning events leading to and resulting from a waiver of the maintenance-of-effort, §§ 770.41(b)(2) and 770.42(b) on criteria for waiver of maintenance-of-effort requirements, and how the Secretary determines that the population of the institutionalized and physically handicapped has declined, respectively.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 402L, Capital Building, 555 New Jersey Avenue NW., Washington, DC., Monday through Friday of each week except Federal holidays, between the hours of 8:30 a.m. and 4 p.m.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 770

Aging—libraries, Child-care centers, Construction—libraries, Correctional institutions—libraries, Drug abuse, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Limited English-speaking proficiency, Literacy, Mental health programs—libraries, Network(s), Penal institutions—libraries, Preservation, Prisons—libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.034 Library Services; 84.154 Public Library Construction; 84.035 Interlibrary Cooperation and Resource Sharing)

Dated: October 11, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 770 to read as follow:

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.
770.1 The Library Services and Construction Act State-Administered Program.
770.2 Who is eligible to apply for a grant under the State-Administered Program?
770.3 What regulations apply to the State-Administered Program?
770.4 What definitions apply to the State-Administered Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

770.10 What types of projects may be funded under Public Library Services grants?
770.11 What types of projects may be funded under Public Library Construction and Technology Enhancement grants?
770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

Subpart C—How Does a State Apply for a Grant?

770.20 What must a State do to receive a grant under the State-Administered Program?
770.21 What must a State plan include?
770.22 What must a State include in a basic State plan?
770.23 What must a State include in a long-range program?
770.24 What must a State include in an annual program?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

770.40 What matching requirements apply to a Public Library Services grant?
770.41 What are the basic maintenance-of-effort requirements for a Public Library Services grant?
770.42 What other maintenance-of-effort requirements apply to a Public Library Services grant?
770.43 What maintenance of Federal support is required for major urban resource libraries?
770.44 What are a State's financial obligations under a Public Library Construction and Technology Enhancement grant?
770.45 What other financial obligations does a recipient have under a Public Library Construction and Technology Enhancement grant?
770.46 What administrative costs are allowable under the State-Administered Program?

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

770.50 Under what circumstances must a State provide an applicant with an opportunity for a hearing?

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act State-Administered Program.

Under the Library Services and Construction Act State-Administered Program—referred to in this part as the State-Administered Program—the Secretary provides Federal funds to assist States to—

(a) Extend and improve public library services;

(b) Construct, renovate and enhance the technology of public libraries; and

(c) Develop and strengthen interlibrary cooperation, resource sharing, and the preservation of library resources.

(Authority: 20 U.S.C. 351, 353, 355b, 355)

§ 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Under the State-Administered Program the following parties are eligible to apply:

(a) States are eligible to apply to the Secretary for—

(1) Public Library services grants under title I of the Act;

(2) Public Library Construction and Technology Enhancement grants under title II of the Act; and

(3) Interlibrary Cooperation and Resource Sharing grants under title III of the Act.

(b)(1) Public libraries are eligible to apply to their respective States for subgrants under each type of grant specified in paragraph (a) of this section.

(2) Library systems or networks that include libraries other than public libraries are eligible to apply for a subgrant under title I of the Act if the purpose of the subgrant is to improve services for public library patrons.

(3) In the case of Interlibrary Cooperation and Resource Sharing grants, a State may also permit other types of libraries to apply for subgrants.

(Authority: 20 U.S.C. 351d, 352, 355a, 355e)

§ 770.3 What regulations apply to the State-Administered Program?

The following regulations apply to the State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organization), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), and part 86 Drug-Free Schools and Campuses.

(b) The regulations in this part 770.

(Authority: 20 U.S.C. 351 *et seq.*)

§ 770.4 What definitions apply to the State-Administered Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Adult with limited literacy skills
Annual program
Basic State plan
Construction
Educationally disadvantaged adult
Handicapped individual
Hawaiian native
Indian tribe
Library service
Library services for the physically handicapped
Long-range program
Major urban resource library
Network
Public library
Public Library Services
State Advisory Council on Libraries
State institutional library services
State library administrative agency
Technology enhancement

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(c) *Other definitions that apply to this part.* The following definitions apply to this part:

Act means the Library Services and Construction Act, as amended.

Community information referral center means a center that provides information and makes referrals to link people in need of services to appropriate resources.

Disadvantaged means persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from public library services to the same extent as the general community benefits from these services.

Illiteracy means the inability of an individual to read, write, or comprehend or to perform basic arithmetical computations.

Interlibrary cooperation means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers.

Interlibrary Cooperation and Resource Sharing grants means Federal financial assistance provided by the Secretary under title III of the Act.

Library materials means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

Limited English-speaking proficiency, where used with reference to individuals, means individuals who—

(1)(i) Were not born in the United States or whose native tongue is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of one of the reasons listed in paragraph (1) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in society.

Literacy means the ability of an individual to read, write, and comprehend and to perform basic arithmetic computations.

Literacy program means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

Public Library Construction and Technology Enhancement grants means Federal financial assistance provided by the Secretary under title II of the Act.

Public Library Services grants means Federal financial assistance provided by the Secretary under title I of the Act.

(Authority: 20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 770.10 What types of projects may be funded under Public Library Services grants?

(a) The Secretary awards Public Library Services grants to assist projects

designed to plan for, establish, extend, or improve public library services.

(b) The types of projects referred to in paragraph (a) of this section may include, but are not restricted to, the following:

(1) Extending public library services to areas and populations that lack these services.

(2) Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations.

(3)(i) Making public library services accessible to individuals who, because of a disadvantage, are unable to benefit from public library services regularly made available to the general public.

(ii) These disadvantages include, but are not restricted to, distance, residence, handicap, age, literacy level, and limited English-speaking proficiency.

(4) Establishing, expanding, and operating programs to improve State and local public library services for—

(i) The elderly;

(ii) The institutionalized;

(iii) The physically handicapped; and

(iv) The disadvantaged in urban and rural areas.

(5) Adapting public library services to meet particular needs of individuals.

(6) Assisting libraries to serve as community information referral centers.

(7) Assisting libraries in providing literacy programs for adults and school dropouts.

(8) Establishing and supporting model library literacy centers, coordinated by the State library administrative agency with other interested State agencies and nonprofit organizations to reduce the number of functionally illiterate individuals and to help them reach full employment.

(9) Assisting libraries in developing intergenerational library programs that will match older adult volunteers with libraries interested in developing after school literacy and reading skills programs for unsupervised children during afterschool hours.

(10) Assisting libraries in providing mobile library services and programs to licensed or certified child-care providers or child-care centers.

(11) Assisting libraries in providing and displaying educational materials, and conducting community programs aimed at preventing and eliminating drug abuse, in cooperation with local education agencies, or other agencies or organizations.

(12) Strengthening the capacity of the State library to meet the needs of the people of the State with regard to library services, facilities, and resources.

(13) Supporting and expanding the services of major urban resource libraries that meet the demands of individual users and other libraries.

(14) Assisting public libraries in making effective use of technology to improve library and information services.

(15) Strengthening metropolitan libraries that serve as national or regional resource centers.

(Authority: 20 U.S.C. 351(a), 351a, 352, 353)

§ 770.11 What types of projects may be funded under Public Library Construction and Technology Enhancement grants?

The Secretary awards Public Library Construction and Technology Enhancement grants to assist projects designed to carry out construction, remodeling and technology enhancement including the following:

(a) Construction of new buildings.

(b) Acquisition, expansion, remodeling, and alteration of existing buildings.

(c) Purchase, lease, and installation of equipment for any building referred to in paragraphs (a) and (b) of this section. As used in this paragraph "equipment" includes the following:

(1) Machinery.

(2) Utilities.

(3) Built-in equipment.

(4) Information and building technologies.

(5) Video and telecommunications equipment.

(6) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(1) through (5) of this section.

(7) All other items necessary for the functioning of a particular facility to provide for public library services.

(d) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(e) Remodeling designed to ensure safe working environments and to conserve energy.

(f) Renovation or remodeling to accommodate new technologies.

(g) Purchase of existing historic buildings for conversion to public libraries.

(h) Technology enhancement.

(i) Any combination of activities referred to in paragraphs (a) through (h) of this section (including architect's fees and the cost of acquisition of land).

(Authority: 20 U.S.C. 351a(2), 355a, 355c; EO 11490, as amended)

§ 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

The Secretary awards Interlibrary Cooperation and Resource Sharing grants to assist projects designed to enable various types of libraries to share resources and materials. These types of projects include the following:

(a) Planning for, and taking other steps leading to the development of, cooperative library networks. Planning may include—

(1) Development of a statewide resource sharing plan directed toward attaining compliance with section 304 of the Act; or

(2) One or more of the items listed in section 304(c) of the Act.

(b) Establishing, expanding, or operating local, regional, or interstate cooperative library networks.

(c) Developing the technological capacity of libraries for interlibrary cooperation and resource sharing.

(d) Developing and implementing a statewide preservation cooperation plan for systematically preserving endangered library and information resources. Such a plan is to be developed in consultation with such parties and agencies as—

(1) The State archives;

(2) Historical societies;

(3) Libraries;

(4) Scholarly organizations; and

(5) Other interested parties.

Further, the State library administrative agency may contract with other agencies or institutions for part or all of the preservation activities in the plan.

(Authority: 20 U.S.C. 351(a), 355e-1(a), 355e-2)

Subpart C—How Does a State Apply for a Grant?

§ 770.20 What must a State do to receive a grant under the State-Administered Program?

(a) In order to receive a grant under the State-Administered Program, a State must—

(1) Establish a State Advisory Council or Libraries; and

(2) After consulting with the council, submit to the Secretary by the various dates established by the Secretary the three parts of a State plan, as described in § 770.21.

(b) The Secretary does not consider the other parts of the plan until the Secretary has approved the basic State plan.

(Authority: 20 U.S.C. 351d(a))

§ 770.21 What must a State plan include?

A State plan must consist of the following three parts:

(a)(1) A basic State plan, as described in § 770.22, covering a five-year period.

(2) The State shall submit one basic plan to cover all types of grants provided under this program:

(i) Public Library Services grants.

(ii) Public Library Construction and Technology Enhancement grants.

(iii) Interlibrary Cooperation and Resource Sharing grants.

(b)(1) A long-range program, as described in § 770.23, covering a period of not fewer than three years and not more than five years.

(2) The State library administrative agency shall develop the long-range program—

(i) With the advice and assistance of the State Advisory Council or Libraries; and

(ii) In consultation with the Secretary.

(3) The State shall—

(i) Submit a long-range program that provides a comprehensive description of the State's identified library needs and a description of the activities to be taken toward meeting those needs supported with the assistance of the LSCA State-Administered Program;

(ii) Review the program each year;

(iii) Revise the program each year according to changing needs and the results of evaluations and surveys; and

(iv) Submit the revised program to the Secretary.

(c) An annual program, as described in § 770.24, for each type of grant for which the State is applying.

(Authority: 20 U.S.C. 351d(a))

§ 770.22 What must a State include in a basic State plan?

A State shall include the following in its basic State plan:

(a) Assurance that the State library administrative agency—

(1) Will administer or supervise the administration of all programs and projects in the State assisted under the State-Administered Program;

(2) Has the fiscal and legal authority and capability to administer or supervise the administration of programs and projects assisted under the State-Administered Program;

(3) Has established or will establish policies, priorities, criteria, and procedures necessary to implement the program in the State;

(4)(i) Will make the reports the Secretary reasonably requires to—

(A) Carry out the Secretary's functions under the program; and

(B) Determine the extent to which funds provided under the program have been effective in carrying out the purposes of the program;

(ii) Will include in these reports, if requested by the Secretary, reports of evaluations made under the State plan; and

(iii) Will make the reports in the form and containing the information reasonably required by the Secretary; and

(5)(i) Will keep the records the Secretary finds necessary to assure the correctness and verification of the reports referred to in paragraph (a)(4) of this section; and

(ii) Will give the Secretary access to the records as the Secretary finds necessary.

(b) Assurances that—

(1) Any funds paid to the State under a long-range program and an annual program will be expended only for the purposes for which the funds have been authorized and appropriated;

(2) The State has adopted the necessary fiscal control and fund accounting procedures to assure proper disbursement of, and to account for, Federal funds paid—

(i) To the State under the State-Administered Program; and

(ii) By the State to any other agency under the program;

(3) The State will give priority to programs and projects designed to carry out the following objectives:

(i) To improve access to public library resources and services for the least served populations in the State, including—

(A) Projects for individuals with limited English-speaking proficiency;

(B) Projects for individuals who are handicapped; and

(C) Projects in urban and rural areas.

(ii) To serve the elderly.

(iii) To combat illiteracy.

(iv) To increase library services and access to services through effective use of technology; and

(4) Libraries within the State that receive funds under this Act will not discriminate on the basis of race, religion, age, gender, national origin, or handicapping condition in providing space for public meetings.

(Authority: 20 U.S.C. 351a(11), 351d(b))

§ 770.23 What must a State include in a long-range program?

(a) A State shall include the following in a long-range program covering all activities under the State-Administered Program:

(1) A comprehensive description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with Federal funds made available through the appropriate type of grant under the State-Administered Program.

(3)(i) The State's policies, priorities, criteria, and procedures for administering this type of grant and appropriate subgrants under the State-Administered Program.

(ii) A description of how the State plans to implement the priorities in § 770.22(b)(3).

(4) A description of the State's policies and procedures regarding each of the following:

(i) The periodic evaluation of the effectiveness of projects supported under this type of grant in measurable terms appropriate to the purpose of the program and the project.

(ii) The appropriate dissemination of project evaluations and other information pertaining to these projects.

(iii) The coordination of projects assisted under this type of grant with similar library programs and projects operated by other libraries, institutions, and agencies in the State.

(b) In the case of an application for a Public Library Construction and Technology Enhancement grant, the State shall also include in its long-range program the policies and procedures to be followed by the State library administrative agency in providing an opportunity for a hearing to a local or other public agency whose application for a subgrant is denied.

(c) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include the following in its long-range program:

(1) A statewide resource sharing plan directed toward attaining compliance with the provisions of section 304 of the Act. In developing the plan, the State library agency, with the assistance of the State Advisory Council on Libraries, shall consider recommendations from current and potential participating institutions in interlibrary cooperation and resource sharing projects authorized under the Act.

(2) An identification of interlibrary cooperation and resource sharing objectives to be achieved during the period covered by the basic State plan and the long-range program. These objectives may include, but are not restricted to, one or more of the items listed in section 304(c) of the Act.

(3)(i) A State that intends to use Federal funds for the preservation of library materials shall also include in its long-range program a statewide preservation cooperation plan (preservation plan) that—

(A) Identifies the preservation objectives to be achieved during the period covered by the long-range program; and

(B) Specifies the methods by which endangered library and information resources are to be preserved systematically.

(ii) In developing the preservation plan, a State shall consult with parties and agencies such as the State archives, historical societies, libraries, scholarly organizations, and other interested parties.

(iii) In carrying out the preservation plan, a State shall work with libraries, archives, historical societies, scholarly organizations and other agencies, within or outside the State, in planning, education and training, coordinating, outreach and public information, and service programs.

(Authority: 20 U.S.C. 351(a), 351a(12), 351d(a)(d), 355c, 355e, 355e-2, 355e-3)

§ 770.24 What must a State include in an annual program?

(a) A State shall include the following in an annual program:

(1) A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to public library services, public library construction and technology enhancement, or interlibrary cooperation and resource sharing, as appropriate.

(2) A description of how these projects and activities would—

(i) Be consistent with purposes specified in the Act and in §§ 770.10, 770.11, or § 770.12, as appropriate;

(ii) Fulfill the objectives of the State's long-range program or the update of the long-range program; and

(iii) Meet the needs identified by the State in the long-range program.

(3) A description of the criteria the State plans to use in allocating funds.

(4)(i) A demonstration that the manner in which the State proposes to carry out the annual program is consistent with the policies, criteria, priorities, and procedures specified in the long-range program or update of the long-range program.

(ii) In meeting this requirement, the State shall address, among other items, policies and procedures regarding evaluations, dissemination, and coordination, as described in § 770.23(a)(4).

(5) A description of how proposed projects and activities are to be based on the results of evaluations described in § 770.23(a)(4)(i) undertaken according to the long-range program.

(6) A demonstration that proposed projects and activities would meet the assurance given by the State in its basic State plan to implement the priorities specified in § 770.22(c), if appropriate.

(7) The amount of Federal funds the State plans to spend to carry out its administrative functions under the grant, as specified in § 770.43.

(b) In the case of an application for a Public Library Services grant, the State shall also include the following in its annual program:

(1) The criteria the State plans to use to ensure that the State meets the financial obligations specified in § 770.40, § 770.41 and § 770.42.

(2) A description of how the State plans to allocate funds to support and expand library services of major urban resource libraries if—

(i) The sum appropriated for the year exceeds the amount specified in section 102(c)(1) of the Act; and

(ii) The State has one or more cities with populations of at least 100,000 individuals.

(3) A description of how the State plans to use funds for projects and activities for the elderly.

(4) A description of how the State plans to use funds to make public library services and programs more accessible to handicapped individuals.

(5)(i) To enable the Secretary to make a determination of payment under section 7(a) of the Act (Payments), a statement of the amounts the State will have available for expenditure for the proposed projects and activities during the period covered by the annual program from—

(A) State sources; and

(B) Local sources.

(ii) The State may not include in-kind contributions among the amounts the State declares it will have available for expenditure under paragraph (b)(5)(i) of this section.

(c) In the case of an application for a Public Library Construction and Technology enhancement grant, the State shall also include in its annual program a description of how the State plans to—

(1) Use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate public library services; and

(2) Follow policies and procedures in the construction of the public libraries that will promote the preservation of library and information resources to be used in the facilities.

(d) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include in its annual program a description of how the proposed projects and activities would meet the requirements of the Act with respect to—

(1) The statewide resources sharing plan;

(2) The interlibrary cooperation and resource sharing objectives identified in the long-range program; and

(3) If applicable, the statewide preservation cooperation plan as described in § 770.23(c)(3).

(Authority: 20 U.S.C. 351, 351a(13), 351d(a), (b)(4); 351e(a)(1), 354, 355c, 355e-2, 355e-3)

Subpart D [Reserved]

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

§ 770.40 What matching requirements apply to a Public Library Services grant?

In order to receive a Public Library Services grant, a State shall have available, from State and local sources, for expenditure for the projects and activities proposed in its annual program an amount that equals or exceeds the difference between—

(a) The cost of carrying out the State's annual program; and

(b) The Federal share of these costs, as specified in section 7(b) of the Act.

(Authority: 20 U.S.C. 351e(b), 354)

§ 770.41 What are the basic maintenance-of-effort requirements for a Public Library Services grant?

(a) *Basic maintenance-of-effort.* In order to receive a Public Library Services grant, a State shall have available for expenditure—

(1) For State aid to public libraries and library systems, an aggregate amount equal to 90 percent of the amount actually expended by the State for those purposes in the second preceding fiscal year; and.

(2) For the State library administrative agency, or the part of the State library administrative agency charged by State law with extending and developing public library services throughout the State, an aggregate amount equal to 90 percent of the amount actually expended for those purposes in the second preceding fiscal year.

(b) *Waiver.* (1) The Secretary may waive the basic maintenance-of-effort requirements, if the Secretary determines that application of paragraph (a) of this section would be unjust or unreasonable in light of exceptional extenuating circumstances.

(2) The circumstances under which the Secretary may waive the basic maintenance-of-effort requirements included, but are not limited to, the following:

(i) A natural disaster affecting the State.

(ii) A precipitous decline in the financial resources of the State, except that the Secretary does not consider the

effect of State tax initiatives or referenda in determining whether to grant a waiver.

(3)(i) If the Secretary grants a waiver under this section, the amount of funds that the State library administrative agency is otherwise entitled to receive under this part is not reduced.

(ii) In determining the basic maintenance-of-effort for any year following the fiscal year for which a waiver is granted, the State agency shall expend at least 90 percent of the amount that it should have expended in the waiver year had the waiver not been granted.

Example: In fiscal year 1991 a State library administrative agency obtains a waiver under this section because it will have available for expenditure for FY 1991 less than 90 percent of its actual expenditures in the second preceding year (1989) due to exceptional extenuating circumstances. In determining whether the agency meets the basic maintenance-of-effort requirements for fiscal year 1993, the State agency must have available for expenditure at least 90 percent of its actual expenditures for 1989, the second fiscal year preceding the year for which the waiver was granted, and not 90 percent of its actual expenditures in FY 1991 (the wavier year). Thus, if the State agency expended $3,000,000 in FY 1989, $2,800,000 in FY 1990, and only $2,500,000 in FY 1991, when it should have expended $2,700,000 (90 percent of $3,000,000) but obtained a waiver instead, then in FY 1993 it must expend 90 percent of $2,700,000, for a total of $2,430,000, rather than 90 percent of $2,500,000 (the amount it actually expended in FY 1991), or $2,250,000.

(Authority: 20 U.S.C. 351e(a))

§ 770.42 What other maintenance-of-effort requirements apply to a Public Library Services grant?

(a) In addition to the requirements in § 770.41, in order to receive a Public Library Services grant a State shall spend for State institutional library services and library services to the physicially handicapped, from Federal, State, and local sources, an amount not less than the amount that the State spent from those sources for those services during the second preceding fiscal year.

(b) The Secretary ratably reduces the amount that a State is required to spend for institutional library services and library services to the physically handicapped to the extent that—

(1) The Federal allocation for the State's Public Library Services grant is reduced; and

(2) The Secretary determines that the populations served by those expenditures have declined.

(Authority: 20 U.S.C. 354)

§ 770.43 What maintenance of Federal support is required for major urban resource libraries?

(a) If the amount of a Public Library Services grant requires a State agency to allocate funds to support and expand library services of major urban resource libraries (see sections 102(a)(3) and (c) of the Act and § 770.23(b)(2)), the State agency may not reduce the amount it pays to an urban resource library below the amount that it paid to that library in the preceding fiscal year.

(b) The Secretary ratably reduces the amount that a State agency must pay under paragraph (a) of this section to the extent that—

(1) The Federal allocation to the State agency for its Public Library Services grant is reduced for the applicable fiscal year; or

(2) The 1990 Census shows that the population of the city served under paragraph (a) of this section has decreased.

(Authority: 20 U.S.C. 353(c))

§ 770.44 What are a State's financial obligations under a Public Library Construction and Technology Enhancement grant?

(a) A State that receives a Public Library Construction and Technology Enhancement grant shall provide, from State or local sources or both, the difference between—

(1) The costs of project financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(b) In case of any individual project under a Public Library Construction and Technology Enhancement grant, at least one half of the total cost must be supplied by State or local sources or both.

(Authority: 20 U.S.C. 351e(b), 355b(b))

§ 770.45 What other financial obligation does a recipient have under a Public Library Construction and Technology Enhancement grant?

(a) Unless released from the obligation under paragraph (c) of this section, a recipient of Federal financial assistance under a Public Library Construction and Technology Enhancement grant—or the recipient's successor in title or possession—shall repay to the United States on request an amount as specified in paragraph (b) of this section if within 20 years of the completion of construction of the library facility—or part of a facility—for which the assistance was received—

(1) The recipient or its successor ceases or fails to be a public or nonprofit institution; or

(2) The facility ceases to be used as a library facility.

(b) The amount the recipient or its successor is obligated to repay is an amount that equals—

(1) The value of the facility or part of the facility at the time of the occurrence specified in paragraph (a)(1) or (a)(2) of this section, multiplied by—

(2) The ratio of—

(i) The amount of Federal assistance under the grant or subgrant; to

(ii) The cost of the facility or part of the facility for which the assistance was received.

Example: In 1977 a local public library completed a project to enlarge its reading room. The project had been assisted by a subgrant from the State under a Public Library Construction grant. The total cost of the project was $300,000; the subgrant had amounted to $120,000 a ratio of 2 to 5 or 40 percent of the cost.

In 1989 the local library moves to another district, and the facility for which it received assistance in 1977 ceases to be used as a library facility. It is determined that the part of the facility for which assistance was received has a current market value of $400,000.

The United States is entitled to recover from the local public library an amount equal to 40 percent of the current market value of the facility or portion of the facility assisted with Federal funds; that is, 40 percent of $400,000 or $160,000.

(c) The Secretary may decide, for good cause, to release the recipient from its obligation under paragraph (a) of this section.

(d) The provisions of this section apply to any facility constructed at any time with assistance under Title II of the Act.

(Authority: 20 U.S.C. 355b)

§ 770.46 What administrative costs are allowable under the State-Administered Program?

(a) A State library administrative agency may spend funds received under a Public Library Services grant and funds received under a Public Library Construction and Technology Enhancement grant to carry out its administrative functions under a Public Library Services grant, a Public Library Construction and Technology Enhancement grant, and an Interlibrary Cooperation and Resource Sharing grant.

(b) The total amount the agency may spend to carry out its administrative functions under all of these grants

during any year may not exceed the amount specified in section 8 of the Act (Administrative Cost).

(c) The agency may spend the funds for administrative costs in connection with the following activities:

(1) Administration of the State plan, including obtaining the services of consultants.

(2) Statewide planning for and evaluation of library services

(3) Dissemination of information concerning library services.

(4) Activities of the State Advisory Council on Libraries and of any other advisory groups and panels necessary to assist the State library administrative agency in carrying out its functions.

(Authority: 20 U.S.C. 351f, 353(b))

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

§ 770.50 Under what circumstance must a State provide an applicant with an opportunity for a hearing?

(a)(1) In the case of a Public Library Construction and Technology Enhancement grant, if a State denies funds to a local or other public agency that applies for a subgrant for construction of public library facilities, the State library administrative agency shall give the local or other public agency an opportunity for a hearing.

(2) The provision in 34 CFR 76.401(b) (which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs) does not apply to Public Library Construction and Technology Enhancement grants.

(b) In providing opportunity for a hearing, the State library administrative agency shall follow the appropriate policies and procedures included in the State's long-range program for the Public Library Construction and Technology Enhancement grant.

(Authority: 20 U.S.C. 355c)

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Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Final Rule Regarding Test Procedures and Energy Conservation Standards for Water Heaters

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-105]

Energy Conservation Program for Consumer Products; Final Rule Regarding Test Procedures and Energy Conservation Standards for Water Heaters

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Conservation Program for Consumer Products is conducted under the Energy Policy and Conservation Act, as amended. Energy conservation standards for most types of major household appliances, including water heaters, are among the required Program elements. The legislation also requires the Department to establish standard methods of testing covered products. In the case of any amended test procedure, moreover, the Department must determine to what extent the amended test procedure would alter the measured efficiency of the related energy conservation standard and make appropriate corrections to the standard.

The purposes of the final rule announced today are (i) to improve and refine the test procedure for water heaters and (ii) to amend the energy conservation standards for electric water heaters in order to reflect the changes in measured efficiency caused by the revised test procedure. There is no change to the standard for gas and oil water heaters resulting from the revised test procedure.

In addition, today's rule also corrects the effective date of standards for mobile home furnaces in § 430.32(e) that was incorrectly published on February 7, 1989, 54 FR 6077. The correct effective date is September 1, 1990.

DATES: The effective date for this document is April 15, 1991. The effective date of standards for mobile home furnaces in § 430.32(e) is September 1, 1990.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Program Requirements

Part B of title III of the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, the National Appliance Energy Conservation Act (NAECA) of 1987, Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The thirteen consumer products currently subject to this program (often referred to hereafter as "covered products") include water heaters, the subject of today's rulemaking.

Under the Act, the Program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Institute of Standards and Technology (NIST) (formerly National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to produce test results which measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by, the product except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2). However, the one hundred and eighty day period referred to in section 323(c)(2) may be extended for a period of up to an additional one hundred and eighty days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. Section 323(c)(3). Test procedures appear at 10 CFR part 430, subpart B.

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE is required to amend the related energy conservation standard accordingly. In determining the amended standard, DOE is required to measure the energy efficiency or energy use of representative samples of covered products which minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. Section 323(e)(2).

B. Test Procedures

The initial water heater test procedures were prescribed by notice issued September 27, 1977. 42 FR 54110 (October 4, 1977). These original procedures coupled laboratory tests and calculations to obtain estimates of energy efficiency for storage type electric, gas and oil water heaters. The laboratory tests consisted of a "cold start recovery efficiency test," which measured the ability of a water heater to heat cold water, and a "standby loss test," which measured the energy loss of a water heater when not providing heated water. Recovery efficiency and percent standby loss are then mathematically combined in the calculations to obtain an energy factor, DOE's overall measure of water heater efficiency. Also, the original procedures included calculations for determining the annual energy consumption and annual operating costs. DOE amended the water heater test procedures by notice issued August 30, 1979, in order to prescribe a "measure of a water heater's useful capacity called first hour rating," where useful capacity was the maximum hourly demand which could be met by the water heater. 44 FR 52632 (September 7, 1979).

By notice published in the **Federal Register** on February 8, 1984, (1984 proposal), DOE proposed to amend its test procedures for water heaters. 49 FR 4870. The purpose of the 1984 proposal was threefold: First, to extend coverage of the test procedures to heat pump water heaters, a relatively new water heater design not previously covered by the test procedures; second, to add a method of testing to determine the first hour rating of water heaters equipped with thermal compensating dip tubes

[1] Part B of title III of EPCA, as amended, is referred to in this final rule as the "Act." Part B of title III is codified at 42 U.S.C. 6291-6309.

which provide a more constant outlet water temperature by controlling the mixing of incoming cold water with stored hot water; and third, to make modifications to the test procedures that would yield more accurate determinations of energy efficiency and cost of operation for gas, oil and electric storage water heaters.

By notice published March 16, 1984, DOE, on request of the water heater industry, extended the comment period 42 days and rescheduled the March 15, 1984, public hearing to April 26, 1984. 49 FR 10071.

In comments received in 1984 and throughout 1985, numerous parties requested that DOE withdraw the 1984 proposal and wait until a more comprehensive proposal could be developed. Most notably, on October 2–3, 1985, DOE and NIST hosted a forum on testing and rating procedures for consumer products which was attended by manufacturers, utilities, States, and public interest groups. At the forum, there was unanimous agreement that DOE should withdraw the 1984 proposal and initiate the development of a single test procedure method which would be applicable to all types of residential type water heaters, including the instantaneous type of water heaters.

By notice published March 13, 1987 (1987 proposal) DOE proposed a single test procedure for all types of water heaters, including instantaneous type water heaters. 52 FR 7972. The 1987 proposal also addressed the matter of four test procedure waivers where four manufacturers of water heaters had received allowance to test certain water heaters under modified test procedures. Since publication of the 1987 proposal, a fifth manufacturer has received a test procedure waiver. The 1987 proposal would extend these modifications to all manufacturers of similar designs and thereby would terminate the five individual waivers. The five waivers are: A.O. Smith Corporation for its gas water heaters equipped with thermal compensating dip tube, 47 FR 53942 (November 30, 1982), and four manufacturers of water heaters with large thermal mass designs: Bock Water Heaters Inc., 50 FR 47106 (November 14, 1985), modified 51 FR 21975 (June 17, 1986), Ford Products Inc., 50 FR 50678 (December 11, 1985), modified 51 FR 18659 (May 21, 1986), Lochinvar Water Heaters, Inc., 51 FR 22966 (June 24, 1986), and Aero Environmental Limited, 53 FR 9687 (March 24, 1988).

The major issues covered in the 1987 proposal included:

(1) Extending the test procedure to cover heat pump water heaters and instantaneous type water heaters;

(2) Revising the method of test for all water heaters from a no draw test to a 24-hour simulated use test which includes a six-hour draw test; and

(3) Revising the first hour rating test from a calculated estimate to a direct measure for determining a water heater's ability to supply hot water.

By notice published on January 17, 1989 (1989 proposal) the Department proposed to amend the energy conservation standards of title 10, part 430, of the Code of Federal Regulations for water heaters to reflect the changes in measured efficiency which would be caused by a newly revised test procedure. 54 FR 1890. The 1989 proposal discussed all the comments made on the revision of the test procedure proposed in the 1987 proposal and included the newly revised test procedure which incorporated those comments and which was used to determine the 1989 proposed conservation standard. Furthermore, the 1989 proposal stated that the newly revised test procedure was not included for comment except in regard to the manufacturers' ability to replicate the DOE methodology in complying with the proposed efficiency standards, and indicated that the newly revised test procedure contained in the 1989 proposal would be made final when the revised standard levels for water heaters were made final. Today's notice finalizes the test procedure included in the 1989 proposal as modified by DOE in consideration of those comments dealing with the manufacturers' ability to replicate the DOE methodology in complying with the proposed standards. Today's notice also corrects various typographical errors contained in the 1989 proposal, several of which were initially identified in a correction notice published by DOE in the February 9, 1989, Federal Register. 54 FR 6364.

Today's rule amends appendix E of subpart B of 10 CFR part 430. This new test procedure is effective 180 days after publication of today's final rule. Section 323(c)(2) of the Act specifies that effective 180 days after an amended or new test procedure applicable to a covered product is prescribed, no manufacturer may make a representation with respect to energy use or efficiency of such product or the cost of energy consumed by such product, unless the product is tested in accordance with such amended or new test procedure. Section 323(c)(3) of the Act allows for an extension of an additional 180 days of the aforesaid effective date if the Secretary determines upon petition that the requirements of section 323(2) would impose an undue burden. The extant test procedure will remain in effect until the effective date of today's amendment for the purpose of rating existing water heaters. After the effective date of the amended test procedure, all calculations of energy efficiency or energy use of water heaters or cost of energy consumed by water heaters are to be based on the new test procedure. Consequently, all water heaters must be retested using the test procedure announced today.

C. Energy Conservation Standards

NAECA added a definition for water heaters, as follows:

The term "water heaters" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

NAECA also prescribes energy conservation standards for 11 types of appliances including the following standards for gas, oil-fired, and electric water heaters.

Product class	Energy factor
1. Gas water heater	.62 – (.0019 × Rated storage volume in gallons).
2. Oil water heater	.59 – (.0019 × Rated storage volume in gallons).
3. Electric water heater	.95 – (.00132 × Rated storage volume in gallons).

These standards are effective for products manufactured on or after January 1, 1990.

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the

measured efficiency or measured energy use of any covered product as determined under the existing test procedure. Today's final rule satisfies this requirement with respect to the 1989 proposal. Furthermore, section 323(e) requires DOE to test a representative sample of covered products that minimally complies with the existing standard using the proposed test procedures; today's final rule is based on testing a sample of units in accordance with the 1989 proposal which has been revised as discussed, *infra*. Based on the testing, DOE has determined that the standard for electric water heaters shall be changed to: .93 −(.00132×Rated storage volume in gallons). The standards for gas and oil water heaters shall remain unchanged.

Section 323(e) of the Act also provides that models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

Today's rule, by establishing test procedures for heat pump water heaters and gas fueled instantaneous water heaters, also extends the coverage of the standards to these products. Heat pump water heaters must meet the energy standards for electric water heaters and gas fueled instantaneous water heaters must meet the energy standards for gas water heaters. In the case of gas fueled instantaneous water heaters, the rated storage volume may be zero.

II. Discussion

A. Test procedures

DOE is setting forth herein the final amended test procedures which incorporate changes made to the 1989 proposal. Several comments were received in regard to correcting typographical errors and relating to a manufacturer's ability to replicate the DOE methodology in complying with the new efficiency standards.

Specification of Electrical Supply Voltage

Shu Miyazaki (Miyazaki) states the current test procedure specifies that the electrical supply voltage be maintained to within +/− 1 percent of the center of the voltage range specified by the manufacturer. (Miyazaki, No. 74 at 2).[2] Miyazaki maintains that this specification will result in different first hour ratings for three identical storage-type water heaters in which only the specified supply voltage varies. Miyazaki believes that it is absolutely necessary to test all electric water heaters at the same voltage.

Miyazaki is correct in stating that different first hour ratings will result if identical storage type-water heaters are tested with supply voltages which vary in magnitude. However, the Department believes it is important that water heaters should be tested at the manufacturers' specified voltage rating. For the vast majority of storage-type water heaters, a fixed voltage is given on the rating plate rather than a specified range. Heat pump water heater manufacturers typically specify a voltage range. These various voltage ratings are not all the same. It does not seem appropriate to require a commercial test laboratory to select, for example, a 240 volt supply voltage when the rating plate specifies a range of 210 to 230 volts. Thus DOE concludes that the test procedure should not be altered as suggested by Miyazaki.

Heat Traps

Public Utility District Number 1 (PUD1) of Snohomish County, Washington State, comments that it currently operates a rebate program which offers residential customers a $50 rebate if they replace their existing electric water heater with an energy-efficient one. (PUD1, No. 87, at 1). Qualification for the rebate program is based upon the energy factors published within The Gas Appliance Manufacturers Association (GAMA) "Consumers' Directory of Certified Efficiency Ratings." The issue in question relates to the testing of the unit with heat traps if they are supplied with the water heater but are not made an integral part of the unit. PUD1 states that since there is no guarantee that the heat traps will actually be installed, the energy factor and Energy Guide label should not reflect the addition of any accessories, i.e., heat traps.

Section 4.3 of the proposed test procedure states "if heat traps and/or piping insulation are supplied with the water heater, then they shall be installed for testing." The Department agrees that there is no way to guarantee that these items will be installed when the water heater is placed into service. However, if a unit is supplied with heat traps and/or piping insulation by the manufacturer, DOE believes it is reasonable to assume that these items will be used. Therefore, DOE finds that the test procedure not be changed to address the issue raised.

Definition of Instantaneous Water Heaters

GAMA suggests that the definition of instantaneous water heaters be revised to include a criterion which limits the outlet temperature to 180 °F or less. (GAMA, No. 78, at 2; and No. 87, at 3). GAMA contends that this criterion is a common point of differentiation between commercial and residential water heaters. GAMA further states that the 180 °F criterion is already included in the definitions for gas, electric, and oil storage-type water heaters in the test procedures. In particular GAMA suggests the following:

> Gas fueled instantaneous water heater means a water heater which utilizes gas as the energy source controlled manually or automatically by a water flow activated control or a combination of water flow and thermostatic control, which is designed to deliver water at a controlled temperature of less than 180 °F, and which has an input greater than 50,000 Btu per hour and less than 200,000 Btu per hour, and a manufacturer's specified storage capacity of less than 2 gallons.

DOE agrees with the above definition of a gas fueled instantaneous water heater and has incorporated it within the test procedure.

Copper Tubing

GAMA states that the reference to copper tubing in section 4.3 of the test procedure should be clarified to specify the type used for water lines, i.e., Type "L" hard copper tubing, as opposed to copper tubing used for refrigerant lines. (GAMA, No. 78, at 2).

DOE concurs with GAMA on this issue and has changed the statement from "Copper tubing, the same size as the connections on the water heater shall be connected to the tank and extend 24 inches in length" to "Type 'L' hard copper tubing, the same size as the connections on the water heater, shall be connected to the tank and extend 24 inches in length."

Location of Storage Tank Temperature Measurement Probes

GAMA recommends that in addition to utilizing the anodic device opening or the relief valve opening to insert the temperature measurement probes within a storage-type water heater, the use of the hot water outlet opening should also be permitted. (GAMA, No. 78, at 2 and

[2] Comments on the 1984, 1987, and 1989 proposed rules were assigned docket numbers and are numbered consecutively.

3). Specifically, GAMA recommends that section 4.5 of the proposed test procedure be modified as follows:

The temperature sensors shall be installed either through (1) the anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, is installed as close as possible to its original location. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value of 4 hr ft °F/Btu.

DOE agrees with the recommendation and in section 4.5 of the test procedure has adopted GAMA's recommended language to permit the installation of the temperature measurement probes through the hot water outlet.

Prescribed Value of Density of Water

GAMA notes that the value of the density of water, 8.214 lbm/gal for 58 °F, is incorrect in section 5.1.1. (GAMA, No. 78, at 3).

Section 5.1.1 has been changed to remove the incorrect number and to require the use of the density of water at the appropriate temperature which will vary due to allowable tolerances during each test.

Prescribed Value of Specific Heat

GAMA requests that values for specific heat be prescribed throughout the test procedure. (GAMA, No. 78, at 3).

The values for specific heat cannot be prescribed in advance since they are dependent on the inlet and outlet water temperatures which will vary due to allowable tolerances during each test. Accordingly, this suggestion is rejected.

First Hour Rating Test

GAMA does not understand why a draw is initiated to activate the heating element(s) or burner unit prior to the first hour rating test if the mean tank temperature is within the specified temperature range. (GAMA, No. 78, at 3).

The purpose of the draw noted by GAMA was to eliminate the possibility that the beginning of the first hour rating test would coincide with the heating element or burner unit being activated to recover the tank from standby losses. DOE believed that this could cause repeatability problems. However, through continuing testing at NIST, DOE has discovered that this would not be a problem and the requirement of the draw has been eliminated.

Test Setup for Table Top Water Heaters

GAMA states that the attachment of two feet of copper tubing rising vertically from table top water heaters is inappropriate. (GAMA, No. 87, at 2). GAMA states that for this type of water heater the pipes are run horizontally out from the tank and subsequently downward. GAMA suggests that the following statement be added to section 4.3 of the revised test procedure:

A water heater 36 inches high or less (commonly referred to as an under counter or table top model) intended for installation either beneath, adjacent to or in conjunction with a counter shall have the inlet and outlet connections configured as illustrated in Figure 4. If the water heater is not factory equipped with pipe to extend the field connection point of the water lines to outside of the jacket or cabinet, copper tubing shall be used to extend the water line horizontally to the exterior of the jacket or cabinet.

DOE concurs with the above statement. The test procedure has been changed to incorporate the information into section 4.3.

First-Hour Rating

GAMA states that the purpose of the first-hour rating is to provide a means of grouping models of similar capability for the "Ranges of Comparability" established by the Federal Trade Commission (FTC) labelling rules. (GAMA, No. 88, at 2 and 3). GAMA states that in general the revised first-hour rating will have a uniform effect on all water heaters. GAMA contends that the models in the 56 to 64 gallon FTC range of comparability may move to the 65 to 74 gallon range as a result of the proposed first-hour rating procedure. GAMA states that the same models will still be grouped together as comparable models. It further contends that there is no benefit to revising the first-hour rating test, and that the new test will create an unwarranted need for retesting.

According to GAMA, test data collected by Electrical Testing Laboratories (ETL) indicates that the hour-long first-hour rating test provides a value practically the same as the first-hour rating determined using the current test procedure. GAMA believes that the revised first-hour rating test will have a minimal effect on the measured first-hour rating and the current procedure is as appropriate as the proposed first-hour rating test.

GAMA believes that DOE should retain the current first-hour rating test and add an optional calculation method to take into account that the proposed test procedure conditions (mean tank temperature, flow rate, inlet water temperature and ambient temperature) differ from those in the existing test procedure.

DOE notes that the existing procedure interrupts the electrical power or fuel supply to the water heater during the first-hour rating procedure. Imposing a one hour power or fuel interruption is an extremely unlikely mode of operation for residential water heaters. Secondly, the current procedure requires a computation which is an attempt to determine how much additional usable hot water would be generated if 100 percent of the thermal input to the tank, less standby losses, heats the water contained within the storage tank to a usable temperature. This can result in significant error due to the fact that only a portion of the thermal input to the tank would produce usable water. The ability to convert thermal input to usable hot water is a function of the water heater design. Several water heater manufacturers are currently designing and manufacturing water heaters which maximize the conversion of thermal input into usable hot water. The existing test procedure does not give credit to the manufacturers of these innovative products.

GAMA's contention that the proposed test procedure provides a value practically the same as the first-hour rating using the existing test procedure is incorrect. For water heaters which employ two heating elements, the results of tests conducted by NIST show that the first-hour rating using the proposed test procedure yields approximately 95 percent of that obtained using the existing test procedure. For two of the three water heaters tested at NIST which employed a single heating element, the first-hour rating results were significantly less, up to 30 percent, when the proposed test procedure was used as compared to the existing test procedure.

The first hour rating within the existing test procedure combines a measured quantity, the number of gallons removed during a single draw, with a computed quantity, the ability of the water heater to produce hot water within a given time interval. The computed quantity significantly over-predicts the capability of some water heaters, in particular, electric water heaters with a single element, to produce water above a prescribed temperature level. There are two reasons for this over-prediction. First, the computation procedure assumes that the energy supplied during the interval between the time at which the thermostat(s) acts to energize a heating element and the end of the hour is supplied only to the portion of water within the tank, which would be removed during a subsequent draw. This is a reasonably good assumption for electric water heaters which employ

dual elements, since the upper element is used to first heat the water in the upper portion of the water heater. However, for tanks which employ a single element, the water heater may not be able to elevate the temperature above the required minimum outlet temperature. Additionally, the calculation procedure does not take into account the mixing which occurs between the cold entering water and the water within the storage tank during the removal of hot water.

The first hour rating is gaining recognition as a sizing criterion for selecting water heaters. Because of this, the Department believes that it is beneficial to improve the accuracy of the test, as discussed above, especially the relative rankings to recognize water heater designs which improve the first hour rating. This would allow the selection of a "smaller" water heater which could meet the consumers needs and save energy by having smaller standby losses. Therefore, DOE is retaining the proposed first hour rating with one minor adjustment.

Through continuing testing at NIST, DOE discovered that under certain conditions the proposed first hour rating test could be non-repeatable because of thermostat variability. To preclude any unacceptable repeatability problems, DOE is today publishing a slightly revised first hour rating test procedure from that previously proposed. As published, if a draw is underway at the end of the hour, that draw is completed. However, if a draw is not underway, instead of drawing the tank down to T_{min} at that time, the test is continued until the tank recovers and then a final draw is performed. In both cases the water drawn over the total duration of the test is prorated to one hour.

Computation of Standby Losses

GAMA comments that the revised test procedure gives a significantly different measure of standby loss because of the shortened standby period. (GAMA, No. 87, at 3 and 4). GAMA states that although the standby loss measurement in the revised test procedure is adequate for the way in which it is utilized, it should not be used for other purposes outside the framework of the test procedure, since it is an abbreviated, less precise method in relation to the 48-hour standby loss test method within the current test procedure. GAMA contends that the inclusion of a specific calculation for standby loss in the revised test procedure is an implicit invitation to use this standby loss value for other purposes for which it is not suited. GAMA concludes that this term should be deleted.

GAMA is incorrect in stating that the reason the revised test procedure gives a different measure of standby loss, in comparison to the existing test procedure, is due to the decreased test duration. A different standby loss measurement is obtained because the inlet and outlet piping arrangement has been changed. In the proposed test procedure, two feet of vertical uninsulated copper piping are connected to both the inlet and outlet ports of the water heater. The existing test procedure utilizes insulated galvanized piping configured in such a manner as to form an external heat trap. In fact, GAMA clearly points out this difference and its impact on standby losses in its comments addressing the proposed amended energy conservation standards for electric water heaters. Accordingly, GAMA's recommendation is not adopted.

Section 6.1.4

GAMA states that it would simplify matters if an equation within section 6.1.4 were formulated in such a manner so that a number which is usually negative would not be subtracted from another number. (GAMA, No. 87, at 4).

GAMA is correct in noting that the form of the equation will usually result in a negative number being subtracted from another number. However, DOE believes that the form of the equation is more conceptually correct than that proposed by GAMA in that a higher ending tank temperature represents a positive energy input which is then subtracted. Additionally, DOE does not believe that the current equation is difficult to use and does not agree with changing the equations within section 6.1.4.

Off-Peak Water Heaters

The number of comments received by DOE concerning "off-peak" water heaters exceeded that on any other subject. American Electric Power, Appalachian Power Company, Columbus Southern Power, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, and Wheeling Power Company comment they are pleased that DOE intends to explore various concepts for testing these units. These utilities state that "off-peak" water heating is an important element in both their Energy Management and Load Management Programs. They also state that the current test procedure does not accurately show the energy conservation benefits provided by "off-peak" water heaters.

DOE contracted with NIST to test an electric "off-peak" type water heater using today's test procedure. The water heater was tested using several different "off-peak" schedules as well as a test in the normal fully-on mode. The result of these tests was that the energy factor essentially stayed constant regardless of whether the tank was tested "off-peak" or not. NIST thus concluded that there is no need for a test procedure which differs from today's test procedure to determine the energy factor of off-peak water heaters.

DOE recognizes that where off-peak electric rates are offered by utilities, customers may obtain economic benefits by using "off-peak" water heaters. However, based on the efficiency tests conducted by NIST, DOE has determined that today's test procedure is adequate to measure the energy factor of "off-peak" water heaters.

B. Standards

DOE is herein amending the energy efficiency standards for water heaters to reflect the changes necessitated by the revised test procedures. Several comments were received regarding the proposed revision to the standards and they are discussed below:

Rated Volume

The California Energy Commission (CEC) states that it presumes the allowable energy factor is computed by subtracting from a constant the product of a second constant times the measured volume. (CEC, No. 82 at 1 and 2). However, within the proposed rule, the term "rated storage volume" is used in the computation of the Federal energy conservation standards for water heaters. CEC further states that since the meaning of the term "rated volume" as commonly used in the industry is quite different from DOE's intent in the proposed rule, the word "rated" should be dropped from the rule. It also notes that footnote number one in the proposed standard referring to the definition of "rated storage volume" is referenced only to gas water heaters, not to oil or electric water heaters.

In a related matter, GAMA suggests that DOE adopt the following language as the definition for "rated storage volume": "The water storage capacity of a water heater as specified by the manufacturer." This definition would be substituted for the reference to the tank capacity measurements set forth in the current DOE water heater efficiency test procedures. (GAMA, No. 78, at 1).

At the time of the proposed rule, there was not a definition of "rated storage volume." It was DOE's intention to define "rated storage volume" as the measured volume for use in the

standard. However, upon further consideration, and for purposes of the instant rule, DOE accepts the arguments set forth in the comments regarding industry usage and has defined "rated storage volume" to mean the water storage capacity of a water heater, in gallons, as specified by the manufacturer, i.e., the "rated volume". Additionally, the footnote in the standard has been modified to indicate that this definition applies to all types of water heaters.

However, the Department has some concern about this use of "rated storage volume" in the standard because the measure of this quantity seems to be relatively uncontrolled and by specifying a large "rated volume" a manufacturer can lower the standard level that a water heater must meet. In oral testimony at the January 1989 public hearings, DOE staff pointed out that all the water heaters tested by NIST in support of this rule had measured volumes smaller than the "rated volume." GAMA staff replied that this difference was due to manufacturing tolerance. While DOE does not have enough data to be statistically significant, it questions whether the difference in rated and measured volume is due solely to manufacturing tolerance. If that were the case, one would expect some measured volumes to be above the "rated volume" and some to be below. All 13 water heaters tested had measured volumes lower than the "rated volume". Further, oral testimony by GAMA at the January, 1989 public hearings indicated that "the vast majority are below the rated number." However, at the same time, DOE is not aware of any evidence or data which suggests that abuse or consumer detriment has resulted from use of the definition advocated by the industry; and, the definition DOE is adopting for this rule has previously been adopted by the Z-21 Subcommittee on Standards for Gas Water Heaters.

Additionally, at the public hearings, DOE staff asked GAMA if there were limits as to how high the "rated volume" could be relative to the measured volume. It was stated that this difference was limited by adherence to the testing agency's specifications for safety. However, DOE notes that one of the six electric water heaters and one of the five gas water heaters tested by NIST in support of today's rule exceeded this limit. Thus, again some uncertainty exists with regard to which criterion to use.

As a consequence, DOE will continue to test water heaters and collect data on rated versus measured volume. Depending upon the results of those tests, as well as experience under the rule adopted today, DOE may consider revising the definition of "rated storage volume" in connection with the next water heater standards review.

Inclusion of Heat Pump Water Heaters

GAMA states that residential heat pump water heaters are included as a covered product in NAECA and that they are subject to minimum efficiency requirements. (GAMA, No. 78, at 1).

DOE agrees and notes that by establishing test procedures for heat pump water heaters, today's rule extends standards coverage to these products. DOE also notes that since heat pump water heaters use electric power, they are covered under the requirements for electric water heaters. DOE will consider separate standards for heat pump water heaters on the next review cycle for water heater standards in 1992.

Amended Energy Efficiency Standards

GAMA states that it agrees with the proposal to retain unchanged the conservation standards for gas and oil water heaters. (GAMA, No. 88). Testing, conducted at ETL for GAMA, yielded results which were consistent with DOE's data and the conclusion reflected in DOE's proposal for gas and oil water heaters. However, GAMA does not agree with the proposed amended energy conservation standards for electric water heaters. GAMA proposes that the minimum efficiency standard for residential electric water heaters be lowered by 0.04 rather than 0.02. GAMA states that while the average difference of all the test results from ETL is less than 0.04, the differences are greater for the small volume models. GAMA further states that since these small volume models represent the majority of electric water heater shipments, the adjustment should be weighted to acknowledge this. The models selected for the ETL tests, according to GAMA, represent less popular models or models with special design features, such as models factory equipped with heat traps, low-boy and table top models.

On the other hand, the American Gas Association (AGA) challenges DOE's proposal to lower the energy efficiency standard for electric water heaters. (AGA, No. 84). It believes that DOE selected an inadequate sample of electric water heaters to test under the amended test procedure and that the models selected by DOE are not truly representative of the universe of electric water heaters available. According to AGA, given these shortcomings in the amended test procedure's methodology, AGA does not believe that DOE can justify lowering the statutorily-established minimum efficiency standard for electric water heaters.

AGA urges DOE to conduct additional independent testing of water heaters to verify the differences in test methods before DOE amends the statutory minimum efficiency level. AGA states that the number of units tested at NIST represents less than 1 percent of the 1,000 basic models of electric water heaters available. AGA further states that testing should be performed on 20- and 100-gallon models and on models with high efficiency factors.

In closing, AGA states that it does not believe DOE has put forward sufficient justification to lower the statutory minimum standard for electric water heaters. AGA asserts that the DOE proposal has taken the expedient approach of lowering the statutory mandated minimum efficiency level rather than requiring electric water heaters to comply with the statute.

In response to GAMA and AGA, DOE notes that NAECA requires that efficiency standards shall be revised whenever the test procedures are revised so that units that minimally met the standards under the old test procedure will meet the revised standard under the new test procedure. In other words, a unit that met the standards under a test procedure is not allowed to fail to meet the standard just because the test procedure has changed. DOE agrees that the units tested are not representative of the complete universe of water heaters. However, under NAECA the models tested need not be representative of the entire product universe; rather they should be representative of those models which marginally comply with the standard. Because the effect of the test procedure on the majority of models which exceed the standards is not relevant to the pass-fail issue, the pertinent question thus is: what is the effect of the new test procedure on those models that only minimally meet the standard? The six electric units tested by NIST for DOE meet this criterion.

As stated above, GAMA submitted test results of several water heaters tested by ETL using both the old and revised test procedures to support its claim that the constant in the equation for the electric water heater standard should be lowered by 0.04. However, the units submitted by GAMA were not those marginally at the standard. Therefore, most of these test results are not applicable to the question at hand.

DOE recognizes that the number of marginal units tested is limited but believes that they fairly represent

marginal units and that using the average of these results is appropriate. The results of these tests were reported in the 1989 Proposal as Tables 1, 2, and 3. Therefore, DOE has elected to modify the standard as proposed in the 1989 Proposal by lowering the first term of the energy factor equation for electric water heaters by 0.02, which is the average reduction of the electric units tested, and by leaving the standard for oil and gas water heaters unchanged.

In selecting this standard based on average test results, it is recognized that some particular marginal water heaters might not meet the new standard.

It should be noted that any basic model that was manufactured before the effective date of today's final rule, regardless of when the individual unit was in fact manufactured, and which was certified as meeting the standard using the old test procedure, is grandfathered under NAECA as complying with today's standard.

DOE is also concerned over the test results obtained by NIST and those submitted by GAMA in that for the great majority of units tested, the measured values for energy factor were less than that reported in the GAMA directory. If this situation was brought to DOE's attention by one party complaining against another, DOE believes that in an enforcement proceeding the basic model could be found in noncompliance.

III. Correction of Effective Date for Mobile Home Furnaces Efficiency Standards

In reviewing the final rule regarding certification and enforcement of regulations related to energy conservation standards for consumer products published February 7, 1989, in the **Federal Register** (54 FR 6077), DOE noted that the effective date listed for mobile home furnaces efficiency standards, January 1, 1990, was incorrect. The correct date is September 1, 1990. Today's notice makes that correction.

IV. Other Reviews

A. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974 (FEAA) (15 U.S.C. 761–790), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for comments concerning the impact of this proposal on the quality of the environment.

Since the amended test procedures under the Program will be used only to standardize the measurement of energy usage and the energy efficiency standards have been adjusted accordingly to achieve no net change in energy usage, today's rule will not affect the quality or distribution of energy usage, and will not result in any environmental impacts. DOE, therefore, has determined that amending the test procedures and adjusting the energy efficiency standards accordingly under the Program do not individually or cumulatively have a significant effect on the human environment. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for today's rule.

B. Review Under Executive Order 12291

The final rule has been reviewed in accordance with Executive Order 12291, 46 FR 13193 (February 19, 1981), which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. Executive Order 12291 also requires that regulatory impact analyses be prepared for "major rules," which it defines as any regulation that is likely to 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 government agencies, or geographic 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 final rule amends already existing test procedures for water heaters and correspondingly adjusts the energy efficiency standards. Accordingly, DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of extant procedures is not significant enough to bring the final rule within the definition of "major rule."

In accordance with section 3(c)(3) of Executive Order 12291, which applies to rules other than major rules, the final rule was submitted to the Office of Management and Budget (OMB) for review without a regulatory impact analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." DOE certified in the notice of proposed rulemaking, and does so again, that the rule, which affects manufacturers of water heaters, will not have significant economic impact, but rather simply improves the test procedures and adjusts the related energy efficiency standards accordingly. Therefore, DOE certifies that the final rule, as promulgated, will not have a "significant economic impact on a substantial number of small entities."

D. Federalism Review

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

By operation of the statute, standards under the Program initially preempt inconsistent State regulations. Thus, in theory these standards could be said to have a substantial direct effect on State governments. Today's water heater standards provisions, however, have the practical effect of maintaining the *status quo* of the statutory standards levels. Thus the revised standards provisions will have no added substantive or negative effect on States. Based on the foregoing, DOE has concluded that preparation of a Federalism assessment for this rulemaking was not warranted.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, the Department of Energy amends part 430 of chapter II of title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, October 1, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, title III, part B, as amended by National Energy Conservation Policy Act, title IV, part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy

Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

§ 430.22 [Amended]

2. Section 430.22 is amended by revising paragraphs (e)(1) and (e)(2) and by adding paragraph (e)(4) to read as follows:

* * * * *

(e) *Water Heaters.* (1) The estimated annual operating cost for water heaters shall be—

(i) For a gas or oil water heater, the product of the annual energy consumption, determined according to section 6.1.8 or 6.2.5 of appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(ii) For an electric water heater, the product of the annual energy consumption, determined according to section 6.1.8 or 6.2.5 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, divided by 3412 Btu per kilowatt-hour, the resulting quotient then being rounded off to the nearest dollar per year.

(2) The energy factor for the water heaters shall be—

(i) For a gas or oil water heater, as determined by section 6.1.7 or 6.2.4 of appendix E of this subpart rounded off to the nearest 0.01.

(ii) For an electric water heater, as determined by section 6.1.7 or 6.2.4 of appendix E of this subpart rounded off to the nearest 0.01.

* * * * *

(4) The alternative uniform test method for measuring the energy consumption of untested water heaters shall be that set forth in section 7.0 of appendix E of this subpart.

3. Appendix E to subpart B of part 430 is revised to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. Definitions

1.1. *Cut-in* means the time or water temperature when a water heater thermostat has acted to increase the energy or fuel input to the heating elements, compressor, or burner.

1.2. *Cut-out* means the time or water temperature when a water heater thermostat has acted to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burners.

1.3. *Design Power Rating* means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu per hour as appropriate.

1.4. *Energy Factor* means a measure of water heater overall efficiency.

1.5. *First Hour Rating* means the amount of hot water the water heater can supply in one hour of operation.

1.6. *Heat Trap* means a device which can be integrally connected, or independently attached, to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.7. *Recovery Efficiency* means the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.

1.8. *Standby* means the time during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure: $\tau_{stby,1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test; $\tau_{stby,2}$ represents the total time during the 24 hour simulated use test when water was not being withdrawn from the water heater.

1.9. *Gas fueled storage water heater* means a water heater which utilizes gas as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an input of 75,000 Btu per hour or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 100 gallons.

1.10 *Electric storage water heater* means a water heater which utilizes electricity as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an input of 12 kilowatts or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 120 gallons.

1.11 *Oil storage water heater* means a water heater which utilizes oil as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an energy input of 105,000 Btu per hour or less, and which has a manufacturers specified storage capacity of 50 gallons or less.

1.12 *Gas fueled instantaneous water heater* means a water heater which utilizes gas as the energy source controlled manually or automatically by a water flow activated control or a combination of water flow and thermostatic control, which is designed to deliver water at a controlled temperature of less than 180 °F, and which has an input greater than 50,000 Btu per hour and less than 200,000 Btu per hour, and a manufacturers specified storage capacity of less than 2 gallons.

1.13 *Heat pump water heater* means a water heater which utilizes electricity as the energy source with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, and which is designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all auxiliary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

1.14 *ASHRAE Standard 41.1–86* means the standard published in 1986 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. and titled Standard Measurement Guide: Section on Temperature Measurements.

1.15. *ASTM–D–2156–80* means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

1.16. "Rated Storage Volume" means the water storage capacity of a water heater, in gallons, as specified by the manufacturer.

2. Test Conditions

2.1. *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with section 4.

2.2. *Ambient Air Temperature.* The ambient air temperature, shall be controlled to a value between 65.0 °F and 70.0 °F on a continuous basis. For heat pump water heaters maintain the dry bulb temperature at 67.5 ± 1 °F. Additionally, for heat pump water heaters the relative humidity shall be maintained between 49 and 51 percent.

2.3. *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58 ± 2 °F throughout the test.

2.4. *Storage Tank Temperature.* The average temperature of the water within the storage tank shall be set to 135 ± 5 °F.

2.5. *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig and the maximum allowable pressure specified by the water heater manufacturer.

2.6. *Electrical and/or Fossil Fuel Supply.*

2.6.1. *Electrical.* Maintain the electrical supply voltage to within ± 1 percent of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.6.2. *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7 to 10 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. Use natural gas with a higher heating value of approximately 1,025 Btu per standard cubic foot.

2.6.3. *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11 to 13 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ± 10% of the manufacturer's specified manifold pressure. Use propane gas with a higher heating value of approximately 2,500 Btu per standard cubic foot.

2.6.4. *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil

with a heating value of approximately 138,700 Btu per gallon.

3. Instrumentation

3.1. *Pressure Measurements.* Pressure measuring instruments shall have an error no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	±0.1 inch of water column.	±0.05 inch of water column
Atmospheric pressure.	±0.1 inch of mercury column.	±0.05 inch of mercury column
Water pressure	±1.0 pounds per square inch.	±0.50 pounds per square inch

3.2. Temperature Measurement

3.2.1. *Measurement.* Temperature measurements shall be made in accordance with the Standard Measurement Guide: Section on Temperature Measurements, ASHRAE Standard 41.1–86.

3.2.2. *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the limits as follows:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	±0.2°F	±0.1°F
Air wet bulb temperature	±0.2°F	±0.1°F
Inlet and outlet water temperatures	±0.2°F	±0.1°F
Storage tank temperatures	±0.5°F	±0.25°F

3.2.3. *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4. *Temperature Difference.* Temperature difference between the entering and leaving water may be measured with any of the following:

a. A Thermopile
b. Calibrated resistance thermometers
c. Precision thermometers
d. Calibrated thermistors
e. Calibrated thermocouples
f. Quartz thermometers

3.2.5. *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6. *Time Constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 5 seconds.

3.3 *Liquid Flow Measurements.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than ± 1% of the measured value in mass units per unit time.

3.4. *Electric Energy.* The electrical energy used shall be measured with an instrument and associated readout device that are accurate within ± 1% of the reading.

3.5. *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within ± 1% of the reading.

3.6. *Mass Measurements.* Mass measurements shall be made measured with instruments that are accurate within ± 1% of the reading or 0.1 lbm, whichever is greater.

3.7. *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate within ± 1% of the reading. The heating value of natural gas and propane must be corrected for local temperature and pressure conditions.

3.8. *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ± 0.5 seconds per hour.

4. Installation

4.1. *Water Heating Mounting.* A water heater designed to be free standing shall be installed according to the manufacturer's directions on a ¾ inch thick plywood platform supported by three 2 × 4 inch runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between it and the platform. For heat pump water heaters without a storage tank supplied by the manufacturer, connections shall be made with a storage tank as described in section 4.9.3 and in accordance with manufacturer-published installation instructions. The storage tank and heat pump section shall be placed on platform(s) constructed as previously described. If installation materials are not provided by the heat pump manufacturer, use uninsulated 8 foot long connecting hoses, having an inside diameter of ⅜ inch. Wall mounted water heaters shall be installed in accordance with manufacturer-published installation instructions on a simulated wall section made from ¾ inch plywood and 2 × 4 inch studs. Placement in the test room shall be in an area protected from drafts.

4.2. *Water Supply.* The water supply shall be capable of delivering water at conditions as specified in section 2.

4.3. *Water Inlet and Outlet Configuration.* Inlet and outlet piping connections shall be configured as illustrated in Figures 1, 2, or 3 except a water heater 36 inches high or less, (commonly referred to as an under counter or table top model) intended for installation either beneath, adjacent to or in conjunction with a counter shall have the inlet and outlet connections configured as illustrated in Figures 4a and 4b. Type "L" hard copper tubing, the same size as the connections on the water heater shall be connected to the tank and extend 24 inches in length. If a water heater 36 inches high or less is not factory equipped with pipe to extend the field connection point of the water heater lines to outside of the jacket or cabinet, type "L" hard copper tubing shall be used to extend the water line horizontally to the exterior of the jacket or cabinet. Unions may be utilized to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the 24 inch cold water inlet pipe. An appropriately rated pressure and temperature relief valve shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be non-metallic. If heat traps and/or piping insulation and/or pressure relief valve insulation are supplied with the water heater, then they shall be installed for testing. Clearance shall be provided such that none of the piping contacts other surfaces in the test room.

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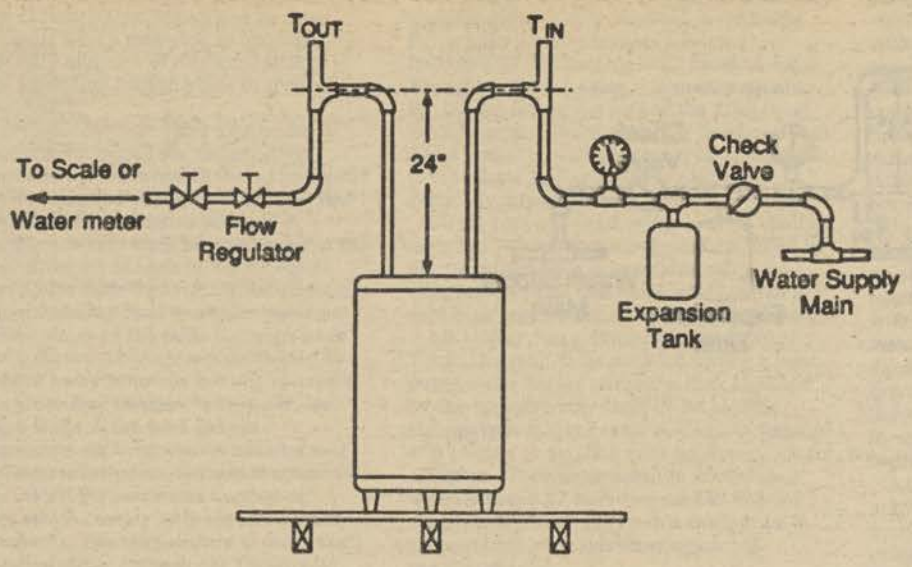

Figure 1

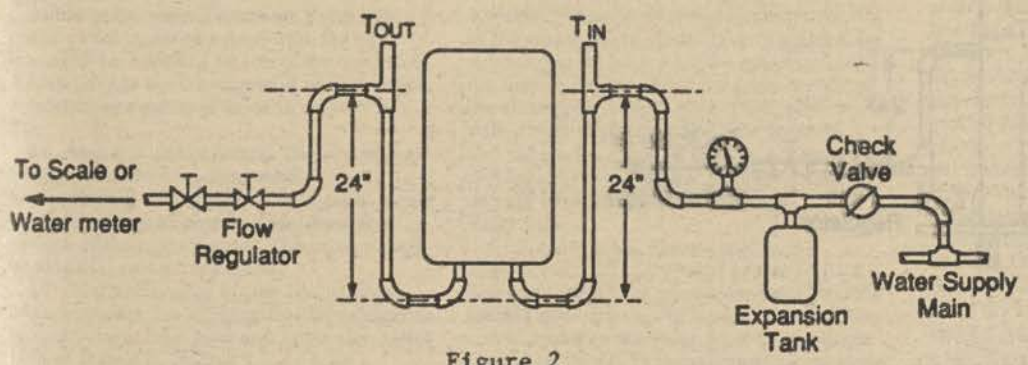

Figure 2

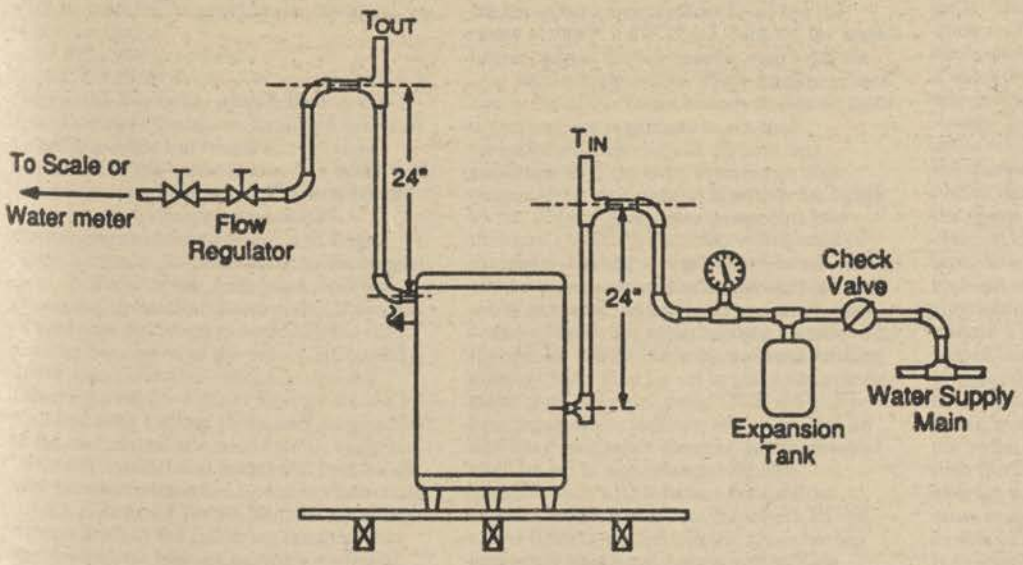

Figure 3

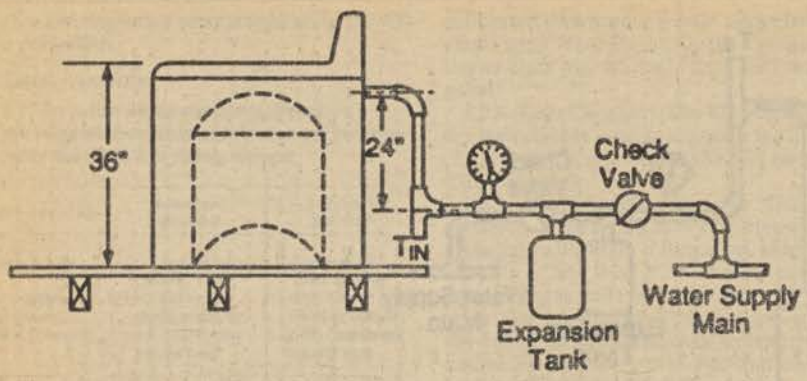

Figure 4a.

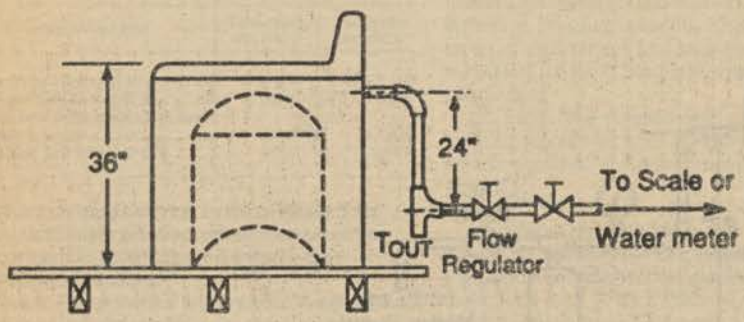

Figure 4b.

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4.4. *Fuel and/or Electrical Power and Energy Consumption.* Install one or more instruments which measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with section 3.

4.5. *Internal Storage Tank Temperature Measurements.* Install six temperature measurement sensors inside the water heater tank with a vertical distance of at least four inches between successive sensors. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes with the tank. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through: (1) The anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, shall be installed as close as possible to its original location. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value of 4 hr-ft^2-°F/Btu.

4.6. *Ambient Temperature.* The ambient air temperature shall be measured approximately at the vertical mid-point of the heater and approximately 2 feet from the surface of the water heater. The sensor shall be shielded against radiation.

4.7. *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figures 1, 2, or 3, as applicable.

4.8. *Flow Control.* A flow control valve shall be installed to provide flow as specified within section 5.

4.9. *Flue Requirements.*

4.9.1. *Oil-Fired Water Heaters.* Establish a draft at the flue collar as specified in the manufacturer's literature. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet and directed vertically upward. For an oil-fired water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2. *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters having a vertically discharging draft hood outlet, a 5 foot vertical vent pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5 foot length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward.

Direct vent gas-fired water heaters shall be installed wth venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.3. *Heat Pump Water Heater Storage Tank.* The tank to be used for testing a heat pump water heater without a tank supplied by the manufacturer shall be an electric storage type water heater having a volume of 47.0 gallons ± 1 gallon with an Energy Factor of 0.87 ± .01 as determined in accordance with section 6.1.7 with two 4.5 kW heating elements controlled in such a manner as to prevent both elements from operating simultaneously.

5. Test Procedures

5.1. *Storage Tank and Heat Pump Water Heaters.*

5.1.1. *Determination of Storage Tank Volume.* Determine the storage capacity, V_{st}, of the water heater under test, in gallons, by subtracting the tare weight—measured while the tank is empty—from the gross weight of the storage tank completely filled with water with all air eliminated and line pressure applied as described in section 2.5. and dividing the resulting net weight by the density of water at the appropriate temperature.

5.1.2. *Setting the Thermostat for a Thermostatically Operated Water Heater.* Starting with a tank of supply water, initiate normal operation of the water heater. After cutout, observe the mean tank temperature (based on the six temperature sensors) every minute until the maximum value is observed. Determine whether this maximum value of the mean tank temperature is within the range of 135°F ±5°F. If not, turn off the water heater, adjust the thermostat, and refill the tank with supply water. Then, initiate normal operation of the water heater, and once again determine the maximum mean tank temperature after cut-out. Repeat this sequence until the maximum mean tank temperature after cut-out is within the range of 135°F ±5°F. If a water heater has two thermostats, the thermostat which controls the upper heating element shall be set first to yield a maximum water temperature of 135°F ±5°F as measured by the temperature tank sensors above the upper heating element. The thermostat which controls the lower heating element shall then be set to yield a maximum mean tank temperature of 135°F ±5°F. For heat pump water heaters, which control an auxiliary resistance element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.1.3. *Power Input Determination.* For all water heaters except electric types having immersed heating elements and initiate normal operation and determine the power input, P, to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be set within ±10% of that recommended by the manufacturer. For oil fired water heaters the fuel pump pressure shall be within ±10% of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2% of the value specified by the manufacturer. For an oil-fired water heater, adjust the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu rating that is within ±2% of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80. Gas- and oil-fired water instantaneous water heaters shall have the burners adjusted to the manufacture's maximum firing rate value.

5.1.4. *First Hour Rating Test.* Establish normal water heater operation with the maximum mean tank temperature within the range specified in section 2.1.4. Begin the first hour rating test after the thermostat has acted to reduce the electrical power or fuel input to the water heater and the maximum storage tank temperature has been achieved. If the water heater incorporates a heat-pump, wait until both the heat pump and electrical heating element(s) have ceased to supply energy to the storage tank. Record the time, oil, gas and/or electrical meter readings as appropriate. Do not interrupt electrical power and/or fuel to the water heater. The rate of water withdrawal shall be 3.00±0.25 gallons per minute. Draw and collect water withdrawn from the water heater in a suitable container for the purpose of determining its weight at the conclusion of the test. During the draw record the inlet and outlet fluid temperature beginning 15 seconds after the start and at every subsequent 5 second interval throughout the duration of each draw. Alternatively, a water meter may be used to directly measure the volume of water withdrawn. Record the maximum outlet temperature which occurs during the draw as T_{max}. The withdrawal of water shall continue until the outlet temperature drops to a value 25°F below T_{max}, defined as T_{min}, at which time the draw shall be terminated. Record the average outlet temperature and mass removed as $T_{del,1}$ and M_1, respectively. If the thermostat acts to reduce the supply of fuel to the main burner or electrical input to the upper heating element of a multiple element electric water heater, or electrical input to a water heater having a single element or multiple elements which operate simultaneously, before one hour has elapsed, initiate a second draw. During the draw record the outlet fluid temperatures beginning 15 seconds after initiating the draw and at every subsequent 5 second interval throughout the duration of each draw until the outlet temperature drops to T_{min}, at which time the draw is terminated. Record the average outlet temperatures as well as the mass removed. Continue this sequence of events until one hour has elapsed. If a draw is currently taking place, continue the draw until the outlet temperature reaches T_{min}, and record the elasped time between the

previously recorded time, at the beginning of the first draw, and the termination of this final draw as τ_{fhr}. If a draw is not taking place at the end of one hour, wait until the thermostat acts to reduce the supply of fuel to the main burner or electrical input to the upper heating element of a multiple element electric water heater, or electrical input to a water heater having a single element or multiple elements which operate simultaneously, to initiate the final draw. During the final draw, record the outlet fluid temperature beginning 15 seconds after initiating the draw and at every subsequent 5 second intervals throughout the duration of the draw until the outlet temperature drops to T_{min}, at which time the draw is terminated. Record the elasped time between the previously recorded time, at the beginning of the first draw, and the termination of the final draw as τ_{fhr}. In either case, record the outlet temperatures and the mass removed during the final draw.

5.1.5. *24 Hour Simulated Use Test.* During the simulated use test, a total of 64.3 gallons are removed. With the water heater turned off, fill the water heater with supply water and apply pressure as described in section 2.1.5. Turn on the water heater and associated heat pump unit, if present. Wait until cutout occurs at 135°F ±5°F, as specified in section 2.1.4. After the cutout occurs, measure the mean tank temperature using the temperature sensors described in section 4.5 every minute until the maximum mean storage tank temperature is achieved. The water heater may be operated through up to three successive cycles of drawing 10 gallons per draw, permitting recovery between each draw, prior to the start of the test. Record at this time (designated as $\tau=0$), the mean tank temperature ($\overline{T}_o$), and the oil, gas, and electrical energy measurements as appropriate. Begin the 24 hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage, 64.3 gallons. Record the average storage tank and ambient temperature every 15 minutes throughout the 24 hour simulated use test unless recovery or a draw is occurring. At elapsed time intervals of one, two, three, four and five hours from $\tau=0$), initiate additional draws removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any single draw being ±0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to 64.3±1.0 gallons.

All draws during the simulated use test are to be made at flow rates of 3.0±0.25 gallons per minute. Measurements of the inlet and outlet temperatures shall be made beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of each draw. The airithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the maximum mean tank temperature observed after cut-out, $T_{max,1}$, and the energy consumed, Q_r for oil, gas, and heat pump water heaters including auxiliary energy such as pilot lights, pumps, fans, etc. For heat pump water heaters Q_r, is the sum of the energy consumed by the heat pump and the electrical heating elements(s).

At the end of the recovery period following the sixth draw, record the total electric and/or fuel energy consumption, Q_{su}, and the scale reading or the meter reading, as appropriate. If a water scale is used, determine the net weight of the water withdrawn, M_{FHR} in pounds. Record the maximum value of the mean tank temperature after cutout as $\overline{T}_{su}$. Except as noted below, allow the water heater to remain in the standby mode until 24 hours have elapsed from the start of the test, $\tau=0$. Prevent the water heater from beginning a recovery cycle during the last hour of the test by turning off the electric power to the electrical heating elements and heat pump, if present, or by turning down the fuel supply to the main burner at an elapsed time of 23 hours. If a recovery is taking place at an elapsed time of 23 hours, wait until the recovery is complete before reducing the electrical and/or fuel supply to the water heater. At 24 hours, record the mean tank temperature, $\overline{T}_{24}$, and the electric and/or fuel instrument readings. Determine the total energy consumption during the entire 24 hour simulated use test, Q. Record the time interval between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test as $\tau_{stby,1}$. Record the time during which water was not being withdrawn from the water heater during the entire 24 hour period as $\tau_{stby,2}$.

5.2 Instantaneous Water Heaters

5.2.1. *Setting the Outlet Discharge Temperature.* Initiate normal operation of the water heater at the full input rating. Monitor the discharge water temperature and set to a value of 135°F ± 5°F in accordance with the manufacturer's instructions. If the water heater is not capable of providing 3.00 ± 0.25 gallons per minute then adjust the flow rate as necessary to achieve the specified discharge water temperature. Record the corresponding flow rate as V_{max}. If the instantaneous water heater incorporates a controller which permits continous burner operation at a reduced input rate, adjust the flow rate as necessary to achieve a discharge water temperature of 135° ± 5°F while maintaining the minimum input rate. Record the corresponding flow rate, V_{min}. If an outlet temperature of 135° ± 5°F cannot be achieved at the minimum allowable flow rate permitted by the instantaneous water heater, record the flow rate as V_{min} and the outlet temperature as T_{min}.

5.2.2. *Power Input Determination.* For oil and gas flow actuated water heaters, adjust the burners to the maximum firing rate value specified by the manufacturer.

5.2.3. *First Hour Rating Test for Instantaneous Water Heaters.* Establish normal heater operation at the maximum input rate with the discharge water temperature set in accordance with section 5.2.1. Record the time, oil, and/or gas meters as appropriate. Do not interrupt electrical or fuel to the water heater. Draw and collect water withdrawn from the water heater, while recording the inlet and outlet fluid temperatures beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of the draw in a suitable container for the purpose of determining its weight at the conclusion of the test. Alternatively, a water meter may be used to directly measure the value of water withdrawn. At the end of one hour terminate the draw. Determine the mass of water withdrawn, M_{FHR}, in pounds, or the volume of water withdrawn, V_{FHR}, in gallons with an error no greater than 2 percent.

5.2.4. 24 Hour Simulated Use Test

5.2.4.1. *Fixed Input Instantaneous Water Heaters.* Establish normal operation with the discharge water temperature and flow rate set to values of 135°F ± 5°F and V_{max}, respectively. Record the oil, gas, and electrical energy measurements, as appropriate. Begin the 24 hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily not water usage, 64.3 gallons. At elapsed time intervals of one, two, three, four, and five hours from $\tau=0$, initiate additional draws removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any single draw being ± 0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to 64.3±1.0 gallons. Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after the draw is initiated and at every 5 second interval throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the energy consumed, Q_r. Allow the water heater to remain in the standby mode until exactly 24 hours have elapsed from the start of the test, $\tau=0$. At 24 hours, record the electric and/or fuel instrument readings. Determine the energy consumption during the entire 24 hour simulated use test, Q.

5.2.4.2. *Variable Input Instantaneous Water Heaters.* If the instantaneous water heater incorporates a controller which permits continuous burner operation at a reduced input rate, the first three draws shall be conducted using the maximum flow rate, V_{max}, while removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any one of the three draws being ± 0.5 gallons. The second three draws shall be conducted at V_{min}. If an outlet temperature of 135° ± 5°F could not be achieved at the minimum flow rate permitted by the instantaneous water heater, the last three draws should be lengthened such that the volume removed is equivalent to

$$V_{4,5,6} = \frac{64.3}{6} \cdot \left[\frac{77°F}{T_{min} - 58°F} \right]$$

with the maximun allowable definition for any one of the three draws being ± 0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to $32.15 + 3 \cdot V_{4,5,6} \pm 1.0$ gallons. Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after the draw is initiated and at every 5 second interval throughout the duration of the draw. Determine the arithmetic mean of the hot water discharge temperature and the cold water inlet temperature for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the energy consumption, $Q_{r,\ max}$. Record the energy consumed prior to the fourth draw and at the end of the recovery period following the fourth draw, $Q_{r,\ min}$.

Allow the water heater to remain in the standby mode until exactly 24 hours have elapsed from the start of the test, $\tau = 0$. At 24 hours, record the electric and/or fuel instrument readings. Determine the energy consumption during the entire 24 hours simulated use test, Q.

6. Computations

6.1 *Storage Tank Water Heaters.*

6.1.1. *Storage Tank Capacity.* The storage tank capacity is computed using the following—

$$V_{st} = (W_f - W_t)/\rho$$

where V_{st} is the storage capacity of the water heater, gallons

W_f is the weight of the storage tank completely filled with water, lbm

W_t is the tare weight of the empty storage tank, lbm

ρ is the density of water at the appropriate temperature, lbm/gal.

6.1.2. First Hour Rating Computation. Compute the first hour rating as

$$F_{hr} = \frac{60}{\tau_{fhr}} \sum_{i=1}^{n} \frac{M_i(T_{del.\ i} - T_{in.i})}{\rho(135°F - 58°F)}$$

Which may be expressed as

$$F_{hr} = \frac{60}{\tau_{fhr}} \sum_{i=1}^{n} \frac{M_i(T_{del.\ i} - T_{in.i})}{\rho(77°F)}$$

where M_i represents the mass removed during the ith draw of the first hour rating test, lbm

$T_{del.\ i}$ is the average delivery temperature for the ith draw which occurred during the first hour rating test, °F

τ_{fhr} represents the elasped time recorded during the first hour rating test, minutes

$\bar{T}_{in.i}$ is the average inlet temperature for the ith draw which occurred during the first hour rating test, °F

ρ represents the density of water at the average delivery temperature, lbm/gal

and n represents the number of draws which occur during the test If a water meter is used in lieu of a scale, the first hour rating is

$$F_{hr} = \frac{60}{\tau_{fhr}} \sum_{i=1}^{n} \frac{V_i(\bar{T}_{del.i} - \bar{T}_{in.i})}{77°F}$$

where V_i represents the volume removed during the ith draw of the first hour rating test, gal

6.1.3 *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage type water heaters is computed as

$$\eta_r = \frac{M_1 C_{p1}(\bar{T}_{del.1} - \bar{T}_{in.1})}{Q_r} + \frac{V_{st}\rho C_{p2}(T_{max.1} - \bar{T}_o)}{Q_r}$$

where M_1 is the mass withdrawn during the first draw, lbm

C_{p1} is the specific heat of water at the average temperature $(\bar{T}_{del.1} + T_{in.1})/2$, btu/lbm °F

$\bar{T}_{del.1}$ is the average delivery temperature for the first draw, °F

$\bar{T}_{in.1}$ is the average inlet temperature for the first draw, °F

V_{st} is the storage tank capacity, gal

ρ is the density of water at the average temperature $(T_{max.1} + \bar{T}_o)/2$, lbm/gal

C_{p2} is the specific heat of water at the average temperature $(T_{max.1} + \bar{T}_o)/2$, Btu/lbm °F

$T_{max.1}$ is the maximum mean tank temperature recorded after cutout following the first draw, °F

$\bar{T}_o$ is the maximum mean tank temperature recorded prior to the first draw, °F

and Q_r is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu. (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1kWh = 3412.76 Btu.)

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98 percent.

6.1.4. *Hourly Standby Losses.* The hourly standby losses are computed as

$$Q_{hr} = \left[Q_{stby} - \frac{MC_p(\bar{T}_{24} - T_{su})}{\eta_r} \right] \Big/ \tau_{stby.1}$$

where Q_{hr} is the hourly standby energy losses of the water heater, Btu/hr

Q_{stby} is the total energy consumer by the water heater between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, Btu

M is the mass of the water within the storage tank, lbm

C_p is the specific heat of water at the average temperature $(\bar{T}_{24} + \bar{T}_{su})/2$, Btu/lbm °F

$\bar{T}_{24}$ is the mean tank temperature at the end of the 24 hour test period, °F

$\bar{T}_{su}$ is the maximum mean tank temperature observed after the sixth draw, °F

and $\tau_{stby.1}$ is the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, hours

The standby heat loss coefficient for the tank is computed as—

$$UA = \frac{Q_{hr}}{T_{t.stby} - T_{a.stby}}$$

where $\bar{T}_{t.stby}$ is the average storage tank temperature between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, °F

$\bar{T}_{a.stby}$ is the average ambient temperature between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, °F

and UA is the standby heat loss coefficient of the storage tank,

$$\frac{\text{BTU}}{\text{hr °F}}$$

6.1.5. Daily Water Heating Energy Consumption. The daily water heating energy consumption, Q_d is computed as

$$Q_d = Q - \frac{C_p M(\bar{T}_{24} - \bar{T}_o)}{\eta_r}$$

where Q is the total energy used by the water heater during the 24 hours simulated use test including auxiliary energy such as pilot lights, pumps, fans, etc., Btu

C_p is the specific heat of water at the average temperature $(\bar{T}_{24} + \bar{T}_o)/2$, Btu/lbm °F

M is the mass of water within the storge tank, lbm

$\bar{T}_{24}$ is the average tank temperature at the conclusion of the 24 hours simulated use test, °F

$\bar{T}_o$ is the average tank temperature at the beginning of the 24 hours simulated use test, recorded one minute before the first draw is initiated °F

and η_r is the recovery efficiency of the hot water heater, dimensionless.

6.1.6. *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{da} takes into account that the temperature difference between the storage tank and surrounding ambient temperature may not be the nominal value of 67.5°F (135°F − 67.5°F) due to the 10°F allowable variation in storage tank temperature, 135 ± 5°F, and the 5°F allowable variation in surrounding ambient temperature 65°F to 70°F. The adjusted daily water heating energy consumption is computed as

$$Q_{da} = Q_d - [(\bar{T}_{stby} - \bar{T}_{a,stby}] - (135°F - 67.5°F)]UA\tau_{stby,2}$$

where Q_{da} is the adjusted daily water heating consumption, Btu

$\bar{T}_{stby}$ is the mean tank temperature during the total standby portion, $\tau_{stby,2}$, of the 24 hour test, °F

$\bar{T}_{a,stby}$ is the average ambient temperature during the total standby portion, $\tau_{stby,2}$, of the 24 hour test, °F

UA is the standby heat loss coefficient for the storage tank, Btu/hr°F

and $\tau_{stby,2}$ is the number of hours during the 24 hour simulated test when water was not being withdrawn from the water heater

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F (135°F − 58°F). The following equations adjust the experimental data to a nominal 77°F temperature rise.

The energy used to heat water, Btu per day, may be computed as—

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{pi}(\bar{T}_{del,i} - T_{in,i})}{\eta_r}$$

where M_i is the mass withdrawn for the ith draw (i=1 to 6), lbm

C_{pi} is the specific heat of water, Btu/lbm °F

The energy required to heat the same quantity of water over a 77 °F temperature rise, Btu per day, is

$$Q_{HW,77} = \sum_{i=1}^{6} \frac{M_i C_{pi}(135\ °F - 58\ °F)}{\eta_r}$$

The difference between these two values is—

$$Q_{HWD} = Q_{HW,77} - Q_{HW}$$

which must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 67.5°F and the temperature rise across the storage tank may not be 77°F is—

$$Q_{dm} = Q_{da} + Q_{HWD}$$

6.1.7. Energy Factor. The energy factor, E_f, is computed as—

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{Q_{dm}}$$

where Q_{dm} is the modified daily water heating energy consumption as computed in accordance with Section 6.1.6, Btu

6.1.8. Annual Energy Consumption

The annual energy consumption for storage type and heat pump water heaters is computed as—

$$E_{annual} = Q_{dm} * 365$$

where Q_{dm} is the modified daily energy consumption value, Btu per day and 365 is the number of days within a year, days

6.2. Instantaneous Hot Water Heaters.

6.2.1. *First Hour Rating Computation.* Compute the first hour rating as

$$F_{hr} = \frac{M(\bar{T}_{del} - \bar{T}_{in})}{\rho(135°F - 58°F)}$$

which may be expressed as—

$$F_{hr} = \frac{M(\bar{T}_{del} - \bar{T}_{in})}{\rho(77°F)}$$

where M represents the mass removed during the one hour continuous draw, lbm

$\bar{T}_{del}$ is the average delivery temperature, °F

$\bar{T}_{in}$ is the average inlet temperature, °F

and ρ represents the density of water at the average delivery temperature, lbm/gal

If a water meter is used in lieu of a scale the first hour rating is computed as—

$$F_{hr} = \frac{V(\bar{T}_{del} - \bar{T}_{in})}{77°F}$$

where V represents the volume of water removed during the one hour continuous draw, gal

6.2.2. Recovery Efficiency

6.2.2.1. *Fixed Input Instantaneous Water Heaters.* The recovery efficiency is computed as

$$\eta_r = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r}$$

where M_1 is the mass withdrawn during the first draw, lbm

C_{p1} is the specific heat of water at the average temperature $(\bar{T}_{del,1} + \bar{T}_{in,1})/2$, Btu/lbm°F

$\bar{T}_{del,1}$ is the average delivery temperature for the first draw, °F

$\bar{T}_{in,1}$ is the average inlet temperature for the first draw, °F

and Q_r is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu

6.2.2.2. Variable Input Instantaneous Water Heaters

For instantaneous water heaters which have a variable firing rate, two recovery efficiency values are computed, one at the maximum input rate and one at the minimum input rate. The recovery efficiency used in subsequent computations is taken as the average of these two values. The maximum recovery efficiency is computed as

$$\eta_{r,max} = \frac{M_1 C_{p1}(\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_{r,max}}$$

where M_1 is the mass withdrawn during the first draw, lbm

C_{p1} is the specific heat of water at the average temperature $(T_{del,1} + T_{in,1})/2$, Btu/lbm °F

$\bar{T}_{del,1}$ is the average delivery temperature for the first draw, °F

$\bar{T}_{in,1}$ is the average inlet temperature for the first draw, °F

and $Q_{r,max}$ is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot light, Btu

The minimum recovery efficiency is computed as—

$$\eta_{r\text{-}min} = \frac{M_4 C_{p4}(\bar{T}_{del.4} - \bar{T}_{in.4})}{Q_{r\text{-}min}}$$

where M_4 is the mass withdrawn during the fourth draw, lbm

C_{p4} is the specific heat of water, Btu/lbm °F

$\bar{T}_{del.4}$ is the average delivery temperature for the fourth draw, °F

$\bar{T}_{in.4}$ is the average inlet temperature for the first draw, °F

and $Q_{r\text{-}min}$ is the total energy consumed immediately prior to the fourth draw and cutout following the fourth draw, including auxiliary energy such as pilot lights, Btu

The recovery efficiency is computed as—

$$\eta_r = \frac{\eta_{r\text{-}max} + \eta_{r\text{-}min}}{2}$$

6.2.3. *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d is computed as—

$$Q_d = Q$$

where Q is the energy used by the flow actuated water heater during the 24 hour simulated use test

A modification is needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77 °F (135 °F−58 °F). The following equations adjust the experimental data to a nominal 77 °F temperature rise.

The energy used to heat water may be computed as—

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{pi}(T_{del.i} - T_{in.i})}{\eta_r}$$

The energy required to heat the same quantity of water over a 77 °F temperature rise is—

$$Q_{HW.77} = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{\eta_r}$$

The difference between these two values is—

$$Q_{HWD} = Q_{HW.77} - Q_{HW}$$

which must be added to the daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature rise across the storage tank may not be 77 °F is—

$$Q_{am} = Q_a + Q_{HWD}$$

6.2.4. *Energy Factor.* The energy factor, E_f, is computed as—

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}(135°F - 58°F)}{Q_{dm}}$$

where Q_{dm} is the daily water heating energy consumption as computed in accordance with section 6.2.3., Btu

M_i is the mass associated with the ith draw, lbm

C_{pi} is the specific heat of water computed at a temperature of (58 °F+135 °F)/2, Btu/lbm °F

$\bar{T}_{del.i}$ is the average delivery temperature for the ith draw, °F

and $\bar{T}_{in.i}$ is the average inlet temperature for the ith draw, °F

6.2.5. *Annual Energy Consumption.* The annual energy consumption for instantaneous type water heaters is computed as—

$$E_{annual} = Q_{dm} * 365$$

where Q_{dm} is the modified daily energy consumption, Btu per day

and 365 is the number of days within a year, days.

7. Ratings for Untested Models

In order to relieve the test burden to manufacturers who offer water heaters which differ only in fuel type or power input, ratings for untested models may be established in accordance with the following procedures. In lieu of the following procedures a manufacturer may elect to test the unit for which a rating is sought.

7.1. *Gas Water Heaters.* Ratings obtained for gas water heaters using natural gas can be used for an identical water heater which utilizes propane gas if the input ratings are within 10 percent.

7.2. Electric Water Heaters

7.2.1. *First Hour Rating.* If an electric storage type water heater is available with more than one input rating, the manufacturer shall designate the standard input rating and the water heater need only be tested with heating elements at the designated standard input ratings. The first hour ratings for units having power input rating less than the designated standard input rating shall be assigned a first hour rating equivalent to the first draw of the first hour rating for the electric water heater with the standard input rating. For units having power inputs greater than the designated standard input rating, the first hour rating shall be equivalent to that measured for the water heater with the standard input rating.

7.2.2. *Energy Factor.* The energy factor for identical electric storage type water heaters, with the exception of heating element wattage, may use the energy factor obtained during testing of the water heater with the designated standard input rating.

§ 430.31 [Amended]

4. Section 430.31, *Purpose and Scope,* is amended by adding the following sentence at the end of the section to read as follows:

* * * Basic models of covered products manufactured before the date on which an amended energy conservation standard becomes effective (or revisions of such models manufactured after such date and have the same energy efficiency or energy use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

§ 430.32 [Amended]

5. Section 430.32, *Energy conservation standards and effective dates,* is amended by revising paragraph (d), and by revising the effective date of entry "2." in paragraph (e) to read "09/01/90." The revised paragraph (d) reads as set forth below:

* * * * *

(d) *Water heaters.*

The energy factor of water heaters shall not be less than the following products manufactured on or after the indicated dates:

Product class	Energy factor, as of Jan. 1, 1990	Energy factor, as of April 15, 1991
1. Gas Water Heater.	0.62−(.0019× Rated Storage Volume in gallons).	0.62−(.0019× Rated Storage Volume in gallons).
2. Oil Water Heater.	0.59−(.0019× Rated Storage Volume in gallons).	0.59−(.0019× Rated Storage Volume in gallons).
3. Electric Water Heater.	0.95−(.00132× Rated Storage Volume in gallons).	0.93−(.00132× Rated Volume Storage in gallons).

Note: Rated Storage Volume=the water storage capacity of a water heater, in gallons, as specified by the manufacturer.

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H.R. 5643/Pub. L. 101-416

To grant a temporary extension on the authority under which the Government may accept the voluntary services of private-sector executives; to clarify the status of Federal employees assigned to private-sector positions while participating in an executive exchange program; and for other purposes. (Oct. 12, 1990; 104 Stat. 902; 2 pages) Price: $1.00

H.J. Res. 398/Pub. L. 101-417

To commemorate the centennial of the creation by Congress of Yosemite National Park. (Oct. 12, 1990; 104 Stat. 904; 2 pages) Price: $1.00

H.J. Res. 482/Pub. L. 101-418

Designating March 1991 as "Irish-American Heritage Month". (Oct. 12, 1990; 104 Stat. 906; 1 page) Price: $1.00

S. 1738/Pub. L. 101-419

To convey certain Oregon and California Railroad Grant Lands in Josephine County, Oregon, to the Rogue Community College District, and for other purposes. (Oct. 12, 1990; 104 Stat. 907; 1 page) Price: $1.00

S. 2583/Pub. L. 101-420

To amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances. (Oct. 12, 1990; 104 Stat. 908; 1 page) Price: $1.00

H.R. 3007/Pub. L. 101-421

Drug and Alcohol Dependent Offenders Treatment Act of 1989. (Oct. 12, 1990; 104 Stat. 909; 1 page) Price: $1.00

H.R. 3697/Pub. L. 101-422

To authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes. (Oct. 12, 1990; 104 Stat. 910; 2 pages) Price: $1.00

S.J. Res. 57/Pub. L. 101-423

To establish a national policy on permanent papers. (Oct. 12, 1990; 104 Stat. 912; 2 pages) Price: $1.00

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To establish calendar year 1992 as the "Year of Clean Water". (Oct. 12, 1990; 104 Stat. 914; 1 page) Price: $1.00

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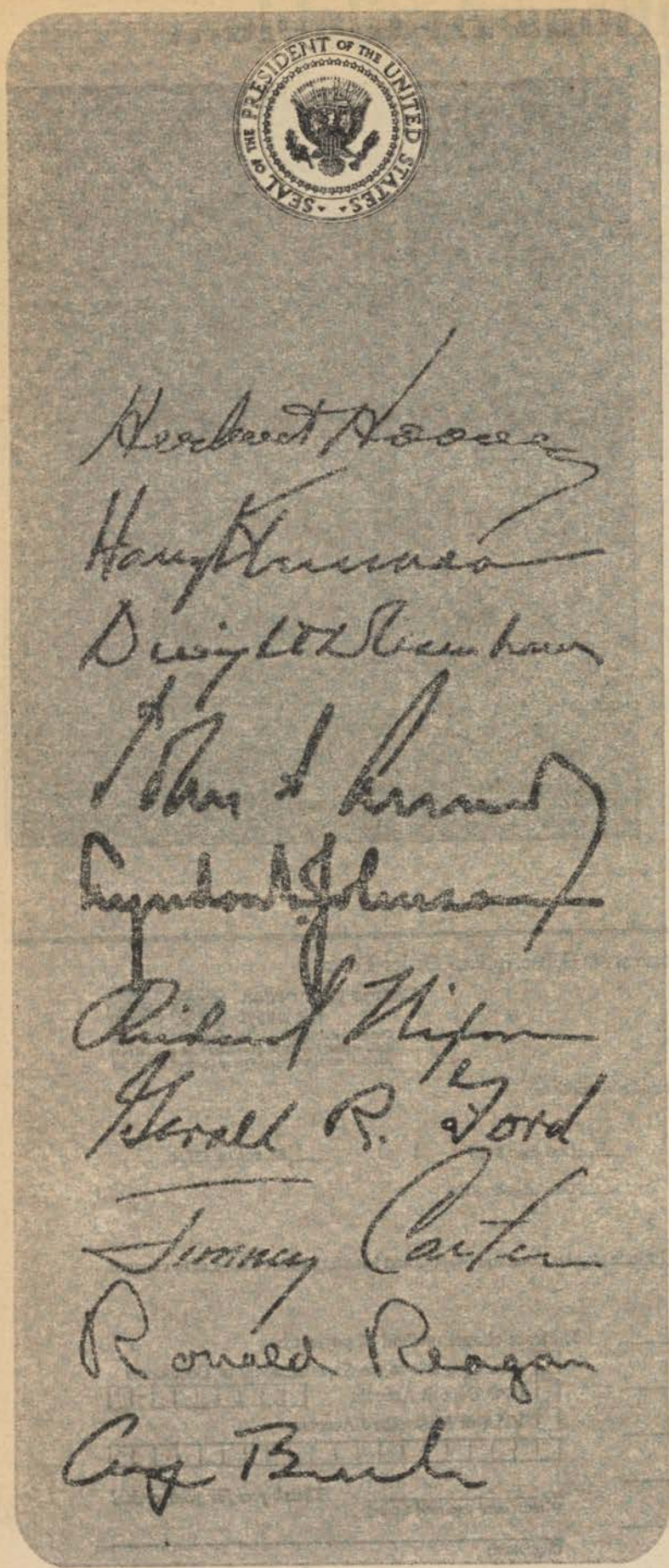

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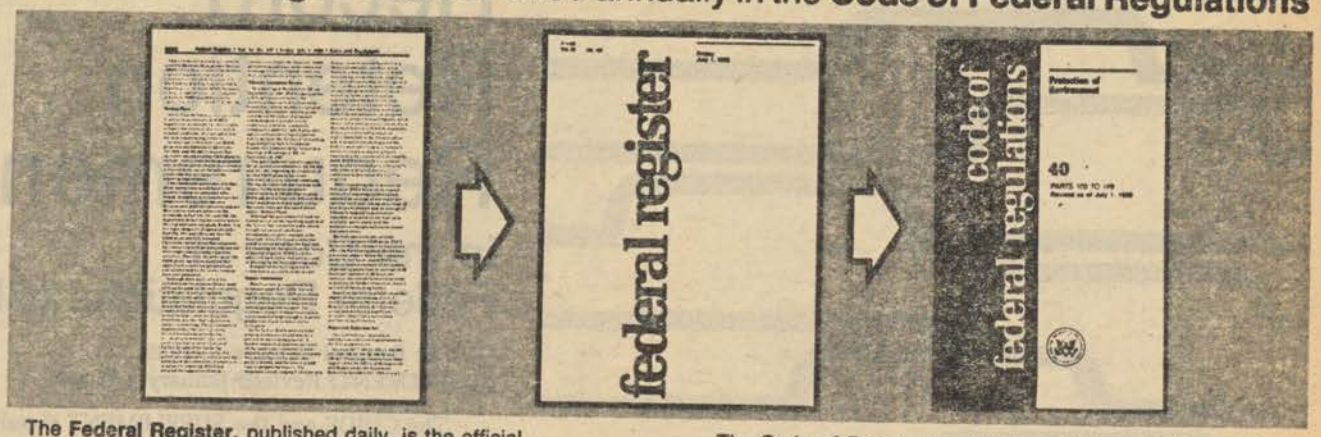

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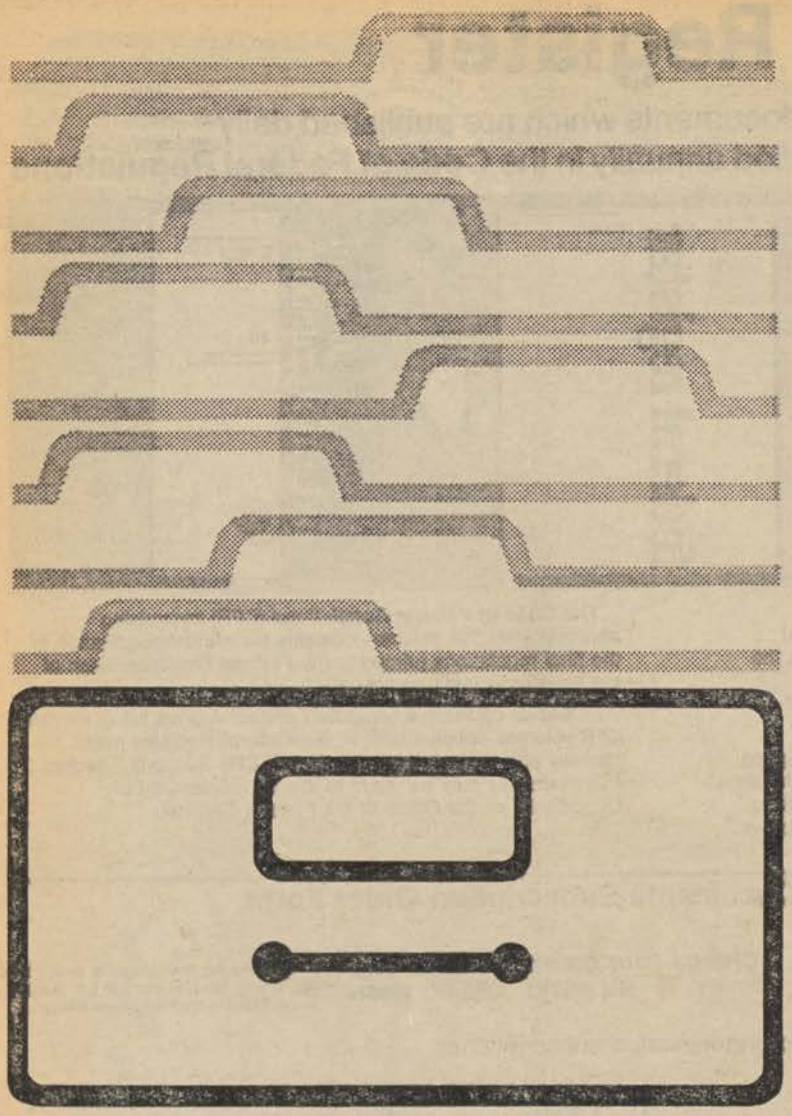

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