11-5-90
Vol. 55 No. 214

federal register

Monday
November 5, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

11-5-90
Vol. 55 No. 214
Pages 46493-46640

Federal Register

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November 5, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Rules and Regulations

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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

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 742]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from November 4 through November 10, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 742 (7 CFR part 910) is effective for the period from November 4 through November 10, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

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

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

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

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

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

The California-Arizona lemon industry is characterized by a larger number of growers located over a wide area. The Committee's estimate of the 1990-91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989-90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1,990-91 production at 6,600 cars compared to the 4,158 cars produced in 1989-90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990-91 lemon production is expected to total 40,200 cars, 8 percent above the 1989-90 season and 1 percent more than the crop utilized in 1988-89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990-91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989-90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989-90. Fresh exports are projected at 20.1 percent of the total 1990-91 crop utilization compared with 22 percent in 1989-90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989-90 crop.

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

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

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1991-91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and

size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on October 30, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 320,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is the same as the estimated projections in the Committee's current shipping schedule.

During the week ending on October 27, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 309,000 cartons compared with 280,000 cartons shipped during the week ending on October 28, 1989. Export shipments totaled 217,000 cartons compared with 193,000 cartons shipped during the week ending on October 28, 1989.

Fresh domestic shipments to date for the 1990–91 season total 3,974,000 cartons compared with 3,789,000 cartons shipped by this time during the 1989–90 season. Export shipments total 1,871,000 cartons compared with 2,021,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 3,151,000 cartons compared with 1,990,000 cartons shipped by this time during 1989-90.

For the week ending on October 27, 1990, regulated shipments of lemons to the fresh domestic market were 309,000 cartons on an adjusted allotment of 360,000 cartons which resulted in net undershipments of 51,000 cartons. Regulated shipments for the current week (October 28 through November 3, 1990) are estimated at 315,000 cartons on an adjusted allotment of 362,000 cartons. Thus, undershipments of 47,000 cartons could be carried over into the week ending on November 10, 1990.

The average f.o.b. shipping point price for the week ending on October 27, 1990, was $12.99 per carton based on a reported sales volume of 311,000 cartons compared with last week's average of $13.08 per carton on a reported sales volume of 307,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $13.14 per carton. The average f.o.b. shipping point price for the week ending on October 28, 1989, was $14.07 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.59 per carton.

The Department's Market News Service reported that, as of October 30, the demand for lemons is "fairly light;" the market for first grade lemons, sizes 165 to 200, is slightly lower and the market for all other grades and sizes is "about steady." At the meeting, several Committee members indicated that demand had declined somewhat. Two members commented that inventory levels had increased. One Committee member commented that business should improve in November due to the anticipated holiday trade and promotional activities. The Committee unanimously recommended volume regulation for the period from November 4 through November 10, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 107 percent of the projected season average fresh on-tree parity equivalent price of $8.24 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from November 4 through November 10, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

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

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

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

In addition, market information needed for the formulation of the basis for this action was not available until October 30, 1990, and this action needs to be effective for the regulatory week which begins on November 4, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.1042 is added to read as follows:

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

§ 910.1042 Lemon Regulation 742.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 4 through November 10, 1990, is established at 320,000 cartons.

Dated: October 31, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26156 filed 11–2–90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 360, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, and 396

Removal of Regulations Transferred from Federal Savings and Loan Insurance Corporation (Federal Home Loan Bank Board)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is removing certain regulations relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the former Federal Savings and Loan Insurance Corporation (FSLIC) insurance fund, which were transferred to the FDIC, because they are redundant with other FDIC regulations, or conflict with statutory law, or are unnecessary.

EFFECTIVE DATE: This action is effective on November 5, 1990.

FOR FURTHER INFORMATION CONTACT: J. William Via, Jr., Counsel, Legal Division (202/898-3733) (issues other than conservator-receiver); Carl Gold, Counsel, Legal Division (202/416-7327) (conservator-receiver issues re thrifts); or Thomas C Bahlo, Counsel, Legal Division (202/416-7073), (conservator-receiver issues re banks); Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), signed into law on August 9, 1989 (Public Law No. 101-73), immediately abolished the FSLIC, and abolished the Federal Home Loan Bank Board (FHLBB) 60 days after enactment. Although these agencies have been abolished, FIRREA provides that FHLBB or FSLIC regulations and orders that relate to functions transferred by FIRREA and that were in effect on August 9, 1989 shall continue in effect according to their terms. These rules and regulations are enforceable by or against the FDIC, the Director of the Office of Thrift Supervision (OTS), the Federal Housing Finance Board, or the Resolution Trust Corporation (RTC), as the case may be, until the responsible agency modifies, terminates, sets aside, or supersedes them in accordance with applicable law, or until the rules and regulations are modified, terminated, set aside, or superseded by operation of law. Pursuant to sections 401(i) and 402(b) of FIRREA, the Chairperson of the FDIC and the Director of the OTS were required to identify those FHLBB or FSLIC regulations and orders relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the FSLIC Insurance Fund which would be enforceable by the FDIC and the OTS, and publish notice of the allocation of these regulations in the **Federal Register**. This was accomplished in a separate notice document jointly issued by the two agencies and published in the **Federal Register** on October 6, 1989 (54 FR 41359). Subsequently the FDIC formally transferred those regulations which were allocated to it from 12 CFR chapter V to 12 CFR chapter III, and redesignated them to conform to the current structure of the FDIC's regulations in 12 CFR chapter III. This was accomplished in another rule document issued by the FDIC and published in the **Federal Register** on October 18, 1989 (54 FR 42799). At that time no technical changes were made to the regulations in order that the transfer could be made in the most expeditious manner.

An examination of 12 U.S.C. 1821(d), as amended by section 212 of FIRREA, reveals that FIRREA provides a comprehensive statutory scheme for the conduct of conservatorships and receiverships, which the FDIC concludes was meant to supersede the FHLBB's regulations on these matters, subject to the power of the FDIC and/or RTC to supplement the statute as necessary, either by internal procedures or such regulations as the FDIC or RTC find to be necessary and consistent with the statutory framework. Subsection (d)(2) of 12 U.S.C. 1821 sets forth in detail the powers and duties of the FDIC/RTC as conservator or receiver. Subsection (d)(3) provides a detailed, comprehensive procedure for the receiver's determination of claims. This includes procedures and deadlines for issuing notification to creditors and receipt of creditor claims; standards for the allowance or disallowance of claims; deadlines for the receiver's determination of a claim; procedures by which a claimant may obtain an agency or judicial hearing on the merits of a disallowed claim; and procedures for the distribution of receivership proceeds. Subsection (e) sets forth comprehensive standards governing a receiver's or conservator's authority to repudiate contracts, including the measure of damages to which the other contracting party may be entitled in the event of repudiation. Subsection (e) also treats the authority of a conservator or receiver to enforce certain contracts notwithstanding the appointment of the conservator or receiver, and contains provisions governing the treatment of security interests by conservators or receivers. Subsection (i) provides for the valuation of claims in default and establishes the maximum liability of the Corporation, in its receivership or other capacity, to any claimant. Section 501(b)(4) of FIRREA, 12 U.S.C. 1441a(b)(4), authorizes the RTC as conservator or receiver to utilize the conservator and receiver powers provided to the FDIC by 12 U.S.C. 1821.

By this action, the FDIC is removing certain of the transferred regulations (original designation shown in brackets) relating not only to conservatorships and receiverships, but to other matters as well, to promote conformity with current FDIC regulations and to eliminate conflicts with law.

B. Summary of Comments

On August 22, 1990, the FDIC published in the **Federal Register** (55 FR 34281) a notice of the proposed removal of the regulations that are the subject of this action and invited comments, even though it was concluded that such notice and comment period were not required. No comments were received.

C. The Regulations Being Removed

Part 384 [562] (Application for Insurance of Accounts) sets out the application procedures for new state chartered savings institutions to obtain insurance of accounts. It is being removed since these or comparable procedures have been incorporated into amendments recently made to part 303 of the FDIC regulations. See 54 FR 53551 (Dec. 29, 1989).

Sections 385.1 [563.29-1] (Continuation of insurance) and 385.3 [563.31] (Other insurance or guaranty) are being removed as redundant with existing law. Section 385.1 provides that an insured institution may change its name or charter to become a state savings bank-type institution and retain insured status if its authority would not be significantly changed. Section 385.3 provides that an insured institution may not acquire any insurance on, or guaranty of, all or part of its insured accounts in addition to that provided by the FSLIC (or the FDIC in the case of an FDIC-insured federal association), and specifies that the giving of bond or security pursuant to 12 CFR 545.16 and 545.103 are exceptions to this prohibition.

Section 385.4 [563.36] (Equal Opportunity in Employment) is being

removed as inconsistent with law, as amended by FIRREA. This section is based on a finding by the FHLBB that deposit insurance as provided by the FSLIC under prior law is a contract and that insured institutions are before government contractors under Executive Order 11246. These institutions are not insured under the Federal Deposit Insurance Act, and the FDIC has consistently held that deposit insurance provided thereunder is not a contract and that insured institutions are not government contractors solely by reason of being FDIC-insured.

Section 385.5 [563.8–2] (Corporation's right of purchase), is being removed as unnecessary. This provision applies, except in limited circumstances, when an institution insured by the former FSLIC borrows money and gives collateral as security. In applicable cases, the security agreement must provide that, upon default by such institution, the FSLIC will be notified and have an opportunity to purchase the collateral before it is liquidated or otherwise disposed of.

Sections 385.6 [563.15], 385.7 [563.16] and 385.8 [563.16–2] (Premiums), which govern the method and amount of premium payments by former FSLIC insured institutions to the former FSLIC, are being removed since the FDIC has established Part 327 to bring the premiums assessed by FSLIC into conformity with the assessment procedures and requirements of the FDIC. Section 208 of FIRREA establishes a new assessment schedule and procedures for insured institutions which part 327 implements.

Section 385.2 [563.30] by which the former FSLIC reserved the right to prescribe the form in which insurance of accounts may be advertised, is being removed as redundant.

Section 385.9 [563.28] (Advertising of insurance of accounts), is being removed since savings associations are not longer "members" of the FSLIC.

Parts 382 [548], 383 [549] 388 [569a], 392 [575], 394 [576], 395 [577], and 396 [578] relate to the conduct of conservatorships and receiverships and are being removed as displaced by existing law and in light of the conservatorship and receivership provisions of FIRREA found in section 212. Part 389 [569c], which also applies to receivership rules, is also removed, except section 389.11 (Priorities) (excluding paragraph (c)), which sets forth the order in which unsecured claims against a depository institution insured under the Savings Association Insurance Fund, (formerly the FSLIC) or the receiver, proved to the satisfaction of the receiver, have priority, and except section 389.8 (Federal Home Loan Banks as secured creditors; see 54 FR 19155).

Part 393 [575a] consists of procedural regulations which address the statutory requirement that before pursuing a receivership claim against the FDIC as receiver or the RTC as receiver, a party must exhaust its administrative remedies. It was originally indicated that this regulation might be retained, but upon further consideration it is deemed to be unnecessary; accordingly, it is being removed.

Section 386.1(d) [564.1(d)], which prescribes a lengthy, formal administrative appeal process that must be exhausted before a claimant can obtain judicial review of a denied deposit insurance claim, is being removed as unnecessary. This removal does not preclude informal staff review of denied claims upon request, as is now the FDIC practice. A claimant who has invoked the review or appeal process of this provision before the effective date of its removal may continue to rely on, and comply with it until resolution of the claim. The balance of part 386 [564] (Settlement of Insurance) has been displaced by part 330 as revised, pursuant to section 402(c)(3) of FIRREA (requiring the FDIC to prescribe uniform deposit insurance regulations), which was the subject of a separate rulemaking (see 55 FR 20111).

Part 387 [565] (Termination of Insured Status) is being removed as redundant with section 8 of the Federal Deposit Insurance Act, as amended by FIRREA, and with part 308.

Part 390 [572] (Net Worth Certificates) and Part 391 [572a] (Voluntary Assisted-Merger Program) are being removed because these matters are governed by section 13 of the Federal Deposit Insurance Act, as amended by FIRREA.

D. Administrative Procedure Act

The transferred regulations were promulgated by the former Federal Home Loan Bank Board. All of the regulations being removed are in conflict with, or redundant with, statutory law or FDIC regulations, or are unnecessary. Therefore, a notice of proposed rulemaking and ensuing comment period is not required. However, due to the unusual circumstances attendant upon a transfer of authority from one agency to another, and to insure public awareness, a comment period of thirty (30) days was provided.

E. Regulatory Flexibility Act

No notice of proposed rulemaking is required for this action, so the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* do not apply.

F. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are required by this section. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects

12 CFR Parts 360, 382, 383, 388, 389, 391

Savings and loan associations.

12 CFR Parts 384, 385, 387

Bank deposit insurance, Savings and loan associations.

12 CFR Part 386

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

12 CFR Part 390

Administrative practice and procedure, Savings and loan associations.

12 CFR Parts 392, 393, 394, 395

Claims, Savings and loan associations.

12 CFR Part 396

Bank deposit insurance.

Accordingly, under the authority of sections 401(h) of FIRREA, the FDIC hereby amends title 12, chapter III, of the Code of Federal Regulations as set forth below.

PARTS 382, 383, 384, 385, 387, 388, 390, 391, 392, 393, 394, 395, and 396—[REMOVED]

1. Parts 382, 383, 384, 385, 387, 388, 390, 391, 392, 393, 394, 395, and 396 are removed.

PART 386—[AMENDED]

§ 386.1 [Removed]

2. Section 386.1(d) is removed.

3. Part 360 is added to subchapter C and §§ 389.8–1 and 389.11 are redesignated as §§ 360.1 and 360.2, respectively, as follows:

PART 360—RECEIVERSHIP RULES

Sec.

360.1 Federal Home Loan banks as secured creditors.

360.2 Priorities.

Authority: Sec. 401(h), Public Law 101–73, 103 Stat. 357.

PART 360—[AMENDED]

§ 360.2 [Amended]

4. Newly designated § 360.2 is amended by removing and reserving paragraph (c).

PART 389—[REMOVED]

5. Part 389 is removed.

By order of the Board of Directors.

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

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-26101 Filed 11-2-90; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-138-AD; Amdt. 39-6797]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and -320 series airplanes, which requires modification of the emergency lighting control wiring. This amendment is prompted by reports which indicate that the emergency lighting system will not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

EFFECTIVE DATES: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which requires modification of the emergency lighting control wiring, was published in the **Federal Register** on August 14, 1990 (55 FR 33122), and a correction was published in the **Federal Register** on August 27, 1990 (55 FR 34985).

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

The commenter supported the rule but noted the compliance time of "10 minutes" was possibly a typographical error. The FAA concurs. A correction was published in the **Federal Register** on August 27, 1990, to correct the compliance time to "10 months".

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

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operators by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,440.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale: Applies to Model ATR42-300 and -320 series airplanes, Serial Numbers 003 through 150, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Within 10 months after the effective date of this AD, modify the emergency lighting control wiring in Zones 212, 210, and 214, in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42-33-0017, Revision 1, dated March 2, 1990.

B. Immediately after installing the modification, perform an operational test of the emergency lighting system, in accordance with paragraph D. of Aerospatiale service Bulletin ATR42-33-0017, Revision 1, dated March 2, 1990.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26087 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-208-AD; Amdt. 39-6793]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A320 series airplanes, which requires a weekly functional test of SEC 1 and SEC 2 electrical pitch control, and repair, if necessary. This amendment is prompted by recent reports of jamming of the trimmable horizontal stabilizer (THS) actuator control. This condition, if not corrected, could result in the loss of pitch control and resultant reduced controllability of the airplane.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A320 series airplanes. There have been reports of jamming of the trimmable horizontal stabilizer (THS) actuator. Simulator tests and analysis have revealed that, if the electrical pitch trim actuator jams, loss of all pitch control can occur, when combined with latent failures of the SEC 1 and SEC 2 elevator servo control mode selector valve transducer or electro valve reconfiguration logic. This condition, if not corrected, could result in reduced controllability of the airplane.

Airbus Industrie has issued Service Bulletin A320-27-1031, Revision 1, dated August 15, 1990, which describes procedures for a weekly functional check of the ability of SEC 1 and SEC 2 to control pitch, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-138-014(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a weekly check of the ability of SEC 1 and SEC 2 to control pitch, and repair, if necessary, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, Feburary 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to all Model A320 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the loss of pitch electronic control and resultant reduced controllability of the airplane in the event of the trimmable horizontal stabilizer (THS) actuator control jamming, accomplish the following:

A. Within 7 days after the effective date of this AD, and thereafter at intervals not to exceed 7 days, perform a test to check the availability of pitch control through both the SEC 1 and SEC 2, in accordance with Airbus Industrie Service Bulletin A320-27-1031, Revision 1, dated, August 15, 1990.

B. If electrical pitch control is not available through both SEC 1 and SEC 2, repair prior to further flight and test again, in accordance with Airbus Industries Service Bulletin A320-27-1031, Revision 1, dated August 15, 1990. Following repair, repeat the test required by paragraph A. of this AD at intervals not to exceed 7 days.

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

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon

request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Mangaer, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26091 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-220-AD; Amdt. 39-6794]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which currently requires close visual inspections of the trailing edge wedges on the leading edge slats to detect delamination and physical damage, and replacement or repair of defective parts, if necessary. This condition, if not corrected, could result in separation of one or more trailing edges wedges from the airplane, which could adversely affect controllability of the airplane. This amendment increases the applicability by 67 additional airplanes and establishes a threshold of 11,000 flight hours for the initial inspection. This amendment is prompted by a review of Boeing records, which indicate that leading edge slats with trailing edge wedges that are susceptible to delamination were installed on more airplanes than originally determined.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On September 21, 1990, the FAA issued Telegraphic AD T90-20-51, applicable to Boeing Model 757 series airplanes with line numbers 001 through 091, to require inspection of the trailing edge wedges on the leading edge slats, and repair or replacement, if necessary. That action was prompted by reports that eight Boeing Model 757 series airplanes were found with delaminated trailing edge wedges on the leading edge slats. The delamination problem has been traced to a specific type of adhesive (BMS-5-104) that was used in the production of the slat wedges installed on these airplanes. This condition, if not corrected, could result in separation of one or more slat wedges from the airplane, which could adversely affect the controllability of the airplane.

Since issuance of that AD, the FAA has received and reviewed data which indicate that leading edge slats with trailing edge wedges that are susceptible to delamination were also installed on airplanes with line numbers 92 through 158. Therefore, the addressed unsafe condition may exist on these additional 67 airplanes.

Additionally, the data have substantiated that delamination incidents have occurred only after the airplane/slat has accumulated 11,000 flight hours. Therefore, the FAA has determined that it is appropriate to establish an 11,000 flight hour threshold for accomplishment of the initial inspection.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, which describes procedures for a close visual inspection of the trailing edge wedges on the leading edge slats.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes telegraphic AD T90-20-51 to require the inspection of 67 additional airplanes for delamination of the trailing edge wedge of the leading edge slat in accordance with the service bulletin previously described, and establishes an 11,000 flight hour threshold for accomplishment of the intitial inspection.

The inspections required by this AD are considered to be interim action until replacement with new parts is accomplished, or until the manufacturer develops a non-destructive testing procedure, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Telegraphic AD T90-20-51 issued on September 21, 1990, with the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, line number 1 through 158, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of trailing edge wedges from the airplane, accomplish the following:

A. For airplanes line number 001 through 091, prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days after September 21, 1990 (the effective date of telegraphic AD T90-20-51), whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damge in accordance with Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, or earlier FAA-approved revisions.

B. For airplanes line number 092 through 158, prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days of the effective date of this AD, whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damage in accordance with Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, or earlier FAA-approved revisions.

C. Repeat the inspections required by paragraphs A. or B. of htis AD, as applicable, at intervals not to exceed 300 flight hours.

D. If delamination and/or physical damage are found, prior to further flight, repair in accordance with an FAA-approved procedure or replace with new parts.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes telegraphic AD T90-20-51, issued September 21, 1990.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26090 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-121-AD; Amdt. 39-6796]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80, series airplanes, which requires replacement of the oxygen mask and hose assemblies at the mid attendant's station. This amendment is prompted by reports of oxygen mask hoses which are too short to permit the desired mobility for the mid attendant. This condition, if not corrected, could result in the mid attendant's oxygen mask not staying properly positioned if the attendant is required to move; this situation could lead to a temporary loss of oxygen to the flight attendant.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, which requires replacement of the oxygen mask and hose assemblies at the mid attendant's station, was published in the **Federal Register** on July 10, 1990 (55 FR 28226).

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

One commenter requested that the compliance time be extended from the proposed one year to 1½ years to allow accomplishment during a regularly scheduled light "C" check. The FAA does not concur. The replacement of an oxygen mask hose assembly is a simple operation and the additional time is not considered to be warranted.

Two commenters questioned what was meant by "desired mobility" in the statement in the NPRM preamble which indicated that the manufacturer had advised the FAA that the mid flight attendant's station oxygen hose was "too short to permit desired mobility." These commenters suggested that this matter be studied further so that specific criteria could be formulated. The FAA does not concur. The desired mobility is that the flight attendant, while seated, be able to look about the cabin while wearing the oxygen mask. This is not considered to be an unusual or complicated requirement which would require study.

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

There are approximately 268 Model MD-80 series airplanes of the affected design in the worldwide fleet. It is estimated that 251 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. There is no cost for the required parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,020.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Model DC–9–81, –82, and –83 (MD–81, –82, –83) series airplanes, serial numbers as listed in McDonnell Douglas MD–80 Service Bulletin 35–18, dated May 15, 1990, certified in any category. Compliance required as indicated, unless previously accomplished.

To ensure the mid attendant's oxygen mask stays properly positioned during the attendant's movements, accomplish the following:

A. Within one year after the effective date of this AD, replace the oxygen mask and hose assemblies at the mid attendant's station in accordance with the Accomplishment Instructions of McDonnell Douglas MD–80 Service Bulletin 35–18, dated May 15, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1–HCW (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–26086 Filed 11–2–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–215–AD; Amdt. 39–6798]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, which currently requires repetitive replacement of eight valve body attachment screws of the power transfer unit shutoff (PTU S/O) valve. That action was prompted by reports of two cases of dual hydraulic system failure during flight. This condition, if not corrected, could result in landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems. This amendment requires that certain PTU S/O valves be removed from service and that an improved valve be installed.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1–HCW (54–60) or from Whittaker Controls, 12838 Saticoy Street, North Hollywood, California 91605. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Aircraft Certification Directorate, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–22–02, Amendment 39–6356 (54 FR 41960, October 13, 1989), applicable to McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require repetitive replacement of eight valve body attachment screws of the power transfer unit shutoff (PTU S/O) valve, was published as a Supplemental NPRM in the **Federal Register** on July 17, 1990 (55 FR 29062).

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

Several commenters requested that the rule be revised to provide a one year compliance time. They contended that the 90-day or 180-day compliance time may ground airplanes. Two operators expressed lack of confidence that the sole supplier for the replacement valve can meet demand, and also expressed concern that there may be further internal valve damage involving parts which have a long lead time for procurement. One of these operators stated that it will have to expend $100,000 for spares to accommodate the 90-day/18-day compliance time. The FAA does not concur that an extension of the compliance time is necessary. The manufacturer has confirmed that an ample number of valves will be available in a timely manner. In addition, paragraph C. of the final rule allows for use of an alternate means of compliance should any unforseen circumstances arise.

One operator commented that removal of the –1 valve from service should not be required in this AD. The failure mode of the 240695–1 valve, in which hydraulic fluid is not lost, does not in itself constitute an unsafe condition, since there will continue to be one operable hydraulic system. The FAA does not concur. The –1 valve has had a high failure rate in service (five instances since July 1990). The FAA has determined that corrective action is necessary to remove it from service in order to eliminate potential landings without normal hydraulic systems (should the valve fail).

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

There are approximately 732 Model

DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts to accomplish the required modification is estimated to be $5,830 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,255,220.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6356 (54 FR 41960, October 13, 1989), AD 89-22-02, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes and Model MD-88 airplanes; equipped with Whittaker Controls power transfer unit shutoff (PTU S/O) valve, part number (P/N) 240695 or P/N 240695-1; certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent dual hydraulic system failure, accomplish the following:

A. For those airplanes with Whittaker Controls PTU S/O valve P/N 240695 installed,

1. Prior to the accumulation of 2,000 landings, or within 200 landings after October 23, 1989 (the effective date of Amendment 39-6356, AD 89-22-02), whichever occurs later, unless accomplished within the last 1,800 landings, replace the PTU S/O valve body attachment screws, P/N NAS 1101E-14, with new screws of the same part number, in accordance with the installation instructions of McDonnell Douglas Telex MD-80-COM-24/JCE, dated September 18, 1989. Thereafter, replace the attachment screws at intervals not to exceed 2,000 landings until replacement of the valves in accordance with paragraph A.2. of this AD is accomplished. Replacement of Whittaker Controls PTU S/O valve P/N 240695, with PTU S/O valve P/N 240695-2 constitutes terminating action for the requirements of this paragraph.

2. Within 90 days after the effective date of this amendment, replace all Whittaker Controls PTU S/O valves P/N 240695, with Whittaker Controls PTU S/O valves P/N 240695-2; or modify the valves P/N 240695 to the P/N 240695-2 configuration in accordance with Whittaker Controls Service Bulletin 240695-29-1, dated March 15, 1988, and Service Bulletin 240695-29-3, dated May 14, 1990. (Accomplishment of the procedures specified in both service bulletins is required.)

B. For those airplanes with the Whittaker Controls PTU(S/O valve P/N 240695-1 installed, within 180 days after the effective date of this amendment, replace all Whittaker Controls PTU S/O valve P/N 240695-1, with PTU S/O valve P/N 240695-2; or modify the valve P/N 2406795-1 to the P/N 240695-2 configuration in accordance with Whittaker Controls Service Bulletin 240695-29-3, dated May 14, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60); or from Whittaker Controls, 12838 Saticoy Street, North Hollywood, California 91605. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6356, AD 89-22-02.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26088 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-139-AD; Amdt. 39-6795]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This informaton may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standarization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which require incorporation of certain structural modifications, was published in the **Federal Register** on August 14, 1990 (55 FR 33129).

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

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

This is considered to be interim action. The manufacturer is currently developing additional modifications. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 387 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts and modification kits is $10,315. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,805,650.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 5-A-PM5995, Issue 2, dated July 2, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

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

A. In accordance with the schedule below, install the structual modifications listed in each Item, except Items 6, 12, and 13, in Table 1 of British Aerospace Alert Service Bulletin 5-A-PM5995, Issue No. 2, dated July 1, 1990.

1. Accomplish the modifications at the later of the following:

a. Prior to reaching the "Not Exceed Time" interval specified in Table 1 of the alert service bulletin; or

b. Within 15 months after the effective date of this AD.

2. The modifications shall be done in accordance with the appropriate service bulletin specified for each Item on Table 1, listed under "Service Bulletin No."

Note: Item 6 in Table 1 of British Aerospace Alert Service Bulletin 5-A-PM5995 is not included in the rule because the service bulletin was not available at the time the proposal was issued; Item 12 is required by AD 67-15-01, Amendment 39-401; and Item 13 is required by AD 67-14-04, Amendment 39-397.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26089 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772, 774, 775, and 787

[Docket No. 90912-9212]

Elimination of Submission Requirement for Certain Supporting Documents

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Export Administration Regulations have required that a person applying for an export license, reexport authorization, or an amendment obtain supporting documentation in accordance with the provisions of parts 772, 774, and 775 of the Regulations and submit such documentation to the Office of Export Licensing (OEL) with the export license application, reexport authorization request, or amendment request

This rule, which retains all existing requirements relating to the applicant's responsibility for obtaining supporting documentation, eliminates the submission requirement when the commodity to be exported is not a supercomputer and the country of ultimate destination is located in Country Group S or V (excluding the People's Republic of China). While

applicants are no longer required to submit the supporting documents to OEL under these circumstances, they must now retain the original copies of the supporting documents in their files for a period of five years, as provided by § 787.13(e)(2). Section 787.13(e) is revised to include a five-year retention period for documents formerly submitted to OEL and retained in its files. To ensure compliance with the recordkeeping requirement, the Office of Export Licensing will require applicants on a random basis, to submit specific supporting documents that have been retained on file. Applicants may also be required by OEL to submit supporting documents when the particular circumstances presented by their applications make this necessary.

Required supporting documents must still be submitted to OEL if the commodity to be exported is a supercomputer or the country of ultimate destination is the People's Republic of China or a destination in Country Group Q, W, Y, or Z. Supporting documents are still not required for applications to export to destinations in Country Group T.

For those applications where the supporting document may be retained on file, the applicant may deliver the application to OEL after receiving a facsimile of the document, provided that the original document is obtained and retained in the applicant's files prior to any shipment against the license.

This rule makes the documentation requirements contained in the Regulations more compatible with the recently published provisions governing the electronic submission of export license applications (52 FR 48808) and the use of Optical Character Recognition (OCR) forms by the Office of Export Licensing (54 FR 6643).

DATES: *Effective date:* This rule is effective February 4, 1991. *Comment date:* Comments must be received by December 5, 1990.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce published two final rules that amended the Export Administration Regulations to permit the electronic submission of export license applications (52 FR 48808) and to implement the use of Optical Character Recognition (OCR) forms (54 FR 6643). The implementation of the electronic submission procedures and the use of OCR forms has made submission of supporting documentation impractical, in certain cases, because the Form BXA-629P and Import Certificates are not compatible with the OCR forms used in the electronic licensing process.

This interim rule is designed to achieve a balance between OEL's need to require that applicants obtain supporting documentation and the exporters' interest in retaining the benefits of the electronic licensing process (*e.g.*, significant decreases in processing times, fewer processing errors). The rule eliminates the requirement that supporting documentation be submitted with applications for certain destinations, provided that exporters obtain the documents and retain them on file prior to submitting their applications. In addition, the applicant may deliver the application to OEL after receiving a facsimile of the supporting document, provided that the original document is obtained and retained in the applicant's files prior to any shipment against the license. Therefore, the exporter benefits from the electronic licensing process and from a reduction in the number of supporting documents that must be submitted to OEL.

In return, the exporter is now required to keep on file the supporting documents that were formerly submitted to OEL and retained in its records. The retention period for these documents is five years. This is identical to the statute of limitation for criminal actions brought under the Export Administration Act of 1979, as amended, and represents the minimum period of time that OEL has maintained such records.

Rulemaking Requirements

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

2. This rule contains reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The reporting requirement found at 15 CFR 775.9 (e)(1) and (e)(2) and the new recordkeeping requirement have been submitted to OMB for review under the Paperwork Reduction Act. Other collections that are affected by this action have been approved by the Office of Management and Budget under control numbers 0694-0001, 0694-0002, 0694-0005, 0694-0006, 0694-0007, 0694-0010, 0694-0012, 0694-0014, 0694-0015, and 0694-0021. Public burden for the uncleared requirements is estimated to average 30 minutes for the reporting requirement and 1 minute for the recordkeeping requirement. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694-XXXX).

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

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

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 5, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their

consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations 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 comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4086, 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 Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects

15 CFR Parts 772, 774, and 775

Exports, Reporting and recordkeeping requirements.

15 CFR Part 787

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

Accordingly, parts 772, 774, 775, and 787 of the Export Administration Regulations (15 CFR parts 768–799) are amended as follows:

1. The authority citation for 15 CFR parts 772 and 787 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR parts 774 and 775 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95–223, title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 772—[AMENDED]

3. Section 772.4 is amended by adding a new paragraph (a)(1)(iv) to read as follows:

§ 772.4 How to apply for a validated license.

(a) * * *

(1) * * *

(iv) *Supporting documents.* Supplement No. 1 to part 772 contains instructions on how to prepare export license applications when supporting documents are required. Part 775 of this subchapter indicates when supporting documents are required for export license applications.

* * * * *

4. Section 772.11 is amended by revising paragraphs (k) and (l) to read as follows:

§ 772.11 Amending export licenses.

* * * * *

(k) *License covered by an Import Certificate or End-Use Certificate*—(1) *Change in party or increase in net quantity not in accordance with current supporting document.* The applicant shall obtain a new or appropriately amended International Import Certificate (§ 775.3 of this subchapter), Swiss Blue Import Certificate (§ 775.4 of this subchapter), Yugoslav End-Use Certificate (§ 775.5 of this subchapter), People's Republic of China End-User Certificate (§ 775.6 of this subchapter), or Indian Import Certificate (§ 775.7 of this subchapter) before submitting a request to amend an export license by proposing to change any party to the transaction named on the license or by increasing the net quantity set forth on the license if the proposed change is not in accordance with the current supporting document covering the license. The original copy of the new or amended certificate shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new or amended certificate (include certificate number, if any, and date) has been received and will be retained in the applicant's files or

(B) A facsimile of the new or amended certificate (include certificate number, if any, and date) has been received and the original copy of the certificate will be obtained and retained in the applicant's files prior to any shipment against the license.

(2) *Change in net quantity in accordance with current supporting document.* If a proposed quantitative amendment is in accordance with the current supporting document covering the license, the request for amendment shall include the following certification:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity authorized under the (Name of country) (Import Certificate) (End-Use Certificate) number _____.

(l) *License covered by consignee/purchaser statement*—(1) *Change in party or increase in net quantity not in accordance with current consignee/purchaser statement.* The applicant shall obtain a new consignee/purchaser statement before submitting a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license or increases the net quantity set forth on the license, if the proposed change is not in accordance with the current statement covering the license. The original copy of the new consignee/purchaser statement shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the

country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new supporting document (cite date of document) has been received and will be retained in the applicant's files or

(B) A facsimile of the new supporting document (cite date of document) has been received and the original copy of the document will be obtained and retained in the applicant's files prior to any shipment against the license.

Where the amendment request contains only a proposed increase in the net quantity set forth on the license and this proposed change is not in accordance with the current statement covering the license, the applicant has the option of substituting, in lieu of a consignee/purchaser statement, a letter, wire, or cable from the ultimate consignee and purchaser citing the original consignee/purchaser statement and confirming the proposed increase in net quantity.

(2) *Increase in net quantity covered by current consignee/purchaser statement*—(i) *Single transaction statement.* If a request for an amendment of an export license proposes a change in net quantity in the license that is in accordance with the quantity noted on the current consignee/purchaser statement covering the license, the exporter need not obtain a new consignee/purchaser statement. However, the following certification shall be entered on or submitted with the Form BXA-685P:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total covered by the consignee/purchaser statement against which the export license was issued.

(ii) *Multiple transactions statement.* Where the export license is covered by a current Form BXA-629P, Statement by Ultimate Consignee and Purchaser, with Item 2b completed, the applicant does not need to obtain a new consignee/purchaser statement to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be entered on the Form BXA-685P:

I (We) certify that the license(s) described in Item 3 (is) (are) supported by a statement by consignee and purchaser covering multiple transactions.

5. Section 772.12 is amended by revising the section heading and paragraphs (a)(2) and (b)(2) (i) and (ii) to read as follows:

§ 772.12 Special provisions for an amendment to extend the validity period of a license.

* * * * *

(a) *Procedure for requesting an extension.* * * *

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request and attach a detailed justification. Also include all supporting documents and any certifications relating to those documents that must be submitted to the Office of Export Licensing in accordance with the provisions of this part 772.

* * * * *

(b) *New license application to replace expiring or expired license.* * * *

(2) Comply with new documentation requirements in the following circumstances:

(i) If current Export Administration Regulations require the application to be supported by a consignee/purchaser statement, import certificate, or end-use certificate, the applicant shall obtain the new supporting document and submit it with the application or retain it on file, as appropriate, (see part 775 of this subchapter on documentation requirements), unless:

(A) The applicant already has retained on file or filed with the Office of Export Licensing, as appropriate, a current supporting document that covers the transaction described in the new license application; and

(B) The applicant submits, with the application, a statement certifying the existence of such a supporting document and citing the number (if any) and date of the supporting document.

(ii) If current Export Administration Regulations require the application for a new license to be supported by any document other than, or in addition to, a consignee/purchaser statement, import certificate, or end-use certificate and that document was not submitted with the application upon which the expiring or expired license was based, that supporting document shall be furnished.

* * * * *

6. Supplement No. 1 to part 772 is amended by adding a second undesignated paragraph at the end of "*Item 15*" to read as follows:

Supplement No. 1 to Part 772—Instructions for Preparing an Application for a Validated License

* * * * *

Item 15. * * *

Where part 775 of this subchapter permits a supporting document to be retained in the applicant's files, the applicant shall certify in Item 15 on the application form, or on an attachment thereto, either: (1) That the appropriate supporting document (cite document number, if any, and date) has been received and will be kept on file or (2) that a facsimile of the supporting document (cite document number, if any, and date) has been received and that the original will be obtained and retained in the applicant's files prior to any shipment against the license. Where the applicant is required to submit a supporting document to the Office of Export Licensing, this document must be attached to the application form and a statement referencing the attached document should be included in Item 15.

* * * * *

PART 774—[AMENDED]

7. In § 774.3, paragraph (a)(3), paragraph (b)(3), and paragraph (c)(1) are revised to read as follows:

§ 774.3 How to request reexport authorization.

(a) *Requests for reexport authorization for commodities not yet exported.* * * *

(3) *Shipment to specified destinations.* If the reexport is to be made to any of the countries listed in § 774.3(c)(1)(i), the applicant shall—

(i) Include the name and address of the consignee in that country on the export license application or the amendment request; and

(ii) Submit supporting documentation with the license application or amendment, or retain supporting documents on file, as appropriate (see § 774.3(c)). Where § 774.3(c) permits a supporting document to be retained in the applicant's files, the applicant shall certify on the application or amendment that—

(A) The supporting document—or reproduced copy of the supporting document, as permitted by § 774.3(c)(1)(ii)—has been received (include the document number, if any, and date) and will be kept on file; or

(B) A facsimile of the supporting document (include the number, if any, and date) has been received and the original will be obtained and retained in the applicant's files prior to any shipment against the license; or

(C) A facsimile of the supporting document (include the number, if any, and date) has been received and will be retained in the applicant's files—as a

reproduced copy of the supporting document—in accordance with § 774.3(c)(1)(ii).

(b) *Request for reexport authorization for commodities previously exported.* * * *

(3) *Shipment to specified destinations.* If a reexport is to be made to any of the countries listed in 774.3(c)(1)(i), the applicant shall—

(i) Submit the supporting documentation, along with the Form BXA-699P or letter request, to the Office of Export Licensing when the new destination is any country identified in § 774.3(c)(1)(i)(A) (*1*) or (*2*) or the commodity described on the application is a supercomputer; or

(ii) Retain the supporting document on file when the new destination is any country listed in § 774.3(c)(1)(i)(B), except that a supporting document must be submitted when the commodity described on the application is a supercomputer

* * * * *

(c) *Documentation requirements.* The applicant is not required to obtain supporting documentation covering a request for reexport authorization except, as required for certain special commodities under the provisions of part 776 of this subchapter or when one of the following conditions applies:

(1) *Reexports to specified destinations.*—(i) The consignee/purchaser statement or other documentation from the new ultimate consignee that would be required by part 775 of this subchapter if the reexport were a direct export from the United States to the new destination—

(A) Shall be submitted with the request for reexport authorization if the new destination is—

(*1*) Any destination in Country Group Q, W, Y, or Z (see Supplement No. 1 to part 770 of this subchapter for the countries included in each country group); or

(*2*) The People's Republic of China.

(B) Shall be retained in the applicant's records, in accordance with the requirements of parts 775 and 787 of this subchapter, if the new destination is a country in Country Group S or one of the following countries in Country Group V:

Afghanistan, India, Liechtenstein, Singapore, South Africa, Republic of, Sweden, Switzerland, Yugoslavia

However, if the commodity described on the application is a supercomputer, the supporting document must be submitted with the request for reexport authorization—not retained in the applicant's records.

(ii) If the required document is a Yugoslav End-Use Certificate, a Swiss Blue Import Certificate, a People's Republic of China End-User Certificate, a Singapore Import and Delivery Verification Certificate or an Indian Import Certificate and the same document must be furnished to the export control authorities of the country from which reexport will be made, the Office of Export Licensing will permit the applicant to submit or to retain on file, as appropriate (see § 774.3(c)(1)(i)), a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations. (See § 775.4(c) of this subchapter for waiver of a Swiss Blue Import Certificate, § 775.5(c) of this subchapter for waiver of a Yugoslav End-Use Certificate, and § 775.7(c) of this subchapter for waiver of an Indian Import Certificate.)

* * * * *

8. In § 774.5, the concluding text of paragraph (b)(2) is revised to read as follows:

§ 774.5 Validity period.

* * * * *

(b) *Extension of validity period.* * * *

(2) *Letter request for extension.* * * *

The documentation normally required to support certain reexport requests under the provisions of § 774.3(c) is not needed to support a request for the extension of the validity period of a reexport authorization, provided that the original documents are still valid and remain in the possession of the Office of Export Licensing or in the applicant's files, as appropriate.

PART 775—[AMENDED]

9. Section 775.1 is amended by designating the paragraph preceding the chart as paragraph (b) and the text following the chart as paragraph (c), by adding a new paragraph (a), and by removing the first sentence of newly designated paragraph (b) to read as follows:

§ 775.1 Introduction.

(a) Most export license applications and certain reexport authorization requests must be supported by documents designed to elicit information concerning the disposition abroad of the goods intended for export or reexport. Supporting documents for export license applications and reexport authorization requests where the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z must be submitted to the Office of Export Licensing along with the license applications or reexport requests. Supporting documents where the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) generally shall not be submitted to the Office of Export Licensing, but shall be retained in the applicant's files in accordance with the recordkeeping provisions of this part 775. However, if the commodity described on the application is a supercomputer, the supporting document shall be submitted to the Office of Export Licensing along with the application. Supporting documents are not required for Country Group T, unless the Office of Export Licensing specifically requests a supporting document.

(b) * * *

(c) * * *

10. Section 775.2 is amended by revising the section heading and paragraphs (a), (c), and (d)(4), by revising the heading of paragraph (e) and the first four sentences in paragraph (e)(6), and by adding a new paragraph (k) to read as follows:

§ 775.2 Form BXA-629P, statement by ultimate consignee and purchaser.

(a) *Scope*—(1) *Submission to OEL required.* A Form BXA-629P, Statement by Ultimate Consignee and Purchaser, shall be submitted to the Office of Export Licensing in support of each individual export license application when the commodity described on the application is a supercomputer or where the country of ultimate destination is located in Country Group Q, W, Y, or Z, unless one or more of the exemptions set forth in paragraph (b) of this section apply. Where § 775.6(c) permits substitution of a Form BXA-629P for the PRC End-User Certificate, a Form BXA-629P must be submitted in support of export license applications, unless one or more of the exemptions set forth in paragraph (b) of this section apply.

(2) *Retention in applicant's files.* When the country of ultimate destination is in Country Group S or V (except for the People's Republic of China) and the commodity described on the application is not a supercomputer, a Form BXA-629P shall be retained in the applicant's files, in accordance with § 775.2(k) and § 787.13 of this subchapter, unless one or more of the exemptions set forth in paragraph (b) of this section apply. When the applicant retains a Form BXA-629P on file, that fact, as well as the date of the Form BXA-629P, shall be clearly noted on the appropriate license application form. The applicant may submit a license application after receiving a facsimile of the completed Form BXA-629P, provided that this fact is noted on the

application form together with a statement indicating that no shipment will be made against the license until the original copy of the Form BXA-629P is received and retained in the applicant's files.

* * * * *

(c) *Filing of applications where no statement is attached or on file with the applicant.* When a consignee/purchaser statement is not submitted in support of an application, as required in paragraph (a) of this section, the application will be returned without action to the applicant. An application will also be returned without action when the applicant, though required by paragraph (a) of this section to retain a consignee/purchaser statement on file, fails to certify on the application form that this has been done. However, if an applicant can show that diligent efforts have been made to obtain such a statement, without success, the applicant may advise the Office of Export Licensing in the space provided for additional information on the application or on an attachment to the application, giving the reasons stated by the ultimate consignee or purchaser for failing or refusing to supply the statement. If satisfied by the evidence presented, the Office of Export Licensing will consider waiving the supporting documentation requirement and accepting the application for processing.

(d) Single/Multiple Transactions

* * *

(4) *Number of copies to be submitted.* When applicants are required to submit copies of Form BXA-629P to the Office of Export Licensing, as indicated in paragraph (a) of this section, only the original Form BXA-629P need be submitted for a single transaction. The original and one copy must be submitted for multiple transactions.

(e) *Information required on Form BXA-629P* * * *

(6) *Validity period.* The first application to be supported by a Form BXA-629P that is prepared as a single transaction statement must be submitted to the Office of Export Licensing within 180 days after the Form BXA-629P is signed by the consignee or purchaser, whichever date is later. There is no specific time limit for submitting the first application supported by a Form BXA-629P prepared as a multiple transactions statement, but any license applications suported by a multiple transactions Form BXA-629P must be received by the Office of Export Licensing prior to the termination date as shown in Item 2 of the form. The form will expire on June 30 of the second year following the year in which it is signed, unless the consignee or purchaser enters an earlier date in Item 2. * * *

* * * * *

(k) *Procedures for retaining Form BXA-629P in applicant's files.*—(1) Any applicant required to retain Form BXA-629P on file pursuant to the requirements of paragraph (a) of this section must adhere to all of the recordkeeping provisions contained in § 787.13 of this subchapter, except that reproductions may not be substituted for original documents as permitted under § 787.13(d)(2) of this subchapter.

(2) The fact that the applicant has a Form BXA-629P on file, as well as the date of the Form BXA-629P, must be clearly noted on all export license applications suported by the consignee/purchaser statement. If the consignee/purchaser statement is a multiple transactions statement, the certification provided in paragraph (j)(2) of this section shall be included on the application or on an attachment thereto.

(3) An applicant may submit an application before obtaining the original copy of the Form BXA-629P, provided that—

(i) The applicant has recevied a facsimile of the Form BXA-629P at the time the license application is filed; and

(ii) The applicant states on the application that a fascimile of the Form BXA-629P has been received and that no shipment will be made against the license prior to obtaining the original Form BXA-629P and retaining it on file.

11. Section 775.3 is amended by revising paragraph (a)(1) and paragraph (g); by revising the heading of paragraph (h) and the first sentence of paragraph (h)(1); and by revising paragraphs (h)(3), (4), and (5) to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

(a) *Scope*—(1) *International Import Certificate.* An International Import Certificate (IC) is an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the commodities covered by the IC. The governments that issue ICs are listed in § 775.3(b). The IC is obtained by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The exporter (applicant) must obtain an IC and retain it on file, in accordance with the provisions of § 775.3(g)(1) and § 787.13 of this subchapter, for any license application to export a commodity(ies) identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List to one of the destinations listed in § 775.3(b). If the commodity described on the application is a supercomputer, the IC must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files. The IC is not required if one of the exemptions in § 775.3(d) applies. An IC may also be required for transactions not involving an export from the United States. (See § 768.2(a)(8) of this subchapter.)

* * * * *

(g) *Retention of International Import Certificate*—(1) Any applicant required to retain an International Import Certificate on file pursuant to paragraph (a)(1) of this section must adhere to all of the recordkeeping provisions contained in § 787.13 of this subchapter, except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(2) The applicant must clearly note the number (if any) and the date of the International Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the IC has been received and will be retained on file as required by paragraph (g)(1) of this section. However, the applicant may submit an application before obtaining the original copy of the IC, provided that—

(i) The applicant has received a facsimile of the IC at the time the license application is filed; and

(ii) The applicant states on the application that a facsimile of the IC has been received and that no shipment will be made against the license prior to obtaining the original IC and retaining it on file.

(3) If an International Import Certificate is used in support of more than one export license application, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, one of the following certifications bearing the original signature of the applicant—(i) if quantity or value is shown on the Certificate:

I (We) certify that the quantities (values) of commodities shown on all export licenses based on the (*name of country*) International Import Certificate Number _____, when added to the quantities (values) shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application, do not total more than the quantities (values) shown on that Import Certificate. This Import Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by*

the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application).

or

(ii) If quantity or value is not shown on the Certificate:

I (We) certify that this application is supported by the (*name of country*) multiple transactions International Import Certificate Number _____, which was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

(h) *Other requirements applicable to both single and multiple transactions Import Certificates*—(1) *Parties named on Import Certificate.* The International Import Certificate may be used in support of an export license application when the Certificate is made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country. * * *

* * * * *

(3) *Validity period.* When an International Import Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by this Certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date the Certificate was issued by the foreign government, whichever is shorter. In addition, any subsequent export license application supported by such a Certificate must be submitted to OEL within 12 months from the date that the first export license application supported by the Certificate was submitted to OEL. The expiration of the validity period of an International Import Certificate, after the submission of the first export license application supported by the Certificate, will in no way affect the validity period of the resultant export license(s).

(4) *Triangular transactions.* Whenever an International Import Certificate bearing a triangular symbol is used in support of an export license application, the applicant must identify—on the application—all parties to the transaction, including parties located outside the country that issued the Import Certificate. If the importer objects to giving this information to the U.S. exporter, the importer may submit it directly to the Office of Export Licensing through a U.S. Foreign Service post or in a sealed envelope to the exporter, marked "To be opened by the Office of Export Licensing only."

(5) Issuance of an International Import Certificate does not relieve the parties to the transaction from compliance with the reexport provisions of part 774 of this subchapter.

* * * * *

12. Section 775.4 is amended by revising paragraph (a) to read as follows:

§ 775.4 Swiss Blue Import Certificate.

(a) *Requirement*—(1) *General.* A license application for export of commodities to Switzerland or Liechtenstein, regardless of value, must be supported by a Swiss Blue Import Certificate. This certificate is issued to the importer by the Swiss Federal Department of Public Economy, Division of Commerce, Import and Export Control, covering the proposed export from the United States.

(2) *Retention of certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Swiss Blue Import Certificate issued in support of any license application for export to Switzerland or Liechtenstein. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Swiss Blue Import Certificate on all export license applications support by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* The certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, the following certification:

I (We) certify that the quantities of commodities shown on all export licenses based on the Swiss Blue Import Certificate No. _____, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Certificate, including the present application, do not total more than the quantities shown on that Certificate. This Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Swiss Blue Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

* * * * *

13. Section 775.5 is amended by revising paragraph (a) to read as follows:

§ 775.5 Yugoslav End-Use Certificate.

(a) *Requirements*—(1) *General.* A license application for export of commodities to Yugoslavia, regardless of value, must be supported by a Yugoslav End-Use Certificate issued to the Yugoslav importer by the Yugoslav Chamber of Economy in Belgrade covering the proposed export or reexport.[3] The applicant must obtain the original Certificate from the Yugoslav importer along with a supplement on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use, and end-user information.

(2) *Retention of certificate in applicant's files.*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Yugoslav End-Use Certificate and supplement issued in support of any license application for export to Yugoslavia. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated originals as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Yugoslav End-Use Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been

[3] Foreign consignees may obtain End-Use Certificates from the Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade.

received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.*—The End-Use Certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against the Certificate, the following certification:

I (We) certify that the quantities of commodities shown on all export licenses (reexport authorizations) based on the Yugoslav End-Use Certificate No. _____, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same End-Use Certificate, including the present application, do not toal more than the quantities shown on that certificate. This End-Use Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the End-Use Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

* * * * *

14. Section 775.7 is amended by revising paragraph (a) and paragraphs (b) (1), (3), and (4) to read as follows:

§ 775.7 Indian Import Certificate.

(a) *Requirement.*—(1) *General.* A license application to export or reexport commodities to India, regardless of consignee, must be supported by a Government of India (GOI)-certified copy of the Indian Import Certificate. The Import Certificate, inter alia, places certain obligations on the Indian importer against reexport or transfer of the commodities. The Import Certificate requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL), and to those commodities identified by the code letter "B" that include "National security" in the Reason for Control portion of the CCL entry.

(i) *Responsibility of Indian importer.* The Indian importer is responsible for determining the appropriate GOI issuing agency. The issuing agencies include:

(A) For small scale industries and entities, and those not elsewhere specified, Office of Chief Controller of Imports and Exports;

(B) For the "organized" sector, except for computers and related equipment, Directorate General of Technical Development;

(C) For Defense organizations, Ministry of Defense; and

(D) For computers and related electronic items, Department of Electronics.

In addition, any of the agencies listed above has the authority to instruct the Embassy of India in Washington, DC to issue the Import Certificate on its behalf.

(ii) *Responsibility of the U.S. exporter or the reexporter.* The U.S. exporter, and where appropriate, the reexporter, should inform the Indian customer that:

(A) The GOI-certified copy of the Import Certificate is required documentation in order to apply for a U.S. export license or reexport authorization; and

(B) The Indian customer should limit the request for issuance of the Indian Import Certificate solely to those commodities that are subject to this Import Certificate procedure, i.e., commodities under national security control.

The exporter should clearly identify those commodities covered by this procedure. For example, where the Indian order is for a mixture of commodities, some requiring an Import Certificate under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G-DEST, the request for the certified copy of the Indian Import Certificate should be limited to cover only those commodities that are subject to the Import Certificate requirement as described in paragraph (a)(1) of this section.

(2) *Retention of Indian Import Certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Indian Import Certificate issued in support of any license application for export to India. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Indian Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* Where the Indian Import Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Import Certificate, the following certification:

I (We) certify that the quantities of commodities shown on all export licenses based on the Indian Import Certificate No._____ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application and any licenses already issued, do not total more than the quantities shown on the Import Certificate. This Import Certificate was obtained in support of application number _____ (*insert application number, or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Indian Import Certificate, and the Export Control Commodity Numbers and Processing Code shown on that application.*

(b) *Exemptions*—(1) *Shipments with a total value of less than $5,000.* An Indian Import Certificate is not required for a license application to export commodities classified in a single entry on the Commodity Control List, the total value of which, as shown on the export order, is less than $5,000. However, if a lesser transaction is part of a larger export order that is subject to this

Import Certificate procedure, the Import Certificate shall be retained in the applicant's files in support of the application and cited in a certification as required by paragraph (a)(3) of this section. In limited circumstances, the Office of Export Licensing may require the applicant to obtain an Indian Import Certificate for an order valued under $5,000. In such an event, the exporter will be specifically notified by the Office of Export Licensing.

* * * * *

(3) *Temporary export.* An Indian Import Certificate is not required for a license application to export commodities for temporary exhibition, demonstration, or testing purposes in India (see § 772.8(c) of this subchapter).

(4) *Applications for Special Licenses.* An Indian Import Certificate is not required to support an application for a special license as described in part 773 of this subchapter, that is supported by a Form BXA-6052P or BXA-6026P.

15. Section 775.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 775.8 Documents accompanying applications.

(a) *Copies in lieu of originals.* Documents required by this part 775 to accompany an application for an individual or other validated license must be submitted in the original; copies will not be accepted. A document submitted in support of an application for an individual or other validated license will not be returned to the applicant or the applicant's agent, except when the application is returned without action. The original of a document, other than one required by this part 775, which an exporter may subsequently need, does not have to be submitted unless specifically required by the provisions of another section of the Export Administration Regulations. A copy of an original document is acceptable. An individual certification of a copy as an original is not required by the Office of Export Licensing. In lieu thereof, by signing the application, the applicant is deemed to certify and represent that any copy of a document submitted with the application, or at any time before or after it is filed, is a true copy of the original document. The applicant's signature also certifies and represents that the information contained in such document is true, correct, and complete to the best of the applicant's knowledge and belief.

(b) *Availability of original.* The Bureau of Export Administration may demand the original of any document retained in the applicant's files as required by this part 775. Such original must be kept and made available for inspection in accordance with the provisions of § 787.13 of this subchapter. To ensure compliance with this recordkeeping requirement, the Office of Export Licensing will require applicants, on a random basis, to submit specific supporting documents that have been retained on file.

* * * * *

16. In the first sentence of § 775.9(c), the phrase "In submitting" is revised to read "In obtaining".

17. Section 775.9 is amended by revising paragraphs (e) and (f) to read as follows:

§ 775.9 Special provisions.

* * * * *

(e) *Request for return of certificates.* A U.S. exporter may be requested by a foreign importer to return an unused or partially used International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate or Indian Import Certificate. To meet such requests, exporters should adhere to the following procedures:

(1) *Certificate on file in the Office of Export Licensing.* In order to request the return of a People's Republic of China End-User Certificate or any Certificate that was submitted in support of an application to export a supercomputer, the exporter must send a letter containing the request addressed to:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The letter should include the name and address of the importer, the case number(s) to which the Certificate applies, the Certificate number, and, when the Certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the Certificate will not be used in connection with another license application. When the U.S. exporter does not intend to make any additional shipments under a license covered by the Certificate or is holding an expired license covered by the Certificate, this fact should be mentioned in the letter requesting the return of the Certificate. The Office of Export Licensing will place an appropriate notation on the Certificate before returning it to the exporter.

(2) *Certificates retained in the exporter's files.* Notwithstanding the provisions of this part 775 regarding the 5 year period for retaining original supporting documents in the applicant's files, a U.S. exporter may return an unused or partially used Certificate at the request of a foreign importer provided that the exporter adheres to the procedures listed in paragraph (e)(2)(i) and (ii) of this section.

(i) The exporter must submit the original Certificate—accompanied by a letter of explanation and a copy of each license (Form BXA-628) covered by the Certificate, including a copy of the reverse side of the license showing the "record of shipments"—to:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The U.S. exporter must include the following information in the letter:

(A) A statement citing the foreign importer's request for the return of the Certificate;

(B) The license number(s) that have been issued against the Certificate (including expired and unexpired licenses); and

(C) A statement that the Certificate will not be used in connection with another license application. (This statement is necessary only when the Certificate covers a quantity greater than the total quantity identified on the license applications submitted against it.)

(ii) The exporter must make a copy of the Certificate after the original has been returned by the Office of Export Licensing and before the original is sent to the foreign importer. This copy must show all the information contained on the officially authenticated original, including any notation made on the Certificate by the Office of Export Licensing. The U.S. exporter must retain this copy on file in accordance with the recordkeeping provisions of this part 775.

(f) *Request for amendment of export license.*—[4] (1) *Change in consignee or purchaser.* The applicant must obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of

[4] Section 772.11(l) of this subchapter contains other provisions applicable to amendments of licenses covered by a consignee/purchaser statement.

the new Statement or Certificate must be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if—

(A) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(B) The commodity described on the license is a supercomputer; or

(ii) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(2) *Increase in quantity*—(i) *Increase not supported by existing Statement or Certificate obtained in support of license application.* The applicant shall obtain a new Statement by Ultimate Consignee or Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or with the Office of Export Licensing. The original copy of the new Statement or Certificate shall be—

(A) Submitted to the Office of Export Licensing, along with the amendment request, if—

(*1*) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(*2*) The commodity described on the license is a supercomputer; or

(b) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(ii) *Increase supported by existing Statement or Certificate obtained in support of license application.*—(A) If a proposed quantitative amendment is in accordance with the single transaction Statement by Ultimate Consignee and Purchaser or Certificate obtained by the applicant in support of the original export license application, the amendment request shall include the following certification as appropriate:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity covered by the Statement by Ultimate Consignee and Purchaser against which this export license was issued.

or

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate number _____.

(B) Where the export license is based on a multiple transactions Statement by Ultimate Consignee and Purchaser, an additional Statement is not required from the consignee or purchaser to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be placed on the amendment request:

I (We) certify that the license listed above is supported by a Statement by Ultimate Consignee and Purchaser.

* * * * *

18. Section 775.9(g) is amended by revising the introductory text of paragraph (g)(1), by revising paragraph (g)(2)(ii), and by revising paragraphs (g)(2)(iii)(G) and (H), and by republishing the introductory text of paragraph (g)(2)(iii) as follows:

§ 775.9 Special provisions.

* * * * *

(g) *Request for exception.*—(1) *Types of requests.* A request for exception to a requirement for obtaining an International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate,[5] may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

* * * * *

(2) *How to submit request* * * *

(ii) Each request for exception shall be by letter in duplicate, addressed to: Office of Export Licensing, P.O. Box 273, Washington, D.C. 20044. It shall be accompanied by a Statement of Ultimate Consignee and Purchaser bearing the original signature(s) of the parties identified thereon, unless such statement is already on file in the Office of Export Licensing or the applicant has the statement on file in accordance with § 775.2.

[5] See § 775.2(c) for exceptions to the consignee/purchaser statement requirement where applicant is unable to obtain the statement.

(iii) As a minimum, the letter request shall include:

* * * * *

(G) Whether the exporter has previously submitted to the Office of Export Licensing or retained on file, in accordance with § 775.2, a Certificate issued in the name of the importer and a listing of the case number(s) to which the certificate(s) applied;

(H) Whether a Statement by Ultimate Consignee and Purchaser is on file with the Office of Export Licensing or in the applicant's files, in accordance with § 775.2;

* * * * *

PART 787—[AMENDED]

19. In § 787.13, paragraph (c) is amended by adding the phrase "774.3," following the reference "773.8," in the second sentence and paragraph (e) is revised to read as follows:

§ 787.13 Recordkeeping.

* * * * *

(e) *Period of retention.*—(1) *Two-year general requirement.* Except as indicated in paragraph (e)(2) of this section, records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) *Retention requirements exceeding two years.*—(i) *Three years.* Records relating to restrictive trade practice or boycott requests must be kept for a period of three years from the latest of the times indicated in paragraph (e)(1) of this section. (See § 769.6(b)(8) of this subchapter.)

(ii) *Five years.* The following records must be kept for a period of five years from the latest of the times indicated in paragraph (e)(1) of this section:

(A) Shipper's Export Declarations covering exports made under a Project License, as required by § 773.2(f)(1) of this subchapter—the three-year retention period specified in § 30.11 of the Foreign Trade Statistics Regulations

(15 CFR 30.11) does not apply to Declarations covering exports made under a Project License;

(B) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under a Distribution License, as required by § 773.3(h)(1) of this subchapter;

(C) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under the Service Supply Procedure, as required by § 773.7(e) of this subchapter;

(D) Supporting documentation that must be retained in the applicant's files, as required by § 772.11 and § 774.3 and part 775 of this subchapter.

(3) *Destruction or disposal of records.* If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies even if such records have been retained for a period of time exceeding that required by paragraph (e)(1) or (e)(2) of this section.

* * * * *

Dated: October 26, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-25846 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration, HHS.

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Roxarsone

AGENCY: Food and Drug Administration, HHS

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc. The NADA currently provides for use of Type A medicated articles containing several concentrations of roxarsone in making Type C medicated animal feeds. The supplemental NADA provides for changing the existing potency assay limits for roxarsone in those Type A medicated articles.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Center for Veterinary Medicine (HVC-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3044.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, holds approval for NADA 92-953. The application provides for use of Type A medicated articles containing several concentrations of roxarsone in making Type C medicated animal feeds. The Category II table in § 558.4(d) (21 CFR 558.4(d)) currently specifies the potency assay limits for roxarsone in Type A medicated articles as 95 to 103 percent of the amount claimed on the label. The firm has filed a supplemental NADA providing for widening the assay limits to 90 to 110 percent. The supplemental NADA is approved and the Category II table in § 558.4(d) is amended to reflect the approval.

Approval of this supplement is an administrative action that does not require generation of new effectiveness or safety data. Therefore, a freedom of information summary pursuant to 21 CFR 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 Medicated feed applications is amended in paragraph (d), in the Category II table, at each of the seven entries for "Roxarsone", under the hearing "Assay limits percent[1] Type A" by removing "95-103" and inserting in its place "90-110".

Dated: October 29, 1990.

Andrew J. Beaulieu,

Director Division of Surveillance, Center for Veterinary Medicine.

[FR Doc. 90-26121 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 43, 74, 78

[Gen. Docket No. 90-54, Gen. Docket No. 80-113; DA 90-1521]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: This correction rectifies the effective date of the final rule in Gen. Docket Nos. 90-54 and 80-113, published on October 31, 1990 (55 FR 46006), regarding wireless cable service.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division, (202) 632-7792; Bruce Romano, Mass Media Bureau, Policy and Rules Division, (202) 632-5414; Lynne Milne, Common Carrier Bureau, (202) 634-1772; or Mike Lewis, Private Radio Bureau, (202) 632-6940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Erratum in Gen. Docket Nos. 90-54 and 80-113, released October 30, 1990. The complete text of this Erratum is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Erratum

On October 26, 1990, the Commission released a Report and Order (FCC 90-341) in the above-captioned proceeding, and published a synopsis of that Report and Order and a final rule on October 31, 1990, on page 46006.

1. Paragraph 9 of the synopsis on page 46007 should read as follows:

9. *It is further ordered* that this Report and Order will be effective 30 days after publication in the **Federal Register**, except as follows:

(1) Sections 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, and 21.914 of the Commission's Rules, 47 CFR 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, 21.914, are effective upon publication of a summary of this Report and Order in the **Federal Register**;

(2) * * *

2. On page 46006, the effective date of the final rule is corrected to read as follows:

EFFECTIVE DATE: November 30, 1990, except §§ 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, and 21.914 are effective on October 31, 1990, and §§ 1.1307(b), 21.901(d)(1), 21.902(i), 21.905(c), 21.911, 21.913, 74.903(a)(2), 74.961(c), and 74.965 are effective on January 24, 1991.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-26246 Filed 11-2-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[FCC 90-235]

Maritime Services Rules To Redesignate Vessel Traffic Services (VTS) Channels in the Port Area of New York for Exclusive VTS System Use; Cancellation of Conditional Grants of Operating Authority

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to redesignate two VHF frequencies in the New York Vessel Traffic Services (VTS) area for exclusive use of the VTS system, and cancels the pertinent conditional grants of operating authority issued under a previous Commission Order.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 90-235, adopted September 26, 1990, and released October 11, 1990. The complete text of this Commission action, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this action, including the rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

SUMMARY OF ORDERS:

1. The maritime services rules have been amended to redesignate the use of two VHF maritime channels in the port area of New York City. In a previous Order released February 15, 1989, 4 FCC Red 1590 (1989) 54 FR 8745, March 2, 1989, the Commission permitted, *inter alia*, the use of two Vessel Traffic Services (VTS) system channels by eligible users for other than VTS operations, pending possible future use for VTS communications. The Commission took its previous action because the U.S. Coast Guard had discontinued the New York VTS system due to budgetary constraints, pending the system's possible re-establishment at a later date. On April 30, 1990, the Coast Guard informed the Commission that, as a result of a Congressional directive and appropriation of funds, the New York VTS system would be re-established. This present action redesignates the use of the two VHF maritime channels for exclusive VTS system use in the port area of New York City.

2. VTS systems are ship movement reporting systems designed to prevent damage to ships, bridges, and other structures in high vessel traffic areas of the United States. The systems are also used to minimize environmental damage associated with navigational accidents. The systems use VHF marine radiotelephone equipment to exchange voice communications on specific VHF channels that are dedicated to VTS operations.

3. In its previous Order, the Commission specified that if the New York VTS system were to be re-established, any coast station licensees authorized as a result of the Order would be required to cease operation. Consequently, the present Order requires operations conducted under those licenses to cease. The Commission has already notified the five affected private coast station licensees individually of the Coast Guard's plans and of this present Commission action. Therefore, the conditional grants of operating authority pertaining to the New York VTS system channels have been cancelled for the following five licensees, effective October 1, 1990: Harbor Ready Marine, Inc, call sign WHU941; Little Toot Marine, Inc., KMC918; Marine Rescue Services, Inc., KTD486; Seatow, Inc., KVF897; and Frank H. Wetmore, Inc., WHW673.

4. The amended rule is set forth at the end of this document.

5. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Because the Commission found that the rule amendment contained herein constitutes a minor amendment to the Commission's Rules in which the public is not likely to be interested, the Commission found for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), was unnecessary. Furthermore, in light of both the Coast Guard's intent to re-establish the New York VTS system by October 1, 1990, and the immediate increase in vessel traffic safety that would thereby result, the Commission found good cause to expedite the effective date of his Order. Therefore, the rule amendment was made effective October 1, 1990.

7. The amended rule is issued under the authority contained in §§ 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 80

Coast stations, Radio, Ship stations, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rule

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is amended by revising the table and the text of footnote 1 below the Table, to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) *Assigned frequencies:*

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250	Seattle.
156.550	New York, New Orleans,[1] Houston.
156.600	New York, New Orleans,[1] Houston.
156.700	New York, New Orleans,[1] Seattle.

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If

the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

* * * * *

[FR Doc. 90-25936 Filed 11-2-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 90778-0275]

RIN 0648-AD07

Endangered and Threatened Species; Sacramento River Winter-run Chinook Salmon

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

ACTION: Final rule.

SUMMARY: NMFS has determined that the winter run of chinook salmon in the Sacramento River, California, should be listed as a threatened species under the Endangered Species Act (ESA) of 1973. On March 20, 1990, NMFS published a proposed rule to list this species as threatened. NMFS is listing the species based on information received in response to the proposed rule and on information available on the status of the run.

In a separate rulemaking, the U.S. Fish and Wildlife Service (FWS), which is responsible for the List of Endangered and Threatened Wildlife, is adding the Sacramento River winter-run chinook salmon to the list.

EFFECTIVE DATE: This rule will become effective November 30, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Branch, 300 S. Ferry Street, Terminal Island, CA 90731, telephone (213) 514-6664 or FTS 795-6664, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East West Highway, Silver Spring, MD 20910, telephone (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguishable from the other runs in the river based on timing of their upstream migration and spawning season. For the most part, the winter-run chinook population is comprised of three year-classes, each of which returns to spawn as 3-year-old fish.

The best measure of trends in abundance of winter-run chinook is a series of counts of run size conducted by the California Department of Fish and Game (CDFG) at Red Bluff Diversion Dam. The CDFG began conducting these counts in 1966, the year that the dam began operating. These counts show a persistent decline in run size from a 3-year average of about 84,000 fish for the years 1967 through 1969 to a 3-year average of about 2,000 fish for the years 1982 through 1984 (see Table 1).

On November 7, 1985, NMFS received a petition from the American Fisheries Society to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the Endangered Species Act of 1973 (ESA). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted.

On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether or not listing the run was appropriate. The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA and recognized that the run had declined by more than 97 percent over a period of less than two decades. The definable causal agents in this decline were the construction and operation of Red Bluff Dam, adverse temperature conditions created by the operation of Shasta Dam (particularly in dry years), and other human activities that had collectively degraded spawning and rearing habitat in the Sacramento River to the point that productivity of the run declined.

Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NMFS decided not to list winter-run chinook in the Sacramento River as a threatened species under the ESA. Subsequent to this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented by means of a Cooperative Agreement signed on May 20, 1988, by the CDFG, the Bureau of Reclamation (Bureau), FWS, and NMFS. The Restoration Plan is reviewed in NMFS' original decision not to list the run (52 FR 6041, Feb. 27, 1987) and again after a reconsideration of that decision (53 FR 49722, Dec. 9, 1988). Among the ten points, the tasks expected to be of most immediate benefit to winter-run chinook are raising the gates at Red Bluff Dam from December 1 through April 1 to allow free passage of adult winter-run chinook to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above Red Bluff Dam that is used for spawning. Other points in the plan that are expected to benefit winter-run chinook in the near future are a propagation program at the FWS' Coleman Hatchery and several studies to quantify and identify mitigation options for other activities affecting the run.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to developing winter-run chinook eggs. NMFS decided to review its decision to not list the run and evaluate the adequacy of the Ten-point Winter/run Restoration Plan for protecting the run during drought conditions.

On June 2, 1988 (53 FR 20155), NMFS announced its intent to reconsider its decision not to list the run and opened a public comment period to ensure that all information on the status of the run and factors affecting it was available for the reconsideration.

Based on the information considered during the review, NMFS found that the status of the winter-run chinook population had not deteriorated since the original determination not to list the run as threatened; none of the comments received during the reconsideration provided substantial new information indicating listing was necessary; the Ten Point Winter-run Restoration Plan was being implemented; and unprecedented actions were being carried out to

minimize the adverse effects of the drought.

On December 9, 1988 (53 FR 49722), NMFS reaffirmed its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. Therefore, listing was considered not appropriate under the conditions at the time (53 FR 49722).

Simultaneous with NMFS' review of the status of the winter-run chinook population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State's Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run (CDFG undated states review).

Precipitation and runoff were again below normal for the water-year beginning October 1988. In February 1989, the Bureau announced cuts in the water supply of up to 50 percent for central valley project water contractors because of the persistence of dry conditions. Heavy precipitation in March 1989 in the northern Sacramento River drainage basin restored Lake Shasta's storage equal to the storage in October 1987. As a result of the heavy March rains, the Bureau was able to restore water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The Bureau was also able to leave the gates at Red Bluff Dam out of the water 2 weeks beyond the April 1 deadline agreed to in the Cooperative Agreement. This provided an additional 2 weeks of unrestricted access for returning winter-run chinook to suitable spawning habitat, but lower than expected returns of winter-run chinook were in the river to benefit from this additional period of unrestricted passage.

For undetermined reasons, the 1989 run returned at much lower levels than expected. The CDFG estimated run size for 1989 was about 533 fish, roughly 75 percent below the expected run size. Since 1982, the run has varied about a mean run size of 2382 fish, and resource agencies had expected the 1989 run to be near that level.

Based on the poor return of fish in 1989 and the fact that the Fish and Wildlife Service's hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production was still developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989 meeting of the California Fish and Game Commission that the Commission list the winter-run chinook as a threatened species under the California Endangered Species Act. The Commission considered the CDFG's recommendation, but voted to list the run as endangered under State law. The run was listed as endangered under State law in August 1989.

NMFS also believed that the 1989 run size was dangerously low, but felt that the restoration actions taken by the Bureau at Red Bluff Dam and in managing water temperatures, spawning gravel restoration program initiated by the CDFG, and other restoration actions that had been or were planned for implementation were likely to contribute to a rebuilding of the run. Therefore, NMFS decided that a listing as threatened under Federal law would be appropriate, and on August 4, 1989, published an emergency rule listing the winter-run as a threatened species (54 FR 149). A proposed rule to list the species as threatened was published March 20, 1990 (55 FR 10260). The emergency rule was republished on April 2, 1990 (55 FR 12191) to ensure there would be no break in coverage of the run under the ESA while the final rule was developed. The second emergency rulemaking expires November 28, 1990.

TABLE 1—ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of Fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085
1989	550
1990	[1] 441

[1] Preliminary estimate.

Summary of Comments

State agencies, county governments, Federal agencies, and other interested parties were notified and requested to comment. A newspaper notice inviting public comment was published in the Sacramento Bee on April 2, 1990. Eight comments were received in response to the proposed rule. Three supported the proposal, two did not support the proposal, and three were neutral.

Two commenters supported the listing but recommended that the run be reclassified as endangered if poor returns persist. NMFS agrees that if the run continues to decline, its classification should be reconsidered. NMFS is monitoring the status of the run and the effectiveness of recovery actions. If information becomes available indicating the run should be reclassified, NMFS will initiate the rulemaking procedures to do so.

The California Department of Water Resources indicated that the incidental take provisions provided in section 10 of the ESA do not automatically apply to threatened species and recommended that the rule be modified to include an explicit exception to the prohibitions on taking for section 10 permits.

There are a number of non-Federal projects on the Sacramento River or in the Sacramento-San Joaquin Delta that take winter-run chinook incidentally to their activities. NMFS intends to manage and mitigate the take of winter-run chinook incidentally to these projects through the section 10 incidental take permit process. The proposed rule and this final rule contain exceptions for research and incidental take according to the procedures set in 50 CFR part 222.

Two commenters stated that the 1989 run size estimate made by CDFG are biased low. Based on winter-run chinook fry captured in a trap at the Glenn Colusa Irrigation District's diversion facility, the commenters estimated the 1989 run size in excess of 8,000 adults.

NMFS and CDFG agree that the run size estimates are tenuous to make, but believe the CDFG method is more accurate than the method used by the commenters. The commenters are relying on an estimate produced by back calculating a total spawning population from 354 winter-run chinook fry captured at the CDFG trap at the Glen-Colusa Irrigation District's fish screen. This back calculation requires assumptions about the proportion of fry present in the river that are captured at the trap, survival of eggs, and sex ratio of the population, none of which have been tested for winter-run chinook. The

number of untested assumptions necessary to make this extrapolation make it less reliable than the method used by the CDFG. The back calculation also produces results that conflict with the information on number of redds (area where eggs are laid) observed.

Raising the gates at the Red Bluff Diversion Dam during December through March removes an impediment to the upstream migration of winter-run chinook, but it eliminates the opportunity to count salmon passing through the fish ladders. Run size estimates are based on an extrapolation of counts made at the ladders after the gates are placed back in the river. This extrapolation is based on a run timing curve created by averaging the proportion of the run that passed Red Bluff Dam each week during the run over the years 1982–1986. While this method does not produce a precise estimate of run size, NMFS and CDFG believe that it accurately reflects the magnitude of the run and its recent decline in abundance. In addition, information collected by CDFG on number and distribution of redds corroborates the run size estimate made by extrapolation of the counts at the ladders after the gates are lowered.

One commenter opposed the listing because the current size of the run is equal to or larger than the natural run that existed prior to the construction of Shasta Dam.

Information concerning historic population size of winter-run chinook, is ambiguous. Numerous fishery researchers have cited Slater (1963) to indicate that the winter-run chinook population may have been fairly small and limited to the spring-fed areas of the McCloud River before the construction of Shasta Dam in the 1940s. However, recent CDFG research in California State Archives has cited several fishery chronicles from the 1870s that indicate that the winter-run chinook population may have been much larger than previously thought. According to these qualitative and anecdotal accounts, the winter-run chinook reproduced in the McCloud, Pitt, and Little Sacramento Rivers and may have numbered over 200,000 spawners (Rectenwald, 1989).

The current status of the run is more relevant to the decision to list than the historic run size. NMFS has concluded that the run has declined to such a low level that it may become endangered if factors adversely affecting the population are not remedied or if natural events reduce the population further. Therefore, listing the run as threatened is appropriate.

The commenter also opposed the listing because there appears to be no biological reason why the run should not recover to the levels of the 1960s given sufficient time and continuation of the commitment to complete current and planned restoration measures.

This is essentially the conclusion NMFS reached in the original status review (52 FR 6041, Feb. 27, 1987). The additional decline of the run in 1989, poor return in 1990, persistence of adverse weather conditions, and continued presence of factors inhibiting recovery of the run, place it in a more precarious position than as recently as 1988. The listing will aid in obtaining the funding to implement the actions necessary to rebuild the run.

One commenter indicated that the 1989 fry population is encouraging and the measures to improve fish passage at Red Bluff Dam should considerably enhance the survival and production of winter-run chinook.

Generally, NMFS agrees with this statement. FWS studies have documented the benefit of raising the gates at Red Bluff Dam during the upstream migration of winter-run chinook and the production of fry was apparently higher in 1989 than in 1987 or 1988. This may result in a better return in 1991. Nevertheless, NMFS believes the population is at a precariously low level and measures are necessary to prevent it from becoming endangered.

Several commenters provided technical comments to clarify, update, or correct facts contained in the proposed rule. NMFS has accepted these comments and incorporated them in the preamble to the rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing. These criteria were reviewed in the first Notice of Determination published on February 27, 1987, (52 FR 6041) and again in the subsequent Notice of Determination published on December 9, 1988 (53 FR 49722). The criteria for evaluating the status of the run are reviewed again to present a complete document containing the current information for reviewers.

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification and loss of spawning and rearing habitat likely has been a major factor contributing to the decline of the winter-run chinook. Essential elements of suitable spawning habitat are the availability of clean gravel (which provides a substrate for redd construction), adequate flow of oxygenated water through the gravel to aerate the eggs, and water temperatures between 42.5 and 57.5 °F (which are optimal for egg development (Combs and Burrough 1957)). However, studies reviewed in a literature survey conducted by the California Department of Water Resources indicate that the optimum range of temperatures for development through the emerged fry stage may be bound by 55 °F on the upper end (Seymour 1956 cited in Boles 1988). Historically, winter-run chinook found and used this type of habitat in the cold spring-fed headwaters of the tributaries to the Sacramento River. For example, they were reported to have spawned in the McCloud River (Slater 1963) and may have spawned in the upper reaches of the Pit and Sacramento Rivers (Rectenwald 1989) before access to those locations was blocked by the construction of Shasta Dam.

Shasta and Keswick Dams. In the 1940s, the Bureau initiated its Central Valley Project with the construction of Shasta and Keswick Dams on the Sacramento River. These dams blocked access to the winter-run chinook's spawning habitat. However, operations of these dams created new habitat by releasing cold hypolimnitic waters into the mainstem of the Sacramento. During the late spring and summer when the winter-run chinook are spawning, the cold water released from Shasta and Keswick Dams decreases ambient water temperatures downstream to about Red Bluff which contributes to suitable spawning and rearing conditions in most normal water years. During dry years, less cold water is available for release from Shasta Dam compared to normal years. Consequently, river temperatures are not as low for as long a period as they are in normal years. This temperature increase over time, progressively reduces the availability of suitable spawning and rearing conditions. The design of the Shasta Dam spill gates and intake to the powerhouse penstocks limits the Bureau's ability to draw cold water from below the thermocline, particularly in dry years.

In dry years, as Shasta Lake is depleted, the thermocline falls below the intake to the powerhouse. Unless the Bureau operates low-level releases and bypasses the powerhouse, warm surface water is released into the river where it adversely affects spawning habitat.

In May 1987, the Bureau predicted lethal temperatures below incubating and juveniles would be developing. These temperature conditions would likely have contributed to substantial mortality of the 1987 winter-run chinook

year class. The Bureau initiated a water management strategy to lower river temperatures that included opening, for the first time since the dam was constructed, a low-level outlet in Shasta Dam that draws deep, cold water, but requires the Bureau to forego the opportunity to generate power.

With the drought conditions persisting into 1988, the Bureau again agreed to open the low-level release, at the expense of power generation to maintain suitable river temperatures. Even employing these extraordinary measures, the Bureau was only able to maintain suitable spawning and incubation conditions down stream to Cottonwood Creek, about 20 river miles upstream from Red Bluff. The Bureau also made low-level releases in 1989 and is continuing to do so in 1990.

The Bureau has committed to constructing a permanent temperature control structure at Shasta Dam that will allow water to be drawn into the power penstocks from varying levels in the lake. This will allow better control of river temperatures without foregoing the opportunity to generate power from the water released through the dam. In addition to releasing cold water in the summer, the structure will allow the Bureau to selectively release warm water in the spring to attract winter-run chinook well up into their spawning habitat prior to spawning.

On May 7, 1990, the California State Water Resources Control Board amended a number of permits, licenses, and applications by adding conditions that require, among other things, operation of Shasta Dam, Keswick Dam, and the Spring Creek Power Plant to meet a daily average water temperature of 56 °F in the Sacramento River at RBDD during periods when higher temperatures will be detrimental to the fishery (order WR 90–5). If factors beyond the reasonable control of the Bureau prevent the Bureau from maintaining 56 °F at RBDD, the point at which 56 °F may be moved upstream to a point agreed to after the Bureau consults with the CDFG, NMFS, FWS, and the U.S. Western Area Power Administration.

Spawning habitat has also been degraded by decreases in the rate of replenishment of gravel suitable for spawning. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in the tributary streams below those dams has slowed the recruitment of new gravel into the Sacramento (CDWR 1980). Consequently, the amount of suitable spawning habitat has been shrinking, and, in 1985, the CDFG began a spawning gravel replenishment program. The CDFG and the Bureau are purchasing gravel and the CDFG is placing it in the river to restore degraded spawning riffles in areas of the river used by the winter-run chinook. In 1988 and 1989, CDFG and the Bureau placed about 12,000 cubic yards of gravel in the Sacramento River near Keswick Dam. In the fall of 1990, the CDFG plans to place a total of 80,000 cubic yards of gravel at several locations with the winter-run chinook's spawning range. As additional funding becomes available, the CDFG plans to add up to 1 million cubic yards of gravel to the upper Sacramento over the next decade.

In addition to replenishing spawning riffles, the CDFG is working with the California Department of Water Resources to modify gravel mining permits to ensure that gravel of the appropriate size for salmon spawning habitat is left in the river bed for natural distribution to the main stem or that it be made available for transport to areas where it may be used to restore degraded spawning habitat.

Red Bluff Diversion Dam. An equally important problem has been the impediment that the dam presents to upstream migrants. The dam was built to provide a head of water for diversion to farm lands and wildlife refuges in the northern portion of California's Central Valley. It began operating in August 1966. The dam was designed with fish ladders to allow passage of upstream migrants, but these are not adequate, particularly during high flows that occur in the winter when winter-run chinook are migrating upstream. Hallock *et al.* (1982) and Vogel *et al.* (1988) investigated the effect of the dam on upstream migrants and found that nearly 40 percent of tagged upstream migrants were blocked by the dam. Fish that are blocked spawn downstream from the dam where river temperatures commonly exceed 57.5 °F and mortality of incubating eggs is nearly complete. In addition, the physiological stress associated with delays and repeated attempts to get past the dam may contribute to reduced fecundity of fish that do get past the dam and spawn in suitable habitat.

At the recommendation of the fishery resource agencies, the Bureau agreed to an experimental period during which the gates at the dam would be raised (opened) between December 1 and April 1, with the caveat that the gates may have to be lowered (closed) to deliver water for irrigation or maintenance of canals. The period of migration of the four chinook runs past the dam has been characterized by averaging the cumulative number of fish that passed the dam from 1971 through 1982. Based on these data, raising the gates through April 1, should allow about 66 percent of the winter-run chinook free access to its spawning habitat.

From December 1 to April 1, 1986–87 the gates at Red Bluff Dam were raised for a period of 94 days. The FWS conducted a study of fish passage during the period the gates were opened. The results of that study showed that 11 radio-tagged salmon were delayed an average of 3.19 hours or 28 times less than when the gates were down. Also, none of the tagged salmon that approached the dam, while the gates were raised, backed downstream away from the dam (FWS 1987). During the 1986–87 winter, approximately 95 percent spawned above the dam, indicating the relative effectiveness of raising the gates in improving winter-run chinook passage.

The Bureau has continued this operational procedure in subsequent winters. During the winter of 1987–88, the gates were raised for 68 consecutive days before being lowered to provide irrigation water to the Tehama-Colusa Canal users. Eighty-four percent of the run spawned above Red Bluff Dam in 1988. During the winter of 1988–89, the Bureau was able to keep the gates up for a longer period and CDFG estimated that 97.8 percent of the run spawned upstream from the dam. During the 1989–90 spawning migration, the Bureau held the gates out of the river for the entire period and CDFG estimated that 89.6 percent of the spawning took place above the dam.

The FWS has recommended that the Bureau construct new state-of-the-art fish passage facilities at Red Bluff Dam that would resolve fish passage problems and allow the dam to operate during the winter. The Bureau is evaluating alternatives for new fish passage facilities and has agreed to continue the practice of raising the gates during the winter until new passage facilities are in place.

The dam and its associated diversion facilities also have an adverse effect on downstream migrating winter-run chinook. The Tehama-Colusa Canal, which diverts Sacramento River water at Red Bluff Dam, was protected by an inefficient fish screening facility. Consequently, outmigrating juvenile salmon and fry have been entrained and lost. Although the effect of this mortality on the winter-run population has not been specifically quantified, studies by the FWS (Vogel *et al.* 1988) indicate that an estimated 0.6 percent of the

outmigrating juvenile salmon (all runs) are lost at these screens. As part of the Bureau's efforts to improve operation of the dam and the canal, and to mitigate impacts to fish populations, the Bureau has constructed a new fish screen and bypass system at the canal. The design and placement of the new fish screens was developed in consultation with NMFS, FWS, and the CDFG. These screens are a state-of-the-art design and intended to eliminate entrainment of salmon and other fish into the canal. Validation studies are being conducted to ensure the screens are as efficient as planned.

Additional water marketing. The Bureau has expressed its intent to market an additional 1.1 million acre-feet of water from the Central Valley Project and is preparing an environmental impact statement on its marketing plan. However, the Bureau has stated that it may not go forward with additional marketing until the State Water Resources Control Board has completed a comprehensive review of water rights that affect San Francisco Bay and the Sacramento-San Joaquin Delta. If the additional water is marketed, it will likely exacerbate the problem of maintaining suitable temperatures throughout the spawning habitat now judged to be suitable for winter-run chinook by increasing the frequency of years when critical temperature limits are exceeded.

Anderson Cottonwood Irrigation District Diversion Dam. The Anderson-Cottonwood Irrigation District Diversion Dam is an antiquated structure built in 1917. The gates consist of a series of flashboards that are put in place and manipulated manually. Because the dam is generally operational between mid-March and mid-April, the flashboards are not in place during the early part of the winter-run chinook's upstream migration and about 40 percent of the run should pass the dam prior to March 15. There is a fish ladder at the dam but it is inadequate to facilitate passage of all the salmon that encounter the dam. This excludes some fish from spawning habitat that exists above the dam (U.S. Bureau 1983a). Blockage at the Anderson-Cottonwood Dam is not as severe a problem as blockage at the Red Bluff Dam because suitable spawning habitat exists below this dam. Consequently, the problem has not been fully investigated and the effect of the blockage on the population remains unquantified.

However, seasonal operation of the dam creates another problem. When salmon migrate past the dam before it is put into operation and spawn immediately upstream of the dam, the small reservoir created by the dam when it is put into operation covers the salmon redds. This reduces the flow of aerated water over the eggs and may reduce their survival. The effect of this problem on winter-run chinook also has not been quantified.

A third problem is created by the operational and structural limitations of the dam. The flashboards can be manipulated in flows of 6,000 cubic feet per second (cfs) or less, and they can withstand flows of no more than 12,000 cfs. Because of these limitations, the operations of this dam and Keswick dams are coordinated through an informal agreement between the Bureau and the Anderson Cottonwood Irrigation District. Any time the flash boards have to be manipulated, the Bureau reduces the flow in the river to 6,000 cfs by reducing the releases from Keswick. When releases from Keswick must exceed 12,000 cfs, the Bureau first reduces the flows to 6,000 cfs so the flashboards may be configured appropriately and the flow is increased to the necessary level. These fluctuating flows adversely affect the run by dewatering redds that were constructed at high flows, reducing the flow or aerated water through the redds to inadequate levels, and stranding juvenile fish. Since the winter-run chinook spawning season is encompassed by the irrigation season, it is likely that this problem has an adverse effect on the run.

In 1987 the Bureau and the Irrigation District modified their operations to minimize the need for inseason adjustments to the ACID dam, thereby reducing the magnitude of this problem. In January 1989, the Irrigation District, the State (Departments of Fish and Game and Water Resources), NMFS, and the Bureau of Reclamation met to discuss options for improving the dame. The preferred solution is to redesign and modernize the existing dam with adequate ladders and gates that would eliminate the flow problems, but other alternatives, including relocation of the dam will be considered. In the interim, CDFG is pursuing temporary remedies such as a temporary ladder in the dam to improve passage.

Pollution Pollution also has degraded the spawning habitat of the winter-run chinook. Runoff from inactive mining operations at Iron Mountain Mines in the vicinity of Spring Creek, a tributary to the upper Sacramento, leaches heavy metals which can reach levels lethal to juvenile fish, alevins, and eggs. A debris dam was constructed on Spring Creek in 1963 to collect debris eroded from the mine sites and to control the release of toxic water into the mainstem of the Sacramento River. Under normal conditions, release from Spring Creek Dam are diluted by water made available through the Bureau's operation of the Central Valley Project so that concentrations of heavy metals in the Sacramento remain below toxic levels. During years of heavy precipitation, spills from Spring Creek Reservior result in uncontrolled releases of toxic water. Generally, this occurs in the winter when fall-run chinook alevins are hatching and fry are emerging from the gravel. These are the life stages most sensitive to pollution and large kills of these life stages have been attributed to spills of toxic water. Winter-run chinook adults are subjected to these spills, and, while kills of adult fish have not been reported, sublethal effects such as reduced fecundity are probable.

The Environmental Protection Agency (EPA) has placed the site on its Superfund Priority List; they have completed a Remedial Investigation/Feasibility Study of the problem. EPA has identified a combination of source control, treatment, and water management as the most cost-effective remedial solution. The EPA and the Bureau are cooperating in efforts to resolve the Spring Creek toxicity problem. The EPA is funding these remedial activities through its Superfund Program and serves as the managing agency for the restoration. The Bureau will be responsible for design and construction of the water management components that protect most of the Spring Creek Basin drainage from being contaminated and will reduce the possibility of a spill from Spring Creek Reservoir. The first phase of this plan, a structure to divert the North Fork of Spring Creek away from contaminated areas and around Spring Creek Reservoir, is under construction. This structure will divert up to 40 percent of the runoff from the Spring Creek Drainage and release the uncontaminated water into Keswick Reservoir.

Hydroelectric Projects. The Federal Energy Regulatory Commission (FERC) is considering licensing applications for two hydroelectric projects which, if authorized, would adversely affect the winter-run chinook. These are the Lake Redding Project and the Lake Red Bluff Project, which was recently reactivated by the FERC. If built, these projects would result in loss of winter-run chinook habitat and aggravated fish passage problems. Section 18 of the Federal Power Act (19 U.S.C. 791 *et seq.*) grants NMFS authority to prescribe

standards for fish passage. These standards must be met before the projects can be authorized. These provisions, combined with the FERC's responsibilities under section 7 of the ESA, will ensure no new threats to the winter-run chinook population will be allowed to develop as a result of hydroelectric projects on the upper Sacramento River.

Bank Stabilization. Much of the Sacramento River has been riprapped, leveed, or otherwise channeled to prevent erosion of agricultural lands and contain flood waters. Studies of bank protection projects in the upper Sacramento River have demonstrated that juvenile salmon show a marked preference for non-riprapped areas (Schaffter *et al.* 1983, Michny and Hampton 1984). Therefore, bank stabilization may effect the quality of rearing habitat. The COE and the FWS are cooperating in the investigation of methods to restore riparian habitat on stabilized banks so that the quality of the habitat for rearing fish can be maintained.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Winter-run chinook are probably subjected to a harvest rate that is less than that for the other three races of chinook in the Sacramento River. This generalization is based on two observation. First, the separation in timing of the adult spawning migration from the ocean between the winter-run chinook and the fall-run chinook (the target run for the ocean fishery) is almost couplete. Consequently, winter-run chinook are not available to the ocean fishery for as long as fall-run chinook. This should contribute to a lower harvest rate. Second, winter-run chinook return to the Sacramento River at a younger age and at a smaller size than the other three runs. According to Hallock and Fisher (1985), winter-run chinook mature almost exclusively as 2 and 3-year-old fish. Age composition of a typical run is 25 percent 2-year-olds, 67 percent 3-year-olds, and 8 percent 4-year-olds. Fall-run chinook tend to mature somewhat later than winter-run chinook. Since fall-run Chinook return at an older ager, they are generally larger. This indicates that the winter-run chinook are available to the ocean sport and commercial fisheries for a shorter period of time than the other runs and receive greater protection from the size limits imposed by the Pacific Fishery Management Council (PFMC).

Ocean fishing regulations limit sport caught chinook to 20 inches or greater and commercial caught chinook to 26 inches or greater. Since winter-run chinook return at a smaller size they are more available to the sport fishery than the commercial fishery. This explains why the ocean sport fishery catches 71 percent of the ocean harvest of winter-run chinook and the catch consists of mostly 2-year-old fish. The commercial fishery is responsible for about 29 percent of the ocean catch of winter-run chinook and their catch consists mostly of 3-year-old fish.

Hallock and Fisher (1985) report hook-scarring percentages for chinook that were released in the ocean fishery. Hook scars occur when fish under legal size limits are released alive. Of the fish examined at the trapping facility at Red Bluff Dam, the spring, fall, and late-fall runs experienced 38 percent greater hook-scarring than the winter run. Hook-scarring cannot easily be used to infer harvest rates or even "shaker mortality" (associated with the release of undersized fish), but it does show a reduced interaction between winter-run chinook and the ocean fisheries.

Nearly all data about the time, growth, distribution, and mortality of salmon in the ocean come from tagging experiments at hatcheries using coded wire tages. Because winter-run chinook are a naturally spawning race, there have been no coded wire tags studies on them. However, Hallock and Fisher (1985) report a marking study, conducted in 1969–71, in which juveniles from three brood stocks were seined from the Sacramento River, fin-clipped, and released. Recoveries of the adults from these releases were tabulated and estimates made of age at harvest and harvest rate. Their results confirmed that winter-run chinook mature almost exclusively as 2 and 3-year-olds and produce an estimated catch-to-escapement ratio of 0.53:1.0 and an ocean havest rate of 34.6 percent.

These are likely conservative estimates because a duplicate mark was used unintentionally in other California and Oregon chinook studies during the same period. Consequently, the mark returns in the ocean fishery that were attributed to the Sacramento River winter-run chinook were too high by some unknown amount. Also the harvest rate for winter-run chinook has likely declined since the study was completed, because ocean fishing regulations are currently more restrictive than they were during the early 1970s. The effect of each of these factors is an over estimation of the ocean harvest of winter-run chinook.

Data on inland sport harvest of adult winter-run chinook are scarce: estimates are available from 1968-1973 and 1975. Hallock and Fisher (1985) report data for these years that show Sacramento River sport harvest rates for winter-run chinook averaging 8.5 percent of the in-river harvest.

Hallock and Fisher (1985) Reported that 85 percent of the total catch winter-run chinook from the 1969–71 broods were caught in the ocean and 15 percent were caught in the river. Based on the data discussed above, they estimated the total catch-to-escapement ratio was 0.58.1.0, and the total harvest rate was 38 percent.

The harvest rate of winter-run chinook is substantially below that managed for any other chinook stock on the Pacific coast. The PFMC reports an index of ocean fishery harvest rates south of Point Arena for California Central Valley chinook. The 16-year average for the index is 64 percent. The CDFG (L.B. Boydstun, CDFG, personal communication) estimates that the total harvest rate for the stocks (including areas north of Point Arena) is about 30 percent greater than that reported in the index or about 82 percent. This represents a catch-to-escapement ratio greater than 4:1 In Washington State where, in addition to conservation management, the ocean fishery is restricted to achieve court-ordered allocations of chinook to inside Indian fisheries, the ocean catch-to-escapement ratios are managed between 2:1 and 1:1 (J. Coon, PFMC staff, Personal communication).

NMFS believes that even a marginally healthy stock should be able to maintain stable population levels and even growth at the moderate harvest levels to which winter-run chinook have been subjected, and that harvest have not been instrumental in the decline of winter-run chinook in the Sacramento River. Nevertheless, in 1987 the CDFG implemented seasonal closures in the upper Sacramento and a quota of 175 fish and began monitoring the catch. The estimated take was 26 fish in 1987 and 91 fish in 1988. After the poor return of winter-run chinook in 1989, the CDFG has implemented even more restrictive sport fishing measures in the river and the ocean adjacent to the Golden Gate. NMFS agrees that these measures are prudent and necessary to maximize the probability that the adults that survive and return to the spawning grounds have the opportunity to spawn.

In the proposed rule, NMFS include and exception to the prohibition on taking for fishermen that catch winter-run chinook while fishing legally under State or Federal Fishing regulations. NMFS has reconsidered the appropriateness of this exception given

other mechanisms in the ESA to provide for an incidental take. While there is sufficient information to conclude that the commercial and recreational salmon fisheries were not substantial contributors to the decline of the winter-run chinook, the effect of take in the fisheries on the recovery of the run needs to be evaluated. The PFMC is currently consulting with NMFS on the fishery management plan which includes fishing in state waters. The salmon fishery is closed until February 1991, and, by that time, the Section 7 consultation should be completed.

If the results of the consultation indicate that the level of incidental taking will not jeopardize the continued existence of the species, NMFS can provide the PFMC with an incidental take statement that will allow fishermen to catch winter-run chinook incidental to fishing for other stocks of salmon. Therefore, NMFS has deleted the exception to the prohibition on taking.

Winter-run chinook are also captured for scientific purposes. The FWS captures adults for radio tagging to monitor the effectiveness of raising the gates at Red Bluff Diversion Dam on upstream migration of adults and to provide brood stock for an experimental enhancement project. Juvenile winter-run chinook are captured in experiments to determine where winter-run fry rear, when they migrate to sea, and monitor the impacts of diversions. These studies are expected to continue under research permits which have been excepted from the prohibition on taking. These studies will likely be identified as essential components of a recovery plan and would not constitute over use of the species.

3. Disease or Predation

The magnitude and extent of predation throughout the Sacramento River has not been determined. However, observations indicate substantial predation may occur at certain locations. For example, losses of fall-run salmon to predation can be significant at Red Bluff Dam (Vogel *et al.* 1988 and Hall 1977 cited in Garcia 1989). In addition, there is a potential for high levels of predation at the Glenn-Colusa Irrigation District's diversion facility near Hamilton City where squawfish and striped bass have been observed preying on salmonids salvaged from Sacramento-San Joaquin Delta diversions. Garcia (1989) reviewed the impacts of squawfish predation on juvenile chinook salmon at Red Bluff Dam and other locations in the Sacramento River. Although the potential for a substantial loss of winter-run chinook juveniles exists at the dam, Garcia concluded that because information on the timing of the winter-run chinook downstream migration and the biology of the squawfish was lacking, impacts could not be quantified. Even so, raising the gates at Red Bluff Dam from December through March likely has a beneficial impact on the problem of predation at the dam. When the gates are raised, there is no barrier to movements of squawfish and they should not concentrate below the dam. Also, disturbance to the normal flow of the river is minimal so that downstream migrating juvenile salmon should not become disoriented by turbulence thus making them less susceptible to predation.

NMFS has funded an experimental fishery for squawfish in the vicinity of Red Bluff Dam to assess the feasibility of establishing a fishery as a means of squawfish population control. Although squawfish may be catchable in commercial quantities and development of the fishery would likely reduce impacts of predation, recent analysis of squawfish flesh has shown dioxin contamination from paper mills on tributary streams. Consequently, squawfish may not be sold for human consumption.

4. The Inadequacy of Existing Regulatory Mechanisms

Relevant laws that comprise the existing regulatory mechanisms were listed in the Notice of Determination (52 FR 6041, Feb. 27, 1987) and described as providing adequate mechanisms for restoring the winter-run chinook in the Sacramento River. However, the decline in the size of the run since the late 1960s indicates that these regulatory mechanisms were not applied effectively with respect to the winter-run. NMFS now believes the ESA is needed to augment and enhance the effectiveness of the existing regulatory mechanisms.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

In addition to the Red Bluff Dam and the Tehama-Colusa Canal (discussed under criterion 1), there are large diversions of water at the Glen-Colusa Irrigation District's diversion facility and at the Sacramento-San Joaquin Delta pumping plants that likely entrain juvenile salmon as well. There are also numerous small, unscreened diversions on the Sacramento River. Presumably, the cumulative effect of entrainment at these diversions and delays in outmigration of smolts caused by reduced flows has an effect on the winter-run chinook. This effect has not been quantified because of uncertainties of where juvenile winter-run chinook rear in the River and when they migrate to the sea. Presently, the fisheries agencies presume that winter-run chinook fry seldom get to the Delta during the fall rearing period unless high flows are present in the late fall to early winter period. This suggests that the fry rear between Red Bluff and Sacramento, since most young winter-run chinook appear to pass Red Bluff by mid-fall. During these early rearing stages, winter-run chinook fry are susceptible to entrainment because they are likely using habitat near shore.

Based on FWS and CDFG sampling, winter-run smolts appear to travel through the delta between December and April (with the extremes of the seaward migration being September and May) (Stevens 1989). Should exports of water from the delta increase during this period and diversions to the central delta from the Sacramento River remain unscreened, the winter-run chinook smolts would be more vulnerable to delta losses.

The impact of these diversions needs to be quantified and remedial measures need to be pursued and implemented. Regulations under section 4 and consultations under section 7 of the ESA are available to mitigate the affects of diversions.

Natural factors of greatest concern are periodic droughts and the oceanographic phenomenon known as El Niño. The 1976–77 drought severely reduced the size of two consecutive cohorts leaving the 1978 brood as the only large spawning cohort (Table 1). The strong El Niño event during 1982–83 contributed to the decline of the last strong cohort. The only measure to mitigate the profound impact of a strong El Niño is hatchery rearing to increase smolt production from the returning spawners that survive the poor ocean conditions.

Drought conditions, such as those that existed during the past four dry years in Northern California, most directly threaten the winter-run chinook by causing elevated water temperatures on the spawning grounds. This problem was resolved using interim measures in 1987, 1988, 1989, and 1990. However, a permanent temperature control facility at Shasta Dam is needed to solve this problem for the long term.

Conclusion. The 1989 and 1990 runs were significantly reduced, and if such poor returns persist, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as

droughts. Based on the size of the 1989 and 1990 runs and the continuing threats to the population, NMFS believes that the winter-run of chinook salmon in the Sacramento River is likely to become an endangered species in the foreseeable future. Therefore, NMFS concludes that the run should be listed as threatened under the ESA and that the various agencies affecting the run and its habitat should continue to ensure that conditions are maintained in the river for maximum production from the fish that return to spawn annually.

Available Conservation Measures. Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, all Federal agencies are required to conduct conservation programs for threatened and endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS' jurisdiction.

Pursuant to the emergency listing on August 4, 1989, NMFS has initiated section 7 consultations with the Federal agencies whose actions affect the continued existence of the winter-run. Among the agencies with which NMFS is or will be consulting are the Bureau on various aspects of the Central Valley Project, the U.S. Army Corps of Engineers on gravel mining operations and flood control projects, and the Pacific Fishery Management Council on the effect of sport and commercial fishing.

NMFS is charged with implementing the Magnuson Fishery Conservation and Management Act (Magnuson Act) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, interjurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the Magnuson Act. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. The Council manages the fishery generally by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters. NMFS expects that through these consultations under the respective state and Federal laws, a State/Federal regulatory regime will be developed that will ensure that the winter-run chinook population is not adversely affected by sport or commercial fishing.

Although a direct take of winter-run chinook salmon by sport or commercial fishermen will not be allowed, an incidental take of a listed species may be allowed through the ESA section 7 consultation process or the incidental take provisions of section 10.

Also, NMFS will continue coordination with the State of California in managing the winter-run chinook and its habitat. The state's Endangered Species Act contains a provision for interagency consultation among state agencies similar to section 7 of the ESA. The CDFG will be reviewing impacts of state actions on the winter-run chinook to see if there are actions beyond the Ten-point Restoration Plan that can be taken. They will be reviewing the state's water project for opportunities for improved water conservation as well as their own sport and commercial fishing regulations to ensure those fisheries will not jeopardize the continued existence of winter-run chinook.

NMFS has appointed a Recovery Team to develop a recovery plan for winter-run chinook. The first meeting of the team was held on November 28, 1989. The team is reviewing the ten-point restoration plan as a basis for generating a more comprehensive recovery plan.

Critical Habitat

Section 4(a)(3)(A) of the ESA contains the requirement that, to the extent that it is prudent and determinable, critical habitat be designated concurrently with the listing of a species as an endangered or a threatened species. However, unlike designating a species as threatened or endangered, NMFS is required to consider economic impacts when designating critical habitat, and is authorized to exclude any area from the designation if it is determined that the benefits of such an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

In the emergency rules, NMFS designated the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243), and Keswick Dam, Shasta County (River Mile 302), including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for winter-run chinook. The economic impact analysis was cursory because the designation was to last only 240 days. A more rigorous analysis of the economic impacts is being conducted to ensure compliance with the requirement of section 4(b)(2). Since this analysis has not been completed, NMFS has not yet determined the extent of critical habitat. However, within 1 year of this final rule, NMFS will propose in a separate rulemaking the designation of critical habitat. When analyzing the economic impacts, NMFS will evaluate other alternatives for critical habitat including habitat in which winter-run chinook has spawned successfully during exceptionally good water years.

NMFS believes that deferring the designation of critical habitat should not be detrimental to the conservation of the run because section 7 consultations conducted by NMFS under the ESA will identify any Federal (including Federally permitted or funded) actions that harm the species including modifying or destroying its habitat. The prohibitions on taking the species will continue to be in effect, and actions likely to adversely modify or destroy habitat could be considered a take, and will be addressed by NMFS.

Classification

The 1982 amendments to the ESA (Pub. L. 97–304), in section 4(b)(1)(A), restricted the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listing from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

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List of Subjects in 50 CFR Part 227

Threatened fish and wildlife.

Dated: October 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons described in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraph (e) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon (*Oncorhynchus tschawytscha*).

Subpart C—Threatened Marine and Anadromous Fish

3. The title of subpart C is revised to read as set forth above.

4. Under subpart C, a new § 227.21 is added to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon except as provided in paragraph (b) of this section.

(b) *Exception.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the same provisions that apply to endangered species under Part 222—Subpart C—Endangered Fish and Wildlife Permits.

[FR Doc. 90-26102 Filed 10-31-90; 4:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 214
Monday, November 5, 1990

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-215-AD]

Airworthiness Directives; Boeing Model 737-100, 737-200, and 737-200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 737-100, 737-200 and 737-200C series airplanes, which currently requires periodic inspections for missing, worn, or damaged aft engine mount cone bolts, nuts, and secondary supports, and replacement, if necessary. Failure of these components of the aft engine mount assembly could result in an engine separating from the wing. This proposed action would allow certain worn secondary suport load limiter through-bolts to continue to be used on the airplane as long as more frequent inspections of the aft mount cone bolt indicator are performed. This proposal is prompted by inadequate stocks of the required load limiter through-bolt.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certificate Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-215-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 19, 1990, the FAA issued AD 90-03-16, Amendment 39-6497 (55 FR 3041, January 30, 1990), to require either repetitive ultrasonic inspections for cracks of the aft engine mount cone bolt, and replacement, if necessary; or a repetitive visual inspection for missing nuts, worn bolts, or disbonded honeycomb core of the improved secondary support, and repair, if necessary. That action was prompted by reports from several operators of Boeing Model 737 series airplanes who found the aft engine mount improved secondary support installation (required by a previous AD) to have missing nuts, worn bolts, and disbonded honeycomb structure. This condition, if not corrected, could result in an engine separating from the wing.

Since issuance of that AD, recent reports from the manufacturer indicate that spare load limiter through-bolts are scarce and that an alternative schedule for inspection of the aft cone bolt is needed until replacement of these bolts can be accomplished. the FAA has reviewed the available data and has determined that secondary support load limiter through-bolts that are worn within certain limits may continue to be used on the airplane if the currently required repetitive inspections of the aft mount cone bolt indicator and torque checks of the cone bolt are conducted at more frequent intervals. The FAA has determined that safety will not be compromised if these more frequent inspections are performed.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-71A1212, dated December 22,1987, which describes procedures for ultrasonic and magnetic particle inspections of the aft engine mount cone bolts on Model 737 series airplanes, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede Ad 90-03-16 with a new AD that would require more frequent inspection so the aft mount cone bolt indicator for proper alignment, and replacement if necessary; and visual inspections of the aft mount cone bolt improved secondary supports, and replacement of any missing nuts, disbonded honeycomb cores, and load limiter through-bolts worn beyond a certain limit. If replacement hardware is not immediately available, this action would also require repetitive ultrasonic inspections for cracks in the engine aft mount cone bolt, and more frequent torque checks of the cone bolt, until replacement can be accomplished. Certain of these inspections would be required to be accomplished in accordance with the service bulletin previously described.

This is considered to be interim action until a new terminating modification is designed and available, at which time the FAA may consider further rulemaking.

There are approximately 1,144 Model 737 series airplanes of the affected design in the worldwide fleet. It is

estimated that 432 airplanes of U.S. registry would be affected by this AD and that it would take approximately 0.1 manhour per airplane to accomplish the additional required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total additional cost impact of the AD on U.S. operators is estimated to be $1,728.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6497 (55 FR 3041, January 30, 1990), AD 90–03–16, with the following new airworthiness directive:

Boeing: Applies to Model 737–100, –200, and –200C series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation as a result of the improved secondary support not sustaining engine loads if the aft engine mount cone bolt were to fail, accomplish the following:

A. Within the next 45 landings after the effective date of this AD, accomplish the following:

1. Inspect the aft mount cone bolt indicator for proper alignment. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced, prior to further flight, with bolts that have been inspected in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, using magnetic particle inspection techniques. Repeat the inspection of the indicator at intervals thereafter not to exceed 45 landings.

2. Inspect the aft mount cone bolt improved secondary support for missing nuts, evidence of bolt wear, and disbonded honeycomb core in accordance with the instructions below. Missing nuts, worn bolts, or disbonded honeycomb core must be replaced, prior to further flight, with new or repaired identical parts. Repeat the inspection at intervals not to exceed 300 landings.

a. Visually inspect the self-locking nut on the upper end of the load limiter through-bolt to verify that at least two complete threads protrude beyond the nut. If the nut is missing or backed off, prior to further flight, replace the nut.

b. Visually inspect the load limiter through-bolt for grooves or wear patterns at the lower edge of the retainer. Ensure that groove or wear depth does not exceed .022 inch. Replace any bolt which exceeds this limit prior to further flight.

c. Visually inspect the rectangular shaped honeycomb core segment of the load limiter for disbonding. The core is bonded to the end place at the lower end and to the top of the housing at the upper end. Replace the load limiter, prior to further flight, if the core is disbonded at either end.

B. Perform the following inspections if discrepant hardware is found during the inspections required by paragraph A.2. of this AD, and replacement hardware is not immediately available:

1. Prior to further flight, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the above service bulletin, using magnetic particle inspection techniques. Replacement (newly installed) cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

2. At the next ultrasonic inspection, as required by paragraph B.1. of this AD, unless previously accomplished within 150 to 300 landings after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt. After every cone bolt installation, accomplish the torque check procedure required by this paragraph, between 150 landings and 300 landings following installation.

a. If the cone bolt torque is below one-half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

b. If the cone bolt torque is equal to, or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 150 to 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–26092 Filed 11–2–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–212–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, which currently requires modification; one-time and periodic inspections; and repair, if necessary, of passenger doors to ensure proper operation of the emergency power assist door opening system. That action was prompted by reports of fractured emergency power

assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation. This proposed action would require additional modification; terminating inspections; and repair, if necessary, of passenger door emergency power assist opening system.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-212-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-212-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On November 20, 1989, the FAA issued AD 89-25-09, Amendment 39-6407 (54 FR 49964, December 4, 1989), to require modification; one-time and periodic inspections; and repair, if necessary, of the power assist door opening system of passenger doors on Boeing Model 757 series airplanes. That action was prompted by reports of fractured emergency power assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation.

Since issuance of that AD, the manufacturer has developed a modification that provides terminating action for required periodic inspections. This terminating modification consists of the installation of lockout links and a new trigger guard, and modification of the trigger spring cylinder end cap, along with a functional inspection of adjacent assemblies. The FAA has reviewed and approved Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990, which describes procedures for inspection repair, and modification of the passenger door emergency power assist trigger mechanism.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-25-09 with a new airworthiness directive that would also require eventual installation of the terminating modification of the passenger door emergency power assist trigger mechanism, with follow-on inspection and rework, if necessary, in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

There are approximately 254 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $291,720.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6407 (54 FR 49964, December 4, 1989), AD 89-25-09, with the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure passenger door power assist opening when required for emergency opening, accomplish the following:

A. For airplanes identified as Group 1 in Boeing Service Bulletin 757-52-0042 dated March 30, 1989, or Revision 1, dated April 26, 1990: Within the next 350 flight hours after January 6, 1990 (the effective date of Amendment 39-6407, AD 89-25-09), accomplish the following in accordance with section III, part II, of the Service Bulletin. Any interference or improper clearance detected as a result of the required inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Modify the forward right-hand door.

2. Inspect all doors for evidence of interference between the trigger support housing and the upper hinge arm.

3. Inspect all doors for proper clearance between the power assist trigger and the door and fuselage skin.

B. For all airplanes listed in Boeing Service Bulletin 757-52-0042, dated March 30, 1989, or Revision 1, dated April 26, 1990: Within the next 350 flight hours after January 6, 1990 (the effective date of Amendment 39-6407, AD 89-25-09), and thereafter at intervals not to exceed 6 months, accomplish the following inspection in accordance with section III, part I, of the Service Bulletin. Any damage or improper adjustment or operation detected as a result of the inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

2. Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

3. Inspect trigger spring cylinders for proper operation.

4. Inspect roller arms for damage.

C. For all airplanes identified in Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990: Within the next 18 months after the effective date of this AD, accomplish the following in accordance with section III, part III, of the Service Bulletin. Any damage, defects, improper adjustments, or improper operation detected as a result of the inspections required by this paragraph must be repaired prior to further flight, in accordance with the Service Bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph B. of this AD.

1. On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.

2. On all passenger doors, install the new trigger guard and inspect the emergency power assist triggers for wear marks, damage, or fracture.

3. On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.

4. On all passenger doors, inspect roller arms for damage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26093 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-19]

Airworthiness Directives; EROS, Quick Donning Mask-Regulators, MA 10-[ ]-[ ], MB 10-[ ]-[ ], and MC 10-[ ]-[ ]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require the inspection and modification of the EROS Company Quick Donning Oxygen Mask-Regulators, Models MA10-[ ]-[ ], MB10-[ ]-[ ], and MC10-[ ]-[ ]. The proposal is prompted by reports of oxygen mask shells found separated from their regulator valves. This condition, if not corrected, could result in incapacitation of the crew member using the mask and impair aircraft flight safety.

DATES: Comments must be received on or before December 5, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-19, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311, at the above address.

Comments must be marked: Docket No. 90-ANE-19.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from EROS, Equipments Respiratoires a Oxygene de Secours, P.O. Box 10, 78370 Plaisir, France, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Systems and Propulsion Branch, ANE-153, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7066.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before any final action is taken on the proposed rule. The proposals contained in this notice maybe changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 90-ANE-19. The postcard will be date/time stamped and returned to the commneter.

Discussion

The FAA has determined that the EROS oxygen masks can separate from their valve regulators, and that this potential mask regulator separation could affect the safety of the operation of the aircraft because it renders the oxygen masks unusable when needed. Oxygen valve regulators had separated from the mask shells on three occasions while testing the oxygen

masks on a Boeing Model 747–400 airplane for quick donning capability. The locking tab device for the mask face piece was found inadequate to retain the regulator in place. Also, the FAA has received a report that the crew oxygen masks were found defective approximately 5 percent to 10 percent of the time upon removal from the cockpit storage containers in Boeing Model 737–300 airplanes. These defective oxygen masks were reported to have tested properly in the storage containers prior to their removal; however, the masks separated from the regulators upon removal from the containers.

Since this condition is likely to exist or develop on other aircraft that have these mask-regulators installed, the proposed AD would require an inspection and a replacement of these crew oxygen masks.

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

The FAA has determined that this proposed regulation involves between 3,000 and 4,000 crew masks, and the approximate cost would be $18 to $20 per mask replacement. Based on these figures, the total cost is estimated to be between $54,000 and $80,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1323; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Equipments Respiratoires a Oxygene de Secours (EROS): Applies to EROS Crew Mask-Regulators Models MA10–[ ]–[ ], MB10–[ ]–[ ], and MC10–[ ]–[ ] series equipped with plastic mask lock part Number (P/N) 412571, installed on, but not limited to, Boeing 737–300 and 747–400 aircraft.

Compliance is required as follows:

To prevent crew member incapacitation from the use of damaged crew masks accomplish the following:

(a) Within the next 30 days after the effective date of this AD conduct a visual inspection of all currently installed EROS Crew Mask-Regulators for damaged or broken mask locks. Replace any locks found damaged or broken with serviceable mask locks.

(b) Within the next twelve calendar months after the effective date of this AD, unless already accomplished, remove the existing plastic mask lock P/N 412571 from the crew mask, and replace it with a new aluminum alloy metallic mask lock P/N 416611.

Note: EROS Service Bulletin No. MA/B/C 10–35–29, Revision 1, dated March 8, 1988, contains replacement guidance.

(c) Alternatively, upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may approve an equivalent means of compliance or an adjustment of compliance schedule specified in this AD which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on October 11, 1990.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–26094 Filed 11–2–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–ANE–23]

Airworthiness Directives; General Electric (GE) CT58–140–1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CT58–140–1 turboshaft engines, which would require a one-time removal and inspection of certain gas generator (GG) turbine rotor parts and power turbine wheels. This proposal is prompted by the report of inadvertent shotpeening of those parts during overhaul by H & S Aviation, Division 3 (Formerly Hants & Sussex), Portsmouth, England, between March 14, 1989, and August 21, 1989. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Comments must be received no later than December 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket No. 90–ANE–23, 12 New England Executive Park, Burlington, Massachusetts 01803

The applicable service bulletin may be obtained from GE, 1000 Western Avenue, Lynn, Massachusetts 01910, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7087.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this

proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90-ANA-23." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that during a walnut shell cleaning process at H & S Aviation, Portsmouth, England, between March 14, 1989, and August 21, 1989, a number of GE CT58-140-1 turboshaft engine GG rotor turbine parts and power turbine wheels may have been inadvertently shotpeened by walnut shells contaminated with steel shot. This condition, if not corrected, could result in failure of those parts due to reduced low cycle fatigue life and subsequent uncontained engine failure.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require a one-time removal, inspection, and reidentification of all suspect GG turbine rotor parts and power turbine wheels on CT58-140-1 turboshaft engines, in accordance with the compliance section of this AD.

There are approximately 15 parts on 5 engines of the affected design in the worldwide fleet. H & S Aviation will provide overhaul shop labor to remove, inspect and reidentify unaffected parts, at no cost to the operator. H & S Aviation will replace those parts which were inadvertently shotpeened, at no extra charge to the operator.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[Amended]

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

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

§39.13 [Amended]

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

General Electric Company: Applies to General Electric Company (GE) CT58-140-1 turboshaft engines overhauled by H & S Aviation, Division 3 (Formerly Hants and Sussex), Portsmouth, England, between March 14, 1989, and August 21, 1989. The affected parts are identified by serial number (S/N) and installed in engines with S/N's, as follows:

Engine S/N	Part name	Part S/N
295235	Stage 1 forward cooling plate.	BJWTMS 7732
	Stage 1 aft cooling plate.	BJWTMS 6649
	Stage 2 forward cooling plate.	ASVA 3663
	Stage 2 aft cooling plate.	ASVA 0125
	Power turbine (PT) wheel & shaft.	GAT 59510
295206	Stage 1 turbine wheel.	GATBK 483
	Stage 2 turbine wheel.	GATFE 352
280326	Stage 2 turbine wheel.	GATL 2835
	PT wheel and shaft	GAT 59722
280218	PT wheel and shaft	GAT 59692
280294	Stage 1 forward cooling plate.	BJWTMS 7663
	Stage 1 aft cooling plate.	BJWTMS 5778
	Stage 2 forward cooling plate.	BJWTMS 5951
	Stage 2 aft cooling plate.	BJWTMS 7356
	Stage 2 turbine wheel.	GATEL 092

Compliance is required as indicated, unless already accomplished.

To prevent failure of suspect gas generator (GG) turbine rotor parts and power turbine (PT) wheels, which may have a reduced low cycle fatigue life due to inadvertent shotpeening, which could result in an uncontained engine failure, remove and inspect all surfaces of GG turbine rotor parts and PT wheels identified above by 20x microscope as follows:

(a) Part S/N's BJWTMS 7732, BJWTMS 6649, ASVA 3663, ASVA 0125, and GAT 59510, prior to accumulating 5,853 cycles since new (SCN).

(b) Part S/N's GATBK 483, and GATFE 352, prior to accumulating 5,249 CSN.

(c) Part S/N GATL 2835, prior to accumulating 10,792 CSN.

(d) Part S/N GAT 59722, prior to accumulating 10,856 CSN.

(e) Part S/N GAT 59692, prior to accumulating 9,660 CSN.

(f) Part S/N's BJWTMS 7663, BJWTMS 5778, BJWTMS 5951, BJWTMS 7356, and GATEL 092, prior to accumulating 5,696 CSN

(g) Remove from service parts found with evidence of shotpeening and replace with a serviceable part. Reidentify parts found with no evidence of shotpeening prior to return to service.

Note: GE Alert Service Bulletin CT58 A72-173, contains information in reference to paragraphs (a) through (g) above.

All persons affected by this directive who have not already received the appropriate alert service bulletin from the manufacturer may obtain copies upon request to GE Aircraft Engines, 1000 Western Avenue, Lynn, Massachusetts 01910. These documents may be examined at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 16, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26095 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed

rulemaking (PS-4-73), which was published Friday, October 5, 1990, (55 FR 40870). The proposed regulations relate to the requirement that a small business corporation have only one class of stock.

FOR FURTHER INFORMATION CONTACT: David R. Haglund (202) 343-8459 (not a toll-free call).

SUPPLEMENTARY INFORMATION: .

Background

The notice of proposed rulemaking that is the subject of these corrections contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments are proposed to implement section 1361(b)(1)(D) and (c) (4) and (5) as added by the Subchapter S Revision Act of 1982.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS-4-73) which was the subject of FR Doc. 90-23533, is corrected as follows:

Paragraph 1. In the preamble, page 40872, column 1, second paragraph, line eleven, line twenty-one, and line twenty-seven, remove the date "January 3, 1991", and add the language "[Insert date that is 90 days after the publication of the final regulations in the **Federal Register**]" in each location.

§ 1.1361-1 [Corrected]

Par. 2. In § 1.1361-1, page 40874, column 3, paragraph (l)(5) under Example 5, line nine, the word "field" is corrected to read "filed".

§ 1.1361-1 [Corrected]

Par. 3 In § 1.1361-1, page 40875, column 1, paragraph (l)(7), line twelve, line twenty-one, and line twenty-seven, remove the date "January 3, 1991", and add the language "[Insert date that is 90 days after the publication of the final regulations in the **Federal Register**]" in each location.

Dale D. Goode,

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

[FR Doc. 90-26022 Filed 11-2-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3857-6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: On June 28, 1990, (55 FR 26470), USEPA proposed to disapprove revisions to the Minnesota State Implementation Plan (SIP) concerning a Sulfur Dioxide Plan for portions of Dakota County. This action was based on a revision request submitted by Minnesota on August 19, 1987. On July 20, 1990, the State withdrew this submittal from further Federal rulemaking. Therefore, today USEPA is withdrawing its June 29, 1990, proposed action on the revision.

DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Minnesota Regulatory Specialist, (312) 353-3849.

Authority: 42 U.S.C. 7401-7642.

Dated: October 22, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-26118 Filed 11-2-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA40

White Earth Reservation Land Settlement Act of 1985

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Hearings and Appeals is proposing to add new regulations for determining, through intestate succession, the heirs of those persons who died entitled to receive compensation pursuant to section 8(c) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), as amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433). The proposed regulations cite the authority and enunciate the policy and procedures to be followed in making such heirship determinations. The time-sensitive requirements of the White Earth Reservation Land Settlement Act of 1985 also make it necessary and desirable for the Secretary to promulgate regulations which will afford efficient and expeditious determination while at the same time maintaining the existing system integrity.

DATES: Comments should be received on or before December 5, 1990.

ADDRESSES: Written comments should be mailed or delivered to James L. Byrnes, Acting Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20245; Telephone (202) 208-5473 (not toll free).

SUPPLEMENTARY INFORMATION: The White Earth Reservation Land Settlement Act of 1985, Public Law 99-264, as amended by Public Law 100-153 and Public Law 100-212, provides a method of resolving disputes concerning the title to certain allotments of land on the White Earth Chippewa Indian Reservation in Minnesota. The Act defines circumstances by which title to an allotment may have been lost through a questionable tax forfeiture, sale, mortgage or other taking or transfer during the applicable trust period. The Act directs the Secretary of the Interior to (1) identify the allotments or interests therein which were lost under such circumstances, (2) determine the individuals entitled to compensation for the loss of such allotments or interests therein, (3) ascertain the amount of the compensation to which each such individual is entitled, and (4) pay them such amounts plus interest.

Pursuant to section 8(c) of the Act, it is incumbent upon the Secretary to establish the process whereby the compensation is to be distributed. Writing on behalf of the White Earth Reservation Business Committee on May 20, 1986, the Chairman of that Committee asked that the Office of Hearings and Appeals be made responsible and accountable for determining the heirs of those persons who died entitled to receive compensation under the terms of the Act. This position has the support of the Bureau of Indian Affairs.

At present, there are no general or specific regulations governing such determinations. This proposal would add new regulations §§ 4.350 through 4.357, within subpart D of part 4, title 43 of the Code of Federal Regulations, to

set forth the authority, policy, and procedures to be followed in determining allowable compensation pursuant to the White Earth Reservation Land Settlement Act of 1985, as amended. Because the compensation authorized by the White Earth Reservation Land Settlement Act of 1985 is to be paid to all entitled persons, including non-Indians and non-citizens where they are found entitled, and because such compensation is not trust property, existing §§ 4.203 through 4.282, subpart D of title 43 of the Code of Federal Regulations, are not applicable to these proceedings.

Following is a discussion of the proposed rules and the reasons for each of them.

Section 4.350(a). This paragraph sets forth the authority for the proposed rules. Section 8(c) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), requires the Secretary of the Interior to proceed to make such heirship determinations as are necessary in order to determine who should receive compensation under the Act. Since no procedures currently exist which can be utilized to accomplish this end, it is necessary to establish such a process. The first amendment to the Act, Public Law 100–153 (101 Stat. 886), amended section 3(1) of the Act to include within the definition of "heir" one who is determined "by the application of the inheritance laws of Minnesota in effect of March 26, 1986, to be entitled to receive compensation payable under section 8." The use of the phrase "inheritance laws," in contrast with the use of the phrase "testate or intestate succession" as used earlier in the amendment, has been interpreted by the Office of the Solicitor, U.S. Department of the Interior, to limit the process for determining heirs to that of intestate succession only, thus dictating the inclusion of that phrase in this subsection.

Section 4.350(b). This paragraph designates the appropriate official within the Office of Hearings and Appeals who shall render the decision in each case. Also reiterated is the limitation on the applicable law to the inheritance laws of the State of Minnesota which were in effect on March 26, 1986, as is indicated by the first amendment to the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), which amendment was included within Public Law 100–153 (101 Stat. 886). The regulation also acknowledges the applicability of existing heirship determinations which meet the standards of section 5(a) and 5(b) of the Act, as amended, which include heirship determinations rendered by the courts of the State of Minnesota which had been filed with the county recorders, registrars of titles, or probate courts of Becker, Mahnomen, or Clearwater Counties prior to May 9, 1979, and proper heirship determinations rendered by the Secretary of the Interior pursuant to the Act of June 25, 1910 (36 Stat. 855). As set forth in section 5(a) of the Act, where there would be conflicting results between an heirship determination by a court of the State of Minnesota which meets the statutory filing requirements and an heirship determination by the Secretary of the Interior, the former will be recognized unless the latter was dated prior to March 24, 1986, and was filed with the county recorders or registrars of title of Becker, Mahnomen, or Clearwater Counties prior to September 24, 1986.

Section 4.350(c). This paragraph sets forth definitions to be used throughout the regulations, including defining the "Act" as the White Earth Reservation Land Settlement Act of 1985 as amended. Consistent with the balance of the regulations set forth in §§ 4.203 through 4.282, subpart D, of title 43 of the Code of Federal Regulations, the term "Board" is defined as the Board of Indian Appeals of the Office of Hearings and Appeals within the Department. The officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, which is the office designated specifically to implement the White Earth Reservation Land Settlement Act of 1985, is denominated "Project Director" for purposes of these regulations. The term "party (parties) in interest" is defined to include all presumptive or actual heirs of a deceased individual or the lineal descendents of those presumptive or actual heirs. This definition serves to define the range of individuals to whom notices will be sent at various points throughout the procedures. Finally, the definition of the term "compensation" refers back to section 8(c) of the Act providing for specified sums to be paid to eligible individuals.

Section 4.351. This section designates the Project Director as the official who must make the initial request for the determination of the heirs of a deceased individual. The records which should accompany such a request include (1) a copy of the decedent's death certificate or an equivalent document; (2) data normally included with a request for other Office of Hearings and Appeals heirship determinations, including marriages, separations, and divorces of the decedent, names, birth dates, and last known addresses of children, grandchildren, parents, siblings, and othe possible and probable heirs of the decedent; and information about the relationships of those individuals to the decedent, such as whether they were related by blood, adoption, or marriage; and copies of supporting documents establishing those facts; copies of heirship determinations rendered by other tribunals (other than those which are already recognized as binding under the Act, as outlined in the discussion of paragraph 4.350(b) above), including courts of other counties in Minnesota, courts of other states, tribal courts of the Minnesota Chippewa Tribe or other Indian tribes, bands, or communities or Alaska Native Corporations, and tribunals of other countries which may have determined the heirs of the decedent and which documents may contain relevant data; and (4) the amount of compensation which the Project Director has determined was due and owing to the decedent at the time of his or her death, including a complete outline of the real property derivation of those amounts, the valuation assigned to that real property at the date it was improperly taken or transferred, any amounts deducted from that valuation by virtue of establishment of compensation actually received by the decedent or his or her ancestor, the interest accrued on the amount, and any heirships which might have intervened between the individual holding the interest at the time of taking or transfer an the inheritance of the interest by the decedent. The information relating the amount of compensation to which the decedent was entitled at the date of death and the background on derivation of that amount is to be provided solely for information and explanation purposes, since the process of heirship determination does not provide an avenue to question or protest facts or assumptions upon which such computations will be based. Those appeal routes will be provided through specific processes set forth in the Act.

Section 4.352(a). This paragraph begins the process of the actual review and determinations of heirs, setting forth the initial evaluation of the documents and data submitted to the administrative judge and the ascertainment of the existence of possible disputed facts.

Section 4.352(b). This paragraph delineates the process by which the administrative judge shall reach an initial determination when no apparent disputed facts exist. The subsection

specifies, in accordance with section 3(1) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), as amended by Public Law 100–153 (101 Stat. 886), that the laws applied to the process must be the inheritance laws of the State of Minnesota which governed intestate succession and were in effect on March 26, 1986. The regulation directs that the preliminary determination, in the case of the absence of factual disputes, will be rendered without a hearing. It dictates that certain data, to wit: the names, birth dates, relationships to the decedent, and shares attributable to each heir, must be included in the preliminary determination, or, in the alternative, the fact that the decedent died without heirs must be so stated therein. The procedure following the issuance of such preliminary deterination is further set forth in the regulation, requiring distribution of a notice, with the preliminary determination attached thereto, to all parties in interest, which notice will state that all such persons have thirty (30) days within which they may show cause in writing why the preliminary determination should not become final. The process set forth also requires that the notice of preliminary determination is to be posted in certain places determined to be those most likely to be seen by persons who may be affected thereby. Finally, the process established by this regulation directs that, after the expiration of the initial thirty (30) days, in any instance where no written objection to the preliminary determination are received and no requests for hearing are received, the administrative judge shall issue a final order stating that the preliminary determination will become final thirty (30) days from the date on which the final order is mailed to all the parties in interest.

Section 4.352(c). This paragraph sets forth the instances in which a hearing may be held or some less formal process may be conducted, in the discretion of the administrative judge and in aid of receiving further evidence and testimony in order to resolve factual disputes. Such instances include whenever a party in interest responds to the notice provided for in paragraph 4.352(b) by objecting to the results of the preliminary determination, or when such individual responds to such notice by requesting a hearing in the heirship determination proceeding, or when the administrative judge had determined initially, in the context of the prcess set forth at paragraph 4.352(a), that there are factual issues which must be determined in aid of the process of determining heirs. The regulation dictates that the administrative judge may schedule and conduct either a hearing or a prehearing conference or both, using procedures applicable to other hearings under this part and the general rules in subpart B of this part, or may proceed in a more informal manner. Finally, the regulation declares that, following whichever procedure or procedures are followed, the administrative judge shall enter the final order determining heirs, which order is to become final thirty (30) days from the date on which such final order is mailed to each party in interest.

Section 4.352(d). This paragraph dictates that the final order shall contain certain information consistent with that to be contained in the preliminary determination described in paragraph 4.353(b). This is to include the names, birth dates, relationships to the decedent and the shares attributable to each individual determined to be an heir, or, in the alternative, the fact that the decedent died without heirs must be stated in the final order.

Section 4.353. This section dictates that the original record of each heirship determination shall be submitted to the Project Director of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs. The section further sets forth the documents and data to be included in the record, including, where applicable, a copy of the notice of preliminary determination and of the preliminary determination which was posted, and the posting certifications; a copy of each notice served on each party in interest, the evidentiary record, including any transcripts of testimony taken, the data and documentation originally submitted by the Project Director with the request for heirship determination, and the final order determining the heirs of the decedent.

Section 4.354(a). This paragraph authorizes the initiation of a process seeking reconsideration of the final order determining heirs, including the possibility of a rehearing. The process requires the individual seeking such reconsideration to file, with the administrative judge, a written petition, under oath, seeking such reconsideration and stating specifically and concisely the grounds on which the petition is based. The regulation requires that the petition be accompanied by affidavits of witnesses, in the event that there is newly-discovered evidence, setting forth the reasons why there had been a previous failure to discover the evidence. The regulation also requires that the petition must be filed within thirty (30) days after the date on which the final decision was mailed.

Section 4.354(b). This paragraph sets forth two bases upon which the administrative judge may issue an order denying the petition described in paragraph 4.354(a), being, first, if the petition does not set forth proper grounds for reconsideration or rehearing, and, second if the petition is not filed within the prescribed thirty (30) days following mailing of the final order determining heirs. Finally, the regulation requires the administrative judge to serve copies of the order denying the petition to all parties in interest.

Section 4.354(c). Set forth in this paragraph is the process to be followed in the event that the administrative judge considers the petition for reconsideration or rehearing to show sufficient merit. The regulation also contemplates a process of reconsideration in the event that the administrative judge becomes aware, even without the filing of a petition, of the existence of additional evidence which might alter the original conclusions. The process requires the petition, supporting documents, and other data to be served on all parties in interest, allowing a specified time, to be determined in the discretion of the administrative judge, within which such parties may respond, either with answers or legal briefs, following which the administrative judge may determine whether or not to hold a hearing and shall proceed to decide the issues of fact and to issue a final order. The final order upon reconsideration may affirm the original decision, may modify the original decision in certain respects, or it may vacate entirely the original decision and replace it with other orders. Finally, consistent with the final order required under regulations 4.352(b) and4.352(c) and described in regulation 4.352(d), the final order upon reconsideration must be served on all parties in interest.

Section 4.354(d). This paragraph prohibits the filing of more than one round of petitions for reconsideration or rehearing. The regulation also exempts from the prohibition any proceeding in which an appeal, as provided by § 4.356, has resulted in an order of remand from the Interior Board of Indian Appeals.

Section 4.355. This section describes the administrative process to be followed when it is discovered, subsequent to the completion of an heirship proceeding, that the decedent had died entitled to compensation in addition to that which had been described in the report contemplated by

regulation 4.351(b)(4). The section requires the Project Director of the White Earth Reservation Land Settlement Branch to modify that report administratively and to provide a copy of such modified report to all heirs, as previously determined, and to the administrative judge.

Section 4.356(a). This paragraph describes the filing of an appeal from a final order of an administrative judge rendered under § 4.352 or from a final order upon reconsideration of an administrative judge rendered under § 4.354. The regulation specifies that the appeal must be filed with the Interior Board of Indian Appeals at 4015 Wilson Boulevard, Arlington, Virginia 22203. It further requires that a copy of the notice of appeal must be sent both to the Project Director of the White Earth Reservation Land Settlement Branch and to the appropriate administrative judge.

Section 4.356(b). This paragraph specifies the time limits within which the notice of appeal must be filed, being thirty (30) days from the mailing of the final order of the administrative judge, or, if there had been a petition for reconsideration or rehearing filed, then thirty (30) days from the mailing of the final order upon reconsideration by the administrative judge. The regulation further provides that notices of appeal which are not filed within the stated time limits will be dismissed.

Section 4.356(c). This paragraph requires the administrative judge to forward the record of the heirship determination to the Interior Board of Indian Appeals in prompt fashion following receipt of a copy of a notice of appeal.

Section 4.356(d). This paragraph sets forth the process for handling the appeal, requring initially that the individual filing the appeal file, within thirty (30) days following filing the initial notice of appeal, a statement of reasons for filing the appeal, including a description of the portion or portions of the final order or final order upon reconsideration which the appellant believes to be in error. The process then contemplates a review by the Board of Indian Appeals and a determination of whether or not the statement filed by the appellant has set forth a sufficient basis for causing a review of the previous order. If the Board finds that a sufficient basis has been stated, then an order will be issued to all parties in interest, giving each of them an opportunity to respond within a stated time period, followed by a consideration of all submitted materials and a decision by the Board. If the Board determines that the appellant has not set forth a sufficient basis for reviewing the final order, the decision of the Board will be issued without permitting the additional submissions by other parties in interest.

Section 4.356(e). This paragraph describes the range of possible decisions by the Board of Indian Appeals, including affirming the final order or final order upon reconsideration from which the appeal was taken, modifying that order in some respect, or vacating that order. The regulation declares that the decision on appeal either affirming the prior order or modifying it is to be final for the Department of the Interior. In the event that the decision is to vacate that order, the matter is to be remanded to the appropriate administrative judge for further proceedings, either reconsideration or rehearing or both.

Section 4.357. This section permits the appearance of a guardian for any party in interest who is a minor or suffers from other legal incapacity, and also permits the appointment of a guardian *ad litem* for such individual by the administrative judge.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 (Feb. 17, 1981), and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations are based on the fact that the proposed rule only sets forth procedures for such heirship determinations as are necessary in order to determine who should receive compensation under the White Earth Reservation Land Settlement Act of 1985, as amended.

National Environmental Policy Act

This proposed rulemaking is categorically excluded from the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4347, process because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

Takings Implication Assessment

The proposed rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 18, 1988.

Drafting

The primary author of this proposed rule is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Accordingly, 43 CFR part 4, subpart D, is proposed to be amended as set forth below.

Dated: August 17, 1990.

James L. Byrnes,

Acting Director.

PART 4—[AMENDED]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

1. The authority for 43 CFR part 4, subpart D, is revised to read as follows:

Authority: Sections 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b; 100 Stat. 61, as amended by 101 Stat. 886 and 101 Stat. 1433, 25 U.S.C. 331 note.

2. New §§ 4.350 through 4.357, and a new heading, are proposed to be added to subpart D to read as follows:

White Earth Reservation Land Settlement Act of 1985; Authority of Administrative Judges; Determinations of the Heirs of Persons Who Died Entitled To Compensation

Sec.

4.350 Authority and scope.
4.351 Commencement of the determination process.
4.352 Determination of administrative judge and notice thereof.
4.353 Record.
4.354 Reconsideration or rehearing.
4.355 Omitted compensation.
4.356 Appeals.
4.357 Guardians for minors and incompetents.

White Earth Reservation Land Settlement Act of 1985; Authority of Administrative Judges; Determinations of the Heirs of Persons Who Died Entitled To Compensation

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate

succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433).

(b) Administrative judges shall determine such heirs by applying the inheritance laws of Minnesota in effect on March 26, 1986, in accordance with the White Earth Reservation Land Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate, unless such heirs have already been determined by valid, existing heirship determinations recognized by the Act.

(c) As used herein, the following terms shall have the following meanings:

(1) The term "Act" means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term "Broad" means the Board of Indian Apeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term "Project Director" means the officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(4) The term "party(parties) in interest" means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term "compensation" means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term "administrative judge" means an administrative judge of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

§ 4.351 Commencement of the determination process.

(a) The Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

(1) A copy of the death certificate or its equivalent;

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations other than those recognized by the Act, including those rendered by courts from Minnesota or other states, by tribal courts, or by agencies authorized by the laws of other countries.

(4) A report of the compensation due the decedent, including interested calculated to the date of death of the decedent, and an outline of the derivation of such compensation, including its real property origins and the succession of the compensation to the deceased, citing all of the intervening heirs at law, their fractional shares, and the amount of compensation attributed to each of them.

(5) A certification by the Project Director or his designee that the addresses provided for the parties in interest were furnished after having made a due and diligent search.

§ 4.352 Determination of administrative judge and notice thereof.

(a) Upon review of all data submitted by the Project Director, the administrative judge will determine whether or not there are any apparent issues of fact that need to be resolved.

(b) If there are no issues of fact requiring determination, the administrative judge will enter a preliminary determination of heirs based upon the inheritance laws of Minnesota in effect on March 26, 1986, in accordance with the Act. Such preliminary determination will be entered without a hearing, and, when possible and based upon the data furnished and/or information supplementary thereto, shall include the names, birth dates, relationship to the decedent, and shares of the heirs, or the fact that decedent died without heirs.

(1) Upon issuing a preliminary determination, the administrative judge shall issue a notice of such action and shall mail a copy of said notice, together with a copy of the preliminary determination, to each party in interest allowing thirty (30) days in which to show cause in writing why the determination should not become final.

(2) The Project Director shall also cause, within five (5) days of receipt of such notice, the notice of the preliminary determination to be posted in some or all of the following sites plus other sites as may be deemed appropriate by the Project Director:

Elbow Lake Community Center, R.R. #2, Waubun, Minnesota 56589
Postmaster, Callaway, Minnesota 56521
Community Center, Route 2, Bagley, Minnesota 56621
Community Center, Star Route, Mahnomen, Minnesota 56557
Postmaster, Mahnomen, Minnesota 56557
Rice Lake Community Center, Route 2, Bagley, Minnesota 56621
Postmaster, Ogema, Minnesota 56569
Pine Point Community Center, Ponsford, Minnesota 56575
Postmaster, White Earth, Minnesota 56591
White Earth IHS, White Earth, Minnesota 56591
Postmaster, Ponsford, Minnesota 56575
American Indian Center, 1113 West Broadway, Minneapolis, Minnesota 55411
American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404
American Indian Center, 341 University Avenue, St. Paul, Minnesota 55103
Little Earth of United Tribes Community Services, 2501 Cedar Avenue South, Minneapolis, Minnesota 55404
The Minnesota Chippewa Tribe, Box 217, Cass Lake, Minnesota 56633
Naytahwaush Community Center, Naytahwaush, Minnesota 56566

The Project Director shall provide a certificate showing when the notice of the preliminary determination was forwarded for posting, and to which locations, and the certificate shall be made a part of the original file in his custody.

(3) If no written request for hearing or written objection is received in the office of the administrative judge within the thirty (30) days of issuance of the notice, the administrative judge shall issue a final order declaring the preliminary determination to be final thirty (30) days from the date on which the final order is mailed to each party in interest.

(c) When the administrative judge determines either before or after issuance of a preliminary determination that there are issues which require resolution, or when a party objects to the preliminary determination and/or request a hearing, the administrative judge may either resolve the issues informally or schedule and conduct a prehearing conference and/or a hearing. Any prehearing conference, hearing, or rehearing, conducted by the administrative judge shall be governed insofar as practicable by the regulations applicable to other hearings under this part and the general rules in subpart B of this part. After receipt of the testimony and/or evidence, if any, the administrative judge shall enter a final order determining the heirs of the

decedent, which shall become final thirty (30) days from the date on which the final order is mailed to each party in interest.

(d) The final order determining the heirs of the decedent shall contain, where applicable, the names, birth dates, relationships to the decedent, and shares of heirs, or the fact that the decedent died without heirs.

§ 4.353 Record.

(a) The administrative judge shall lodge his original record with the Project Director.

(b) The record shall contain, where applicable, the following materials:

(1) A copy of the posted public notice of preliminary determination and/or hearing showing the posting certifications;

(2) A copy of each notice served on parties in interest, with proof of mailing;

(3) The record of evidence received, including any transcript made of testimony;

(4) Data for heirship finding and family history, and data supplementary thereto;

(5) The final order determining the heirs of the decedent and the administrative judge's notices thereof; and

(6) Any other material or documents deemed relevant by the administrative judge.

§ 4.354 Reconsideration or rehearing.

(a) Any person aggrieved by the final order of the administrative judge may, within thirty (30) days after the date of mailing such decision, file with the administrative judge a written petition for reconsideration and/or rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative judge shall issue an order denying the petition and shall set forth therein the reasons therefor. The administrative judge shall serve copies of such order on all parties in interest.

(c) If the petition appears to show merit, or if the administrative judge becomes aware of sufficient additional evidence to justify correction of error even without the filing of a petition, or upon remand from the Board following an appeal resulting in vacating the final order, the administrative judge shall cause copies of the petition, supporting papers, and other data, or in the event of no petition an order to show cause or decision of the Board vacating the final order in appropriate cases, to be served on all parties in interest. The parties in interest will be allowed a reasonable, specified time within which to submit answers or legal briefs in opposition to the petition or order to show cause or Board decision. The administrative judge shall then reconsider, with or without hearing, the issues of fact and shall issue a final order upon reconsideration, affirming, modifying, or vacating the original final order and making such further orders as are deemed warranted. The final order upon reconsideration shall be served on all parties in interest and shall become final thirty (30) days from the date on which it is mailed.

(d) Successive petitions for reconsideration and/or rehearing shall not be permitted. Nothing herein shall be considered as a bar to the remand of a case by the Board for further reconsideration, hearing, or rehearing after appeal.

§ 4.355 Omitted compensation.

When, subsequent to the issuance of a final order determining heirs under § 4.352, it is found that certain additional compensation had been due the decedent and had not been included in the report of compensation, the report shall be modified administratively by the Project Director. Copies of such modification shall be furnished to all heirs as previously determined and to the appropriate administrative judge.

§ 4.356 Appeals.

(a) A party aggrieved by a final order of an administrative judge under § 4.352, or by a final order upon reconsideration of an administrative judge under § 4.354, may appeal to the Board (address: Board of Indian Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203). A copy of the notice of appeal must also be sent to the Project Director and to the administrative judge whose decision is being appealed.

(b) The notice of appeal must be filed with the Board no later than thirty (30) days from the date on which the final order of the administrative judge was mailed, or, if there has been a petition for reconsideration or rehearing filed, no later than thirty (30) days from the date on which the final order upon reconsideration of the administrative judge was mailed. A notice of appeal that is not timely filed will be dismissed.

(c) The Project Director shall ensure that the record is expeditiously forwarded to the Board.

(d) Within thirty (30) days after the notice of appeal is filed, the appellant shall file a statement of the reasons why the final order or final order upon reconsideration is in error. If the Board finds that the appellant has set forth sufficient reasons for questioning the final order or final order upon reconsideration, the Board will issue an order giving all parties in interest an opportunity to respond, following which a decision shall be issued. If the Board finds that the appellant has not set forth sufficient reasons for questioning the final order, the Board may issue a decision on the appeal without further briefing.

(e) The Board may issue a decision affirming, modifying, or vacating the final order or final order upon reconsideration. A decision on appeal by the Board either affirming or modifying the final order or final order upon reconsideration shall be final for the Department of the Interior. In the event the final order or final order upon reconsideration is vacated, the proceeding shall be remanded to the appropriate administrative judge for reconsideration and/or rehearing.

§ 4.357 Guardians for minors and incompetents.

Persons less than 18 years of age and other legal incompetents who are parties in interest may be represented at all hearings by legally appointed guardians or by guardians *ad litem* appointed by the administrative judge.

[FR Doc. 90-25845 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-79-M

Notices

Federal Register
Vol. 55, No. 214
Monday, November 5, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services Regulations; Public Meeting and Proposed Statement

SUMMARY: This notice of a committee meeting is given pursuant to the Federal Advisory Committee Act (5 U.S.C. App. 2, Pub. L. No. 92–463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

DATE: Friday, November 9, 1990.

TIME: 9:30 a.m.

LOCATION: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (Library 5th floor).

AGENDA: The Committee will meet to discuss a draft statement on Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises, based on a draft report to the Conference by Thomas H. Stanton, Esquire, of Washington, DC, on Federal Supervision of Safety and Soundness of Government-Sponsored Enterprises.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC, telephone: (202) 254–7020.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 90–26194 Filed 11–2–90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Snapping Shoals Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact related to the construction of new headquarters facilities in Newton County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and the Rural Electrification Administration Environmental Policies and Procedures (7 CFR part 1794), has prepared an Environmental Assessment and made a Finding of No Significant Impact with respect to the construction of new headquarters facilities in Newton County, Georgia. Snapping Shoals Electric Membership Corporation has requested the Rural Electrification Administration's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: The proposed new headquarters facilities project will consist of a 74,209 square foot headquarters building, a 19,488 square foot garage, a 11,400 square foot apparatus building, two 13,650 square foot truck storage buildings, a 12,000 square foot material storage building, an 1,800 square foot gasoline and diesel fuel island, 65 visitor and employee parking spaces and 64 truck parking spaces. The proposed site location is located at the west corner of Magnet Road and Browns Bridge Road in southwest Newton County. The size of the proposed new headquarters facilities site is approximately 30 acres.

Alternatives considered to constructing the new headquarters facilities as proposed were no action, expand, expanding the existing headquarters facilities in Covington, Georgia, and maintaining the existing headquarters facilities in Covington and constructing a western district office approximately 500 feet north of the intersection of Highway 155 and Mays Road in Henry County, Georgia.

Copies of the Environmental Assessment and Finding of No Significant Impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the office of Snapping Shoals Membership Corporation, P.O. Box 509, Covington, Georgia 30209.

Dated: October 29, 1990.

John H. Arnesen,
Assistant Administrator—Electric Rural Electrification Administration, United States of America.

[FR Doc. 90–26109 Filed 11–2–90; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Publication of Legal Texts of Central and Eastern European Countries

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice.

SUMMARY: This notice provides details of the Department of Commerce's plans to announce, archive, and make available to the public legal texts from central and eastern Europe through the National Technical Information Service (NTIS), in coordination with the Eastern Europe Business Information Center (EEBIC).

The Department published a notice requesting comments on the proposed service on June 26, 1990 in the **Federal Register** (55 FR 25992). Virtually all comments received strongly supported the proposed plan and offered a variety of suggestions to make the service of greatest practical use to the American business and legal communities. The Department is proceeding to implement the proposed service, details of which are given below.

FOR FURTHER INFORMATION CONTACT: Texts may be ordered from NTIS. For details see Appendix to this notice.

SUPPLEMENTARY INFORMATION: EEBIC already distributes commercial and economic information on central and eastern Europe through NTIS. A list of

information available through NTIS may be obtained from EEBIC on (202) 377–2645. In addition, the Department receives numerous requests for up-to-date legal texts from those countries. Such inquiries and the comments received in response to the Department's June 26 **Federal Register** notice have emphasized the lack of a timely, reliable private source for such materials from all the central and eastern European countries. The Department's legal text information service will provide copies of such texts as soon as they become available to the U.S. government from the governments of those countries.

Form and Content:

Documents available through the service will include typewritten or printed versions of the texts of current and newly issued commercial laws and regulations of general interest to the American business community as those texts are transmitted to the U.S. government by the governments of Poland, Hungary, Czechoslovakia, Yugoslavia, Romania, and Bulgaria. Texts will be available immediately in the language in which they are received from the relevant government; translations into English will be available as soon as possible thereafter.

Materials available through this service may be ordered in three ways (1) As individual documents; (2) as a standing order for all documents pertaining to one country (available in either original language or English versions); or (3) as a standing order for all documents pertaining to all six countries, in English or in the original languages.

A single page legal texts bulletin will also be published on a regular basis. The legal texts bulletin, which will go to all those who have placed standing orders of type (2) or (3) above and to all others who request a copy, will provide information about significant legislation or regulations introduced or adopted for which texts are expected to be available in the near future. The legal texts bulletin will be accompanied by ordering information for texts already available.

Texts available through the service will also be announced in the NTIS bibliographic database, which is searchable online. Orders may be placed by telephone or mail.

Frequency and Price of Service

Materials will be delivered as promptly as possible after receipt of orders by NTIS. Those who have placed standing orders will receive individual texts as soon as those texts are available, rather than on a periodic basis. Prices will be determined on a cost recovery basis.

Dated: October 30, 1990.

Wendell L. Willkie, II,

General Counsel.

Appendix

How to Order Central and Eastern European Legal Texts from NTIS

Standing orders may be placed in any of the following categories:

Materials in English:	Standing Order No.
Czechoslovakia	PB 91960200
Bulgaria	PB 91960400
Hungary	PB 91960600
Romania	PB 91960800
Poland	PB 91961000
Yugoslavia	PB 91961200
Materials in Original Language:	**Standing Order No.**
Czechoslovakia	PB 91960300
Bulgaria	PB 91960500
Hungary	PB 91960700
Romania	PB 91960900
Poland	PB 91961100
Yugoslavia	PB 91961300

An NTIS deposit account is required for standing orders. The minimum deposit for each of the above standing order categories is $150; the minimum deposit for a standing order of materials from all six countries in English *or* in the original languages is $500. Requests for standing orders must be in writing. If you or your firm already have an NTIS deposit account, please cite the number. Send orders to the NTIS Subscriptions Department, 5285 Port Royal Road, Springfield, VA 22161, telephone 703–487–4630, fax 703–321–8647.

Individual texts currently available are as follows:

Polish Law on Termination of Labor Relationship between Workers and Workplace, order no. PB 91–961001, price $8.00.

Polish Law Establishing Office of Minister for Ownership Transformation and Privatization Law, order no. PB 91–961002, price $11.00.

Polish Law No. 445 Governing Tariffs, order no. PB 91–961003, price $15.00.

Polish Law on Taxes on Increments to Remunerations, order no. PB 91–961004, price $8.00.

Polish Law on the Regulation of Credit Relationships and Amended Law on National Bank of Poland, order no. PB 91–961005, price $15.00.

Polish Law No. 325 Governing Economic Activities with the Participation of Foreign Parties (Joint Venture Law), order no. PB 91–961006, price $15.00.

Polish Law on Financial Management of State Enterprises, order no. PB 91–961007, price $11.00.

Polish Law Governing Chances in the Organization and Activities of Cooperatives, order no. PB 91–961008, price $8.00.

Polish Executive Order of Ministry of Finance on General Terms of Foreign Exchange Authorization, order no. PB 91–961009, price $11.00.

Law on Agricultural Cooperatives of Czech and Slovak Federal Republic, order no. PB 91–960201, price $15.00.

Czechoslovakian Decree No. 195/1989 of Labor Ministry on Security for Employees in Connection with Organizational Changes and for Unemployed citizens, order no. PB 91–960202, price $15.00.

Czechoslovakian Law No. 176/1990 on Housing, Consumer, Production or Other Cooperatives, order no. PB 91–960203, price $15.00.

Law of Czechoslovakia Modifying Relationships between Trade Unions and Employees, order no. PB 91–960204, price $8.00.

Decree of Czechoslovakian Federal Ministry of Foreign Trade on Noncommercial Imports and Exports, order no. PB 91–960205, price $8.00.

Law on Foreign Trade of Yugoslavia, order no. PB 91–961201, price $15.00.

Hungarian Law No. 5 of 1990 on Individual Enterprise and Legislative Intent Accompanying the Law, order no. PB 91–960601, price $15.00.

Hungarian Law No. VII/1988 on Taxing Entrepreneurial Profit, order no. PB 91–960602, price $11.00.

To order individual texts, contact the NTIS sales desk at telephone 703–487–4650 between 8:30 a.m. and 5:30 p.m. EST. First class or equivalent service is provided. Express mail and overnight delivery are available for an additional fee.

[FR Doc. 90–26083 Filed 11–2–90; 8:45 am]

BILLING CODE 3510-BW-M

International Trade Administration

[A-533-502]

Certain Circular Welded Carbon Steel Standard Pipes and Tubes From India; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On July 6, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on circular welded carbon steel standard pipes and tubes from India. The Department is now terminating this review.

BACKGROUND: On July 6, 1990, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on

circular welded carbon steel standard pipes and tubes from India. This notice stated that we would review information submitted by the Tata Iron and Steel Co., Ltd. ("TISCO") for the period May 1, 1989 through April 30, 1990. TISCO subsequently withdrew its request for review on October 4, 1990. Since no interested party other than TISCO has requested an administrative review for that period, the Department is terminating this review.

EFFECTIVE DATES: November 5, 1990.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telefax (202) 377-3793 or telephone (202) 377-1388.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a)(1), and § 353.22(a)(5) of the Commerce Department's regulations, 19 CFR 353.22(a)(5).

Dated: October 23, 1990.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90-26039 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review and Intent Not To Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results and termination in part of an antidumping duty administrative review and intent not to revoke in part.

SUMMARY: In response to a request by petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers shipments of this merchandise to the United States from four exporters during the period from May 1, 1987 through April 30, 1988. Preliminary results of the review indicate that no manufacturers or exporters in Taiwan made any shipments of the subject merchandise to the United States during the period of review. In addition, in response to a request by petitioners, the Department is terminating this review with respect to Kao Hsing Chang Iron and Steel Corp. only. Finally, the Department intends not to revoke in part the antidumping duty order with respect to Yieh Hsing Enterprise Co., Ltd.

Interested parties are invited to comment on the preliminary results of this administrative review and intent not to revoke in part.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1989, the Department published in the **Federal Register** the final results of its last administrative review, covering the period from May 1, 1986 to April 30, 1987, of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (53 FR 46432). On May 13, 1988, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order for the period from May 1, 1987 to April 30, 1988 (53 FR 17138). On May 31, 1988, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, petitioners, requested an administrative review of this order. We initiated the review, covering the period beginning on May 1, 1987 and ending on April 30, 1988, on June 29, 1988 (53 FR 24470). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers four exporters of circular welded carbon steel pipes and tubes from Taiwan to the United States. The exporters covered by this review are An Mau Steel Co., Ltd. ("An Mau"), Far East Machinery Co., Ltd. ("FEMCO"), Kao Hsing Chang Iron and Steel Corp. ("KHC"), and Yieh Hsing Enterprise Co., Ltd. ("Yieh Hsing").

Subsequent to the initiation, petitioners withdrew their request for review with respect to KHC on July 25, 1988. On August 25, 1988, the Department received a request for revocation in part of the antidumping duty order from Yieh Hsing. On November 16, 1988, the Department published a tentative determination to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (53 FR 46102). On July 25, 1989, as a result of Yieh Hsing's request for revocation in part of the order, we initiated another review, with respect to Yieh Hsing only, covering the period beginning on May 1, 1988 and ending on November 16, 1988 (54 FR 30915). The Department received comments from petitioners on its tentative determination to revoke the order on December 1, 1989 and January 8, 1990.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4½ inches in outside diameter. Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252 of the TSUSA. Since that date, standard pipe has been classifiable under HTS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. As was the case with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written products description remains dispositive.

Preliminary Results of the Review

On July 29, 1988, we requested the Customs Information Exchange ("CIE") to report to the Department any shipments of the subject merchandise made by the respondents to the United States during the period of review. We received no report of any such shipments from the CIE. We also reviewed Special Steel Summary Invoice data, which confirmed the absence of any such shipments.

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Ad valorem margin (percent)
An Mau	05/01/87–4/30/88	[1] 0.66
FEMCO	05/01/87–4/30/88	[1] .00
Yieh Hsing	05/01/87–11/16/88	[1] .00

[1] No shipments during the period. Rates noted are from the last antidumping duty administrative review in which there were shipments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each export directly to the Customs Service.

Furthermore, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in this or prior administrative reviews, whose first shipment occurred after April 30, 1988, and which is unrelated to the reviewed firms or any previously reviewed firm, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. These deposit requirements are effective for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Termination in Part

In accordance with petitioners' withdrawal on July 25, 1988, of their request for review of KHC, we are terminating this review with respect to KHC only.

Determination Not to Revoke in Part

Yieh Hsing has requested a partial revocation of the order based on the fact that it had no sales at less than fair value for two years. On November 16, 1988, the Department published a tentative determination to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (53 FR 46102). In cases such as this, where the Department has issued a tentative revocation of an order prior to the effective date of the Department's new regulations, published on March 28, 1989 (54 FR 12742), we have stated that we would complete the procedure under the Department's previous regulations. Under § 353.54(a) of the old regulations (19 CFR 353.54 (1988)), the Secretary must be "satisfied that there is no likelihood of sales at less than fair value" in order to revoke an antidumping duty order. Two facts on the record of this and other cases involving Yieh Hsing indicate a strong possibility that Yieh Hsing would resume sales at less than fair value in the United States if the order was revoked.

First, Yieh Hsing has a consistent history of selling pipe and tube products at less than fair value in the United States. The most recent antidumping duty order, covering light-walled rectangular carbon steel pipe and tube ("LWRT") manufactured by Yieh Hsing, was issued on March 27, 1989 (54 FR 12467). Second, we believe that Yieh Hsing has a strong incentive to shift its production from LWRT to circular pipes and tubes since (1) Both LWRT and circular welded carbon steel pipes and tubes can be produced on the same equipment; (2) the market for circular pipe is much larger than the market for LWRT; and (3) LWRT from Taiwan is currently subject to a very high antidumping duty deposit rate.

For the above reasons, the Department intends not to revoke in part the antidumping order with respect to Yieh Hsing.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26040 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From The Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from the Federal Republic of Germany. The review covers two manufacturers/exporters of this merchandise to the United States for the period November 1, 1987 through October 31, 1988. One of the companies, Seco Maschinenbau & Co. GmbH (Seco), failed to respond to our questionnaire. For this company we used the best information available.

In this review, the Department preliminarily found margins of 1.73 percent for Boewe Reinigungstechnik GmbH (Boewe) and 4.44 percent for Seco.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 43913) of the antidumping finding on drycleaning machinery from the Federal Republic of Germany (37 FR 23715, November 8, 1972). On November 23, 1988, the petitioner, Vic Division of Waltron, Inc., requested an administrative review of the antidumping finding. We initiated the review, covering November 1, 1987 through October 31, 1988, on March 8, 1989 (54 FR 868). The Department has

now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on February 29, 1988 (53 FR 6020).

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery currently classifiable under item number 8451.10.10 of the Harmonized Tariff Schedules (HTS). During the review period this merchandise was classifiable under item number 764.4100 of the Tariff Schedules of the United States Annotated (TSUSA). TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers two German manufacturers/exporters of this merchandise to the United States and the period November 1, 1987 through October 31, 1988. One of the companies, Seco, failed to respond to our questionnaire. For this company we used the best information available. The best information available for Seco is its most recent rate of 4.44 percent.

United States Price

In calculating United States price, we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments, where applicable, for discounts, ocean freight and marine insurance, U.S. customs duties, brokerage charges, commissions to unrelated parties, advertising expenses, and the U.S. subsidiary's and indirect selling expenses. Where applicable, we made an adjustment for any increased value resulting from further assembly performed on the imported merchandise after importation and before its sale to an unrelated purchaser in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price when sufficient quantities of such or similar merchandise were sold in the home market or constructed value, as defined in section 773 of the Tariff Act.

Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. For general expenses the Department used actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because actual profit was less than eight percent, the Department used the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers. We made adjustments, where appropriate, for foreign inland freight, cash discounts, guarantees, certain directly-related sales office expenses, technical service expenses, and certain miscellaneous payments incurred in credit expenses, commissions to unrelated parties, packing costs, and, where appropriate, for indirect expenses to offset indirect U.S. selling expenses for ESP calculations.

For those categories where there were no identical products in the home market with which to compare products sold to the United States, we made adjustments to similar merchandise to account for options or other differences in the physical characteristics of the merchandise. These adjustments were based on the costs of direct materials, direct labor, and direct factory overhead.

We disallowed claimed adjustments for warranty expenses because we do not consider such repair work performed outside the warranty period to be true warranty expenses, but rather goodwill. We disallowed Boewe's claims for circumstance-of-sale (COS) adjustments for research and development and product maintenance costs because they were not directly related to the reviewed sales. We disallowed Boewe's claim for COS adjustments for advertising, traffic department, management, and general and administrative expenses because these either were not directly related to the sales used for comparison purposes or were not selling expenses. Alternatively, to the extent that we disallow any of these expenses as COS adjustments, Boewe contends that we should allow them, as well as certain bad debt and indirect sales office expenses, as representing differences in levels of trade (LOT). We have disallowed these expenses as LOT adjustments since Boewe did not adequately quantify what portions of these expenses could be attributed to LOT differences. We also disallowed claimed adjustments for "trade-in losses" as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. No other adjustments were claimed or allowed.

Preliminarily Results of Review

As a result of our review, we preliminary found the following margins:

Manufacturer exporter	Time period	Margin (percent)
Boewe	11/1/87-10/31/88	1.73
Seco	11/1/87-10/31-88	4.44

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Custom Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for the above firms. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of this merchandise occurred after October 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 1.73 percent shall be required. These deposit requirements are effective for all shipments of German drycleaning marchinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26041 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-433-064]

Railway Track Maintenance Equipment From Austria; Preliminary Results of Antidumping Duty Administrative Review and Determination Not To Revoke

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and determination not to revoke.

SUMMARY: In response to a request from an interested party, Kershaw Manufacturing Company (Kershaw), the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on railway track maintenance eqiupment, limited to ballast regulators and tamping machines, from Austria. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period February 1, 1989 through January 31, 1990. The review indicates no shipments of this merchandise during the period.

As a result of the review, the Department has preliminarily determined that the cash deposit rate will remain at zero percent.

On February 9, 1990 we published a notice of intent to revoke this finding; however, since we received objections from Kershaw we have determined not to revoke the antidumping finding on railway track maintenance equipment from Austria.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1990, the Department published a notice of intent to revoke this antidumping finding (55 FR 4646). On February 28, 1990, Kershaw, one of the original petitioners and an interested party, opposed the revocation and requested an administrative review of the antidumping finding. We initiated the review, covering the period February 1, 1989 through January 31, 1990, on March 22, 1989 (55 FR 10642). The final results of the most recent administrative review in this case were published in the **Federal Register** on April 10, 1984 (49 FR 14159).

Scope of the Review

Imports covered by this review are limited to ballast regulators and tamping machines, two specific types of railway track maintenance equipment from Austria. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item 8604.00.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States, Plasser and Theurer, GmbH (Plasser) and the period February 1, 1989 through January 31, 1990.

Preliminary Results of the Review

Plasser reported no shipments of the covered merchandise, either ballast regulators or tamping machines, during the review period February 1, 1989 through January 31, 1990.

Therefore, we preliminarily determine that for cash deposit purposes the margin remains at zero percent for the period.

On February 9, 1990, we published a notice of intent to revoke this finding pursuant to § 353.25(d)(4) of the Department's regulations. Kershaw objected to the proposed revocation and requested that the Department conduct an administrative review. Plasser argued that Kershaw does not produce tamping machines and, therefore, lacks standing to object to revocation or request a review with respect to tamping machines. We disagree. The statute requires that an "interested party" manufacture the "like product." *See* section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). Kershaw manufactures ballast regulators. Since ballast regulators and tamping machines constitute a single "like product" (*See* USITC Pub. No. 844 at 5, 11 (November 1977)), Kershaw is an interested party with respect to tamping machines within the meaning of section 732(b) and section 771(9)(C) of the Tariff Act. Accordingly, based upon an objection from an interested party, we have determined not to revoke the antidumping finding on railway track maintenance equipment from Austria.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication.

Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of zero percent shall be required for this firm. For any future entries of ballast regulators or tamping machines from a new exporter not covered in this or in prior reviews, whose first shipment occurred after January 31, 1990, and who is unrelated to the reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Austrian railway track maintenance equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a) and 353.25(d)(4).

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26042 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 90-026. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Mass Spectrometer,

Model VG 5400. *Manufacturer:* VG Isotope Ltd., United Kingdom. *Intended use: See* notice at 55 FR 8164, March 7, 1990. *Reasons:* The foreign instrument provides a sensitivity of 1.5×10^{-3} amps/torr for argon and xenon and 2.0×10^{-4} amps/torr for helium at a mass resolution of 600. *Advice submitted by:* National Institute of Science and Technology, September 21, 1990.

Docket number: 90-074. *Applicant:* Johns Hopkins University School of Medicine, Baltimore, MD 21205. *Instrument:* NMR Spectrometer, Model MSL-500. *Manufacturer:* Bruker Instruments, West Germany. *Intended use: See* notice at 55 FR 19295, May 9, 1990. *Reasons:* The foreign instrument operates at 500 MHz and provides a bore width of 89 mm with a field strength of 11.746 tesla. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-075. *Applicant.* University of Utah, Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan, MAT, West Germany. *Intended use: See* notice at 55 FR 19295, May 9, 1990. *Reasons:* The foreign instrument provides computer-controlled analysis of up to 48 samples per run with an internal precision of 0.006% for 10 bar μl samples of CO_2. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-085. *Applicant:* California Institute of Technology, Pasadena, CA 91125. *Instrument:* Mass Spectrometer System, Model BIOION 20. *Manufacturer:* BIO-ION, Sweden. *Intended use: See* notice at 55 FR 21420, May 24, 1990. *Reasons:* The foreign instrument provides plasma desorption with a mass range to 20 000. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-101. *Applicant:* Harvard University, Cambridge, MA 02138. *Instrument:* Gas Chromatograph/Mass Spectrometer, Model JMS-AX505. *Manufacturer:* JEOL, Japan. *Intended use: See* notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides FAB ionization and a scan rate to 0.1 second per decade. *Advice submitted by:* National Institutes of Health, September 18, 1990.

The National Institutes of Health and National Institute of Standards fand Technology advise that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26043 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

National Eye Institute, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket numbers: 90-090 and 90-091. *Applicant:* National Eye Institute, Bethesda, MD 20892. *Instrument:* S.P.1 Optometer. *Manufacturer:* A.J. Neuro-Instruments, United Kingdom. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides: (1) A total range of 10.0 diopters with linearity to at least 6.0, (2) operation at a viewing distance to 20 cm; and (3) minimized perturbation from electromagnetic fields.

Docket number: 90-092. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Palisades, NY 10964. *Instrument:* ^{3}He Vacuum Extraction System & Tritium Sample Preparation System. *Manufacturer:* Institut Fur Umweltphysik, West Germany. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides quantitative extraction of helium concentrations of 5×10^{-8} cm^3 STP/g and tritium concentrations of 0 to 30 TU.

Docket number: 90-094. *Applicant:* National Institutes of Health, NCI/DCT/COP/ROB, Bethesda, MD 20892. *Instrument:* Stopped Flow Spectrofluorimeter, SF 17m. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides a biocompatible, low dead volume sample flow circuit with anaerobic capability that can process samples as small as 25 μl.

Docket number: 90-099. *Applicant:* University of California, Los Angeles, CA 90024. *Instrument:* Mass Spectrometer, Model VG 3600. *Manufacturer:* VG Isotopes, United Kingdom. *Intended use: See* notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides a mass 36 background of 3.0×10^{-14} STP and a sensitivity of 1.5×10^{-3} amps/torr for argon at a resolving power of 250.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26044 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M Research Foundation; Withdrawal of Application for Duty-free Entry of Scientific Instruments

Texas A&M Research Foundation has withdrawn Docket Number 90-063 an application for duty-free entry of a Deep Sea Camera with Underwater Strobe. We have discontinued processing in accordance with Section 301.5(g) of 15 CFR part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26045 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

Harvard Medical School et al.; Application for Duty-free Entry of Scientific Instruments: Corrections

In the **Federal Register** of October 15, 1990, the following corrections should be made:

In FR Doc. 90-24252, column 1, page 41737, Docket Number 90-170 should also read: *Application received by commissioner of customs:* August 29, 1990.

In FR Doc. 90-24253 on page 41738, docket number 90-157 appearing in column 3, should read: *Applicant:* University of Florida, Department of Geology.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26046 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams will hold a public meeting on November 13–16, 1990, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, room 2039, Seattle, WA. The meeting will begin at 9 a.m., on November 13. If necessary, the Teams may continue the meeting on November 17.

The Teams will work on the final Stock Assessment and Fishery Evaluation documents and develop recommendations for 1991 groundfish specifications for the groundfish species under the Council's jurisdiction.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: October 30, 1990.

David S. Crestin,

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

[FR Doc. 90–26071 Filed 11–2–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Public Display Permit for Marine Animal Productions, Inc.

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification #1 to public display permit No. 649 (P108I).

Notice is hereby given that pursuant to the provisions of § 216.33(d) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 649, issued to Marine Animal Productions, Inc. (MAP), Gulfport, Mississippi, on August 25, 1988 (53 FR 35104) is modified as follows:

Add to section A:

2. Two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*), identified as "MAP 148" male and "MAP 151" female, collected under the Hagenbeck Tierpark Permit #521, heretofore in the possession of MAP in Gulfport, Mississippi, shall be placed under the care and custody of MAP for an indefinite period of time. These two dolphins will count against MAP's outstanding take under Permit No. 649 as the 4th and 5th authorized take under this permit.

This modification is effective on November 5, 1990.

Documents submitted in connection with the above modification are available for review in the Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910.

Dated: October 26, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–26122 Filed 11–2–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Issuance of Permit; Scott D. Kraus (P466)

On August 6, 1990, notice was published in the **Federal Register** (55 FR 31872) that an application had been filed by Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, Massachusetts 02110–3309, for a scientific research permit to take right whales (*Balaena glacialis*) by harassment for the purposes of obtaining photographs for individual identification and to collect samples and/or the entire specimen from any right whale that dies and strands.

Notice is hereby given that on October 29, 1990, and as authorized the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act, and on a finding that such permit;

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of the endangered species which is the subject of this permit;

(3) And will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

This permit was issued in accordance with and is subject to part 216 and parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing marine mammal and endangered species permits. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200)

Dated: October 29, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–26123 Filed 11–2–90; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 4 to Permit No. 629]

Marine Mammals; Permit Modification: Sea Life Park, Inc. (P10D)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 629 issued to Sea Life Park, Inc., Makapuu Point, Waimanalo, Hawaii 96795 is modified as follows:

Section B.3 is changed to read:

B.3 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1991. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification became effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and its modifications are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396

Dated: October 29, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-26124 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 30, 1990.

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

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

EFFECTIVE DATES: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being increased by application of swing, reducing the limits for the donor categories to account for the swing applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

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

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

October 30, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on October 30, 1990 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-mo limit [1]
Levels not in a Group:	
219	1,664,367 square meters.
226	9,365,641 square meters.
300/301	2,588,848 kilograms.
340	788,978 dozen of which not more than 394,489 dozen shall be in Category 340-Z.[2]
345	118,154 dozen.
363	24,245,012 numbers.
410	1,363,660 square meters of which not more than 1,493,923 square meters shall be in Category 410-A[3] and not more than 1,493,923 square meters shall be in Category 410-B.[4]
607	2,456,995 kilograms.
615	19,379,088 square meters.
617	13,166,563 square meters.
634	515,149 dozen.
635	553,395 dozen.
659-C[5]	263,940 kilograms.
670-L[6]	13,393,530 kilograms.
840	320,480 dozen.
Group II:	
300, 332, 349, 353, 354, 359-O[7], 431, 432, 439, 459, 630, 632, 633, 643, 644, 654, 654 and 659-O[8], as a group.	111,304,309 square meters equivalent.

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

[2] Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6001, 5111.30.6001, 5111.90.3000, 5111.90.7000, 5112.11.1010, 5112.12.1010, 5112.13.1010, 5112.14.1010, 5112.15.1010, 5112.21.1010, 5112.22.1010, 5112.23.1010, 5112.24.1010, 5112.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.34.0510 and 6301.20.0020.

[4] Category 410-B: HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.2120, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520, and 5516.34.0520.

[5] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6104.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, and 6211.43.0010.

[6] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[7] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6122.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.004, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[8] Category 659-O all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060, 6505.90.8060 (659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 6211.12.1020 (Category 659-S).

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-26084 Filed 11.2.90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commnwealth of the Northern Mariana Islands (CNMI) Form Imported Parts

October 30, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

FFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

On November 9, 1989, a notice was published in the **Federal Register** (54 FR 47107) announcing that cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of foreign conntries or foreign territories and exported from the Commonwealth of the Northern Mariana islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 87,540 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period November 1, 1989 through October 31, 1990.

The purpose of this notice is to advise the public that this exception is being continued for goods exported during the period November 1, 1990 through October 31, 1991 at a level of 46,000 dozen, in accordance with the terms of the administrative arrangement, as extended, between the Governments of the United States and the Commonwealth of the Northern Mariana Islands.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the **Federal Register** on August 12, 1988 (53 FR 30456).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 46,000 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Hanmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information on the 1991 Correlation will be published in the **Federal Register** at a later date.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 30, 1990.

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

Dear Commissioner: Under the terms of Section 204 of the Agriculatural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1990, you are directed to permit entry or withdrawal from warehouse for consumption in the United States in an amount not to exceed 46,000 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, the product of any foreign country or foreign territory, as determined under 19 C.F.R. Part 12.130 and which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1990 and extending through October 31, 1991. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

You are directed to require the appropriate visa or export license from the country of origin and charge any shipments of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 to the country of origin if (a) the 46,000 dozen limit has been filled, or (b) the products are not accompanied by certification, or (c) the products are not assembled in the Commonwealth of the Northern Mariana Islands.

Imports charged to the category limit for the period November 1, 1989 through October 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

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

Sincerely,

Roanld I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–26085 Filed 11–2–90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1991 under the CHAMPUS DRG-based payment system. It also describes the non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATE: The rates and weights contained in this notice are effective for admissions occurring on or after October 1, 1990.

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

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently

amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), and May 30, 1990 (55 FR 21863). In addition, a final rule is pending which is based on the proposed rule published on March 16, 1990 (55 FR 9921).

An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

We are not initiating any changes to the CHAMPUS DRG-based system, but this notice describes certain changes effective for the fourth year of its operation which are necessary in order to conform to changes to the Medicare PPS. These changes were published as a proposed rule on May 9, 1990 (55 FR 19426), and the final rule was published on September 4, 1990 (55 FR 35990). We refer the reader to these rules for detailed discussions of the changes. In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS DRG-based payment system.

A. DRG Classification

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1991 HCFA will implement a number of classification changes, including surgical hierarchy changes, refinements to the complications and comorbidities list, and coding changes in the Grouper. The CHAMPUS Grouper will duplicate all changes made to the Medicare Grouper. In addition, HCFA has added thirteen new DRGs, deleted two DRGs, and renamed eleven DRGs. The CHAMPUS system also will duplicate these changes.

It is important to note that these DRG changes will affect neither our existing coverage requirements nor the DRG exemption status of certain procedures. However, they will improve the payment precision of our DRG system, since certain specific cases will now be grouped together and will no longer distort the payment levels for the other procedures in the previous DRG.

For example, we will continue to exempt liver transplantation cases from DRG-based payments, even though all such cases will now be grouped to DRG 480. We will consider including them under our DRG system in the future—perhaps next year—and we welcome any comments regarding this. We will consider the same for heart transplants which group to DRG 103.

B. Wage Index

The CHAMPUS DRG-based payment system will continue to use the same wage index amounts used for the Medicare PPS. This includes all updates to the wage indexes which are effective on or after October 1, 1990, as well as any delays in implementing those updates. Since we use the wage index amounts calculated by HCFA, any changes which are phased in over several years for the Medicare PPS also will be phased in for CHAMPUS. In addition, we will duplicate all changes with regard to the wage index for rural counties whose hospitals are deemed urban.

C. Hospital Market Basket

We will use the revised and updated hospital market basket used for the Medicare PPS. This includes the change in the labor-related and nonlabor-related portions of the adjusted standardized amounts.

D. Outliers

We will use the same outlier thresholds effective for the Medicare PPS. For long-stay outliers this will be the geometric mean length of stay plus the lesser of twenty-nine (29) days or three standard deviations. For cost outliers the threshold will be the greater of two times the DRG-based amount or $35,000.

II. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under the CHAMPUS DRG-based payment system during FY 1991 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: October 30, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Effective for admissions occurring on or after October 1, 1990.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

TABLE 1—NATIONAL URBAN AND RURAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR, AND COST-SHARE PER DIEM

National Large Urban Adjusted Standardized Amounts	$3,067.59
Labor portion	2,172.47
Nonlabor portion	895.12
National Other Urban Adjusted Standardized Amount	2,996.47
Labor portion	2,122.10
Nonlabor portion	874.37
National Rural Adjusted Standardized Amount	2,958.16
Labor portion	2,237.26
Nonlabor portion	720.90
Cost-share per diem for beneficiaries other than dependents of active-duty members	266.00

BILLING CODE 3810-01-M

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.8296	13.2	10.1	1	39	27
2	CRANIOTOMY FOR TRAUMA AGE >17	4.7208	13.4	9.4	1	38	26
3	CRANIOTOMY AGE 0-17	2.8052	9.5	5.9	1	34	22
4	SPINAL PROCEDURES	2.1169	8.6	6.4	1	35	23
5	EXTRACRANIAL VASCULAR PROCEDURES	1.7360	5.5	4.7	1	26	14
6	CARPAL TUNNEL RELEASE	0.6616	2.4	2	1	14	7
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3772	10.8	6.7	1	35	23
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8947	3.4	2.4	1	24	10
9	SPINAL DISORDERS & INJURIES	3.2092	24.6	11.9	1	40	28
10	NERVOUS SYSTEM NEOPLASMS W CC	1.5659	10.4	6.4	1	35	23
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9778	6	3.6	1	32	20
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.9710	13	7.2	1	36	24
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.9247	7.1	5.3	1	34	22
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.5377	8.7	5.9	1	34	22
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7414	3.8	3.1	1	21	10
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6854	14.1	6.3	1	35	23
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	1.0644	6	3.9	1	32	20
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9274	6.2	4.6	1	33	21
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6960	4.8	3.3	1	32	16
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8427	9.6	7.4	1	36	24
21	VIRAL MENINGITIS	0.6273	4.1	3.5	1	18	10
22	HYPERTENSIVE ENCEPHALOPATHY	0.8183	4.5	3.3	1	29	13
23	NONTRAUMATIC STUPOR & COMA	0.6934	2.8	2.2	1	16	8
24	SEIZURE & HEADACHE AGE >17 W CC	0.8443	4.6	3.6	1	31	14
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5386	3.6	2.8	1	22	10
26	SEIZURE & HEADACHE AGE 0-17	0.5357	3.2	2.4	1	19	9
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.2539	9.1	4.3	1	33	21
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.2917	6.8	4.6	1	33	21
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	1.2370	7.5	3.5	1	32	20
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.5955	3.1	2	1	23	10
31	CONCUSSION AGE >17 W CC	0.6317	3.2	2.2	1	21	9
32	CONCUSSION AGE >17 W/O CC	0.4484	2.4	1.8	1	13	6
33	CONCUSSION AGE 0-17	0.2882	1.4	1.3	1	4	2
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2.1045	9.5	5.3	1	34	22
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	1.1231	8.3	3.7	1	32	20
36	RETINAL PROCEDURES	0.7892	2.4	2	1	10	5
37	ORBITAL PROCEDURES	0.8711	2.9	2.2	1	21	9
38	PRIMARY IRIS PROCEDURES	0.3614 *	0	2.2	1	17	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.7245	1.5	1.3	1	5	3
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.6147	2.1	1.6	1	12	6
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4929	1.5	1.2	1	5	3
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8275	2.6	2.1	1	14	7
43	HYPHEMA	0.2827	3.6	2.9	1	23	11
44	ACUTE MAJOR EYE INFECTIONS	0.4690	3.9	3.4	1	16	9
45	NEUROLOGICAL EYE DISORDERS	0.6138	3.7	2.8	1	27	12
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.8169	5.6	3.1	1	32	20
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5074	3.2	2.2	1	24	10
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.4422	2.8	2.2	1	16	7
49	MAJOR HEAD & NECK PROCEDURES	2.2905	9.1	6.2	1	35	23
50	SIALOADENECTOMY	0.7318	1.9	1.7	1	6	4

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.5854	1.6	1.5	1	5	3
52	CLEFT LIP & PALATE REPAIR	0.7219	2.5	2.1	1	12	6
53	SINUS & MASTOID PROCEDURES AGE >17	0.6953	1.9	1.6	1	9	4
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7170	1.9	1.5	1	9	5
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.5870	1.6	1.3	1	6	3
56	RHINOPLASTY	0.5429	1.5	1.3	1	4	3
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6521	2.5	2.1	1	12	6
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.4267	1.3	1.1	1	3	2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.3712	1.3	1.2	1	3	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3380	1.1	1.1	1	2	1
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.7106	2.3	1.7	1	14	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.6121	3	1.9	1	24	10
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0597	3.1	2.4	1	17	8
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0437	4.8	3.3	1	32	19
65	DYSEQUILIBRIUM	0.4794	3	2.6	1	14	7
66	EPISTAXIS	0.4247	3.1	2.5	1	18	9
67	EPIGLOTTITIS	1.1018	4.2	3.5	1	25	12
68	OTITIS MEDIA & URI AGE >17 W CC	0.6452	4.1	3.4	1	19	10
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.4838	3.4	2.8	1	17	9
70	OTITIS MEDIA & URI AGE 0-17	0.4017	3	2.6	1	13	7
71	LARYNGOTRACHEITIS	0.3395	2.3	1.9	1	10	5
72	NASAL TRAUMA & DEFORMITY	0.4875	1.9	1.7	1	7	4
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.5217	3.1	2.4	1	20	9
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.5155	3.2	2.2	1	23	10
75	MAJOR CHEST PROCEDURES	3.3687	11.4	9.3	1	38	26
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.4441	10.2	7.2	1	36	24
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.4745	5.7	3.5	1	32	20
78	PULMONARY EMBOLISM	1.6011	9.1	7.8	1	36	24
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.3529	10.9	8.7	1	37	25
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.2360	7.8	6.1	1	35	22
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	2.2189	8.1	5.6	1	34	22
82	RESPIRATORY NEOPLASMS	1.5896	8.6	5.6	1	34	22
83	MAJOR CHEST TRAUMA W CC	1.2621	6.2	4.8	1	33	21
84	MAJOR CHEST TRAUMA W/O CC	0.5709	3.2	2.6	1	20	9
85	PLEURAL EFFUSION W CC	2.3385	9.4	6.7	1	35	23
86	PLEURAL EFFUSION W/O CC	0.9208	4.9	3.9	1	28	14
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.3477	8.7	6.2	1	35	23
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.1219	6.3	5	1	34	18
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.4110	7.2	6	1	35	19
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.8243	5.2	4.4	1	24	13
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.6512	4.1	3.5	1	18	10
92	INTERSTITIAL LUNG DISEASE W CC	1.6108	6.9	5.6	1	34	21
93	INTERSTITIAL LUNG DISEASE W/O CC	0.8937	5	3.8	1	32	15
94	PNEUMOTHORAX W CC	1.4480	7.7	5.9	1	34	22
95	PNEUMOTHORAX W/O CC	0.6670	4.9	3.9	1	30	14
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.0585	5.8	4.8	1	30	16
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6940	4.2	3.5	1	21	11
98	BRONCHITIS & ASTHMA AGE 0-17	0.5411	3.3	2.8	1	15	8
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9752	4.3	3.2	1	30	13
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5765	2.7	2.2	1	15	7

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.2262	5.7	4	1	32	20
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.6718	3.9	2.5	1	31	12
103	HEART TRANSPLANT	-	-	-	-		
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.2233	16.6	14.2	2	43	31
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.5293	12	10.4	2	39	27
106	CORONARY BYPASS W CARDIAC CATH	5.9450	12.1	11.2	3	36	24
107	CORONARY BYPASS W/O CARDIAC CATH	5.1343	9.8	9	2	31	20
108	OTHER CARDIOTHORACIC PROCEDURES	5.3402	10.6	8.9	1	37	25
109	NO LONGER VALID	-	-	-	-		
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0800	10.6	8.9	1	37	25
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.8974	7.6	6.4	1	35	22
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.2669	4.9	3.9	1	31	14
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.8962	19.6	15.2	1	44	32
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8468	11.4	7.3	1	36	24
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	4.7169	11.8	10.9	3	38	24
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.1189	6.3	4.8	1	33	19
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2330	4.1	3.7	1	17	9
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5920	5	3.5	1	32	19
119	VEIN LIGATION & STRIPPING	0.7276	2.8	2.1	1	16	7
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.6051	11.8	7.3	1	36	24
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.1210	7.8	6.7	1	35	21
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5015	6.1	5.1	1	34	18
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.1589	4	2.5	1	31	15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.4304	4.6	3.5	1	32	15
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.9079	2.9	2.1	1	19	8
126	ACUTE & SUBACUTE ENDOCARDITIS	3.0086	19.3	14	1	42	30
127	HEART FAILURE & SHOCK	1.2961	6.5	5.1	1	34	20
128	DEEP VEIN THROMBOPHLEBITIS	0.8768	7.3	6.4	1	31	17
129	CARDIAC ARREST, UNEXPLAINED	2.1715	6	2.7	1	31	19
130	PERIPHERAL VASCULAR DISORDERS W CC	1.2637	7.3	5.5	1	34	22
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7082	4.9	3.6	1	32	19
132	ATHEROSCLEROSIS W CC	1.5879	5.2	3:7	1	32	19
133	ATHEROSCLEROSIS W/O CC	1.2139	4.2	3	1	31	15
134	HYPERTENSION	0.6142	3.9	3.1	1	23	11
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.8256	5.1	3.1	1	32	18
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.6080	2.4	2	1	11	6
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	1.3828	3.7	2.2	1	29	11
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.9300	4.4	3.3	1	30	13
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6046	3.1	2.4	1	18	8
140	ANGINA PECTORIS	0.7859	3.4	2.7	1	18	9
141	SYNCOPE & COLLAPSE W CC	0.6765	3.7	3	1	23	11
142	SYNCOPE & COLLAPSE W/O CC	0.5384	2.9	2.3	1	16	8
143	CHEST PAIN	0.5914	2.6	2.1	1	12	6
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4044	5.7	4.2	1	33	19
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.8652	3.5	2.6	1	25	11
146	RECTAL RESECTION W CC	2.7840	11.9	11.1	3	34	23
147	RECTAL RESECTION W/O CC	1.7057	8.9	8.1	2	28	18
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.5149	13.4	11.4	2	40	28
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.9086	9	8	1	37	21
150	PERITONEAL ADHESIOLYSIS W CC	2.7060	11.1	9.1	1	38	26

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
151	PERITONEAL ADHESIOLYSIS W/O CC	1.2523	6.6	5.6	1	34	18
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2.0675	10.4	8.2	1	37	25
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1429	6.1	5.4	1	28	15
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.6369	12.4	10	1	38	26
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.7915	7.9	6.9	1	31	18
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.2797	6.7	4.6	1	33	21
157	ANAL & STOMAL PROCEDURES W CC	0.9030	4.3	3.5	1	27	13
158	ANAL & STOMAL PROCEDURES W/O CC	0.5648	2.6	2.2	1	12	6
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.1940	5.3	4.1	1	33	15
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7927	3.4	2.8	1	18	9
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.6996	2.6	2.1	1	14	7
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5294	1.8	1.6	1	7	4
163	HERNIA PROCEDURES AGE 0-17	0.4506	1.5	1.3	1	5	3
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.1141	9.6	8.5	1	37	22
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1890	5.8	5.1	1	24	14
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0452	4.7	4.1	1	19	11
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7118	3.2	2.9	1	10	6
168	MOUTH PROCEDURES W CC	0.9555	4.4	3.1	1	32	15
169	MOUTH PROCEDURES W/O CC	0.6523	2.4	1.8	1	15	7
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8657	12.6	8.4	1	37	25
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.0559	5	3.8	1	32	17
172	DIGESTIVE MALIGNANCY W CC	1.8335	9.5	6.3	1	35	23
173	DIGESTIVE MALIGNANCY W/O CC	1.1363	7.1	4.6	1	33	21
174	G.I. HEMORRHAGE W CC	1.0641	5.1	4.2	1	25	13
175	G.I. HEMORRHAGE W/O CC	0.6538	3.7	3.1	1	18	9
176	COMPLICATED PEPTIC ULCER	1.0141	6.2	4.7	1	33	19
177	UNCOMPLICATED PEPTIC ULCER W CC	0.8330	4.6	3.9	1	24	12
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.5983	3.7	3	1	20	10
179	INFLAMMATORY BOWEL DISEASE	1.2394	7.8	5.7	1	34	22
180	G.I. OBSTRUCTION W CC	1.0375	6.5	4.8	1	33	20
181	G.I. OBSTRUCTION W/O CC	0.5908	4	3.1	1	25	12
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7183	4.4	3.4	1	26	12
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5362	3.4	2.7	1	19	9
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3535	2.8	2.3	1	14	7
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7433	4	3.1	1	30	13
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4058	2.8	2.4	1	14	7
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6438	2.1	1.7	1	11	5
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	0.9747	5.6	4.1	1	33	19
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5002	3.2	2.3	1	23	10
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3911	2.3	1.8	1	12	6
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5.1119	16.4	13.1	1	42	30
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.9142	12.5	10.3	1	39	27
193	BILIARY TRACT PROC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E. W C	3.3941	15	12	1	41	29
194	BILIARY TRACT PROC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E. W/O	1.7502	8.5	7	1	36	24
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8708	8.8	7.8	1	32	19
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.4161	7.2	6.7	2	20	13
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.5080	6.9	6.1	1	25	15
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	0.9790	4.8	4.4	1	15	9
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3765	11.3	8.6	1	37	25
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	1.9349	8.1	5.9	1	34	22

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.6187	8.8	6.1	1	35	23
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.7418	9.3	6.5	1	35	23
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3748	8.1	5.3	1	34	22
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1765	6.8	5.3	1	34	20
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.6793	8	5.4	1	34	22
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.5886	3.6	2.5	1	31	12
207	DISORDERS OF THE BILIARY TRACT W CC	1.0638	5.3	4.2	1	33	16
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.6209	3.3	2.6	1	21	10
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9407	9.8	9.1	2	28	18
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.6268	12	10.3	1	39	27
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8461	9.6	7.8	1	36	24
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5130	6.7	4.6	1	33	21
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.2234	13.5	8.5	1	37	25
214	BACK & NECK PROCEDURES W CC	1.9361	8.1	6.6	1	35	21
215	BACK & NECK PROCEDURES W/O CC	1.2615	5.7	4.8	1	26	14
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.7244	8.5	4.7	1	33	21
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.6197	12.8	7.1	1	36	24
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.6089	7.1	5.6	1	34	19
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0345	4.3	3.6	1	21	11
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.7933	3.1	2.3	1	18	8
221	KNEE PROCEDURES W CC	1.5331	6.7	4.4	1	33	21
222	KNEE PROCEDURES W/O CC	0.9868	3	2.5	1	14	7
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.8830	3.4	2.6	1	19	9
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7380	2.5	2	1	11	6
225	FOOT PROCEDURES	0.7363	2.6	2.1	1	13	7
226	SOFT TISSUE PROCEDURES W CC	1.2258	5.7	3.9	1	32	20
227	SOFT TISSUE PROCEDURES W/O CC	0.7549	2.9	2.3	1	17	8
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.7922	2.5	2	1	12	6
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6084	1.9	1.6	1	8	4
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6759	2.7	2	1	14	7
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.9585	3.6	2.4	1	27	11
232	ARTHROSCOPY	0.9692	3	2	1	22	9
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.6703	10	6.6	1	35	23
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0374	4	3	1	27	12
235	FRACTURES OF FEMUR	1.2218	13	7.5	1	36	24
236	FRACTURES OF HIP & PELVIS	1.1903	9.6	6.6	1	35	23
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5372	3.9	2.4	1	31	16
238	OSTEOMYELITIS	1.3621	8.9	7	1	35	23
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.5201	10.2	6.8	1	35	23
240	CONNECTIVE TISSUE DISORDERS W CC	1.5434	7.8	5.6	1	34	22
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7234	5.2	3.6	1	32	18
242	SEPTIC ARTHRITIS	1.4697	9.2	6.5	1	35	23
243	MEDICAL BACK PROBLEMS	0.6259	4.5	3.2	1	32	16
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	1.3405	6.5	4.4	1	33	21
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.9556	5.7	3.9	1	32	20
246	NON-SPECIFIC ARTHROPATHIES	0.6460	4.9	4.1	1	27	14
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6295	4.7	3.3	1	32	15
248	TENDONITIS, MYOSITIS & BURSITIS	0.5841	3.7	2.7	1	24	11
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8265	6.6	3.6	1	32	20
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8391	4.2	2.8	1	31	16

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5148	2.2	1.7	1	12	6
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3638	1.5	1.3	1	5	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.9303	6.2	4.5	1	33	20
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.5219	3.4	2.6	1	20	9
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4191	2.4	1.8	1	14	6
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6718	3.9	2.6	1	31	13
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0889	4.6	4.1	1	18	10
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.8870	3.8	3.4	1	14	8
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.3701	5.1	3.5	1	32	17
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7378	2.5	2.2	1	10	6
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9349	2.4	2.1	1	10	5
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5475	2	1.7	1	9	5
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	3.0170	18	11.5	1	40	28
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.8895	13.5	6.8	1	35	23
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.7689	7.4	5.2	1	34	22
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	0.9502	3.7	2.8	1	26	12
267	PERIANAL & PILONIDAL PROCEDURES	0.5309	2.1	1.6	1	10	5
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.7786	2.1	1.6	1	12	6
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.8459	9.1	5.7	1	34	22
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7323	3.2	2.3	1	22	10
271	SKIN ULCERS	1.4933	12	7.9	1	36	24
272	MAJOR SKIN DISORDERS W CC	1.3829	7.5	5.1	1	34	22
273	MAJOR SKIN DISORDERS W/O CC	0.7546	5.7	4.2	1	33	18
274	MALIGNANT BREAST DISORDERS W CC	2.0838	11.8	6.6	1	35	23
275	MALIGNANT BREAST DISORDERS W/O CC	1.6268	7	3.6	1	32	20
276	NON-MALIGANT BREAST DISORDERS	0.6935	3.5	2.6	1	25	11
277	CELLULITIS AGE >17 W CC	0.9297	6.5	5.2	1	33	17
278	CELLULITIS AGE >17 W/O CC	0.6602	4.9	4.1	1	25	13
279	CELLULITIS AGE 0-17	0.4934	3.7	3.1	1	17	9
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7382	4.1	2.9	1	31	14
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.5108	3	2	1	21	9
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3787	2	1.6	1	10	5
283	MINOR SKIN DISORDERS W CC	0.7419	5.3	3.7	1	32	17
284	MINOR SKIN DISORDERS W/O CC	0.5032	3.7	2.6	1	29	12
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.7431	16.7	13.6	1	42	30
286	ADRENAL & PITUITARY PROCEDURES	2.1104	7.7	6.6	1	33	18
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2301	13.8	9.1	1	38	26
288	O.R. PROCEDURES FOR OBESITY	1.7266	5.3	5	1	14	9
289	PARATHYROID PROCEDURES	0.8712	3.1	2.7	1	13	7
290	THYROID PROCEDURES	0.7487	2.6	2.3	1	9	5
291	THYROGLOSSAL PROCEDURES	0.5076	1.4	1.2	1	4	2
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.1150	14.8	10.6	1	39	27
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	0.9387	4.3	3.5	1	29	13
294	DIABETES AGE >35	0.7571	5.7	4.8	1	28	15
295	DIABETES AGE 0-35	0.5850	4.2	3.4	1	21	11
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1324	6.9	4.7	1	33	21
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5699	4.3	3	1	31	13
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4416	3.5	2.6	1	20	10
299	INBORN ERRORS OF METABOLISM	1.0326	10.6	4.5	1	33	21
300	ENDOCRINE DISORDERS W CC	1.0508	5.9	3.9	1	32	20

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
301	ENDOCRINE DISORDERS W/O CC	0.6318	3.7	2.6	1	27	11
302	KIDNEY TRANSPLANT	6.7453	17.9	15.6	3	44	32
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5181	9.8	9	2	32	20
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.0428	8.5	7.3	1	36	22
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.2256	5.3	4.4	1	32	16
306	PROSTATECTOMY W CC	1.5412	7.3	5.2	1	34	22
307	PROSTATECTOMY W/O CC	0.8123	4.4	3.5	1	23	12
308	MINOR BLADDER PROCEDURES W CC	1.4083	5.9	4.7	1	33	19
309	MINOR BLADDER PROCEDURES W/O CC	0.9558	3.8	2.9	1	26	12
310	TRANSURETHRAL PROCEDURES W CC	1.0151	3.9	3.1	1	24	11
311	TRANSURETHRAL PROCEDURES W/O CC	0.7409	2.8	2.3	1	15	7
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7523	3.6	2.6	1	31	13
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6544	2.3	1.8	1	14	6
314	URETHRAL PROCEDURES, AGE 0-17	0.5581	1.9	1.5	1	10	5
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2738	9.9	6.4	1	35	23
316	RENAL FAILURE	1.9648	8.2	5.7	1	34	22
317	ADMIT FOR RENAL DIALYSIS	0.3499 *	0	2.2	1	21	21
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.5489	8.7	5.6	1	34	22
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1.1492	5.6	3.5	1	32	20
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.9528	5.8	4.7	1	31	16
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6311	4.2	3.6	1	18	10
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5536	4.1	3.5	1	19	10
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7595	2.8	2.2	1	16	7
324	URINARY STONES W/O CC	0.4629	2.1	1.7	1	9	5
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	1.0265	5.3	3.7	1	32	17
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.5236	3.2	2.5	1	21	10
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3690	2.3	1.9	1	11	6
328	URETHRAL STRICTURE AGE >17 W CC	0.6346 *	0	3.8	1	33	33
329	URETHRAL STRICTURE AGE >17 W/O CC	0.4135	1.7	1.5	1	7	4
330	URETHRAL STRICTURE AGE 0-17	0.2754 *	0	1.6	1	9	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9348	5.1	3.8	1	32	17
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6318	3.9	2.8	1	29	12
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.8659	4.6	3	1	32	15
334	MAJOR MALE PELVIC PROCEDURES W CC	2.2792	8.8	8.3	3	22	15
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.6317	7.3	6.8	1	26	16
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0504	4.8	4.3	1	18	10
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7266	3.6	3.3	1	10	6
338	TESTES PROCEDURES, FOR MALIGNANCY	0.8927	3.8	2.5	1	31	14
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5388	2	1.5	1	9	5
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4871	1.6	1.4	1	5	3
341	PENIS PROCEDURES	0.9275	3.3	2.5	1	22	10
342	CIRCUMCISION AGE >17	0.4971 *	0	2.3	1	24	24
343	CIRCUMCISION AGE 0-17	0.4229	1.2	1.2	1	2	2
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.4182	6.6	5.6	1	31	17
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.5393	2.3	2.1	1	8	5
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.2738	7.4	4.5	1	33	21
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1.1618	4.8	4.1	1	25	13
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.5046	2.2	1.8	1	12	6
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4598	2.4	1.9	1	13	6
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6208	4.2	3.5	1	22	11

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
351	STERILIZATION, MALE	0.3293 *	0	1.3	1	5	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.5722	2.9	2.1	1	22	9
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.2394	10.2	8.6	1	37	23
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4736	6.8	6.1	1	23	14
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9082	4.5	4.2	1	12	8
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8425	4.4	3.9	1	14	9
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.8611	8.3	7.1	1	35	20
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1552	5.1	4.7	1	14	9
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9099	4.1	3.9	1	11	7
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6866	3.1	2.5	1	20	9
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7317	3.1	2.4	1	21	9
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3886	1.6	1.4	1	5	3
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6316	2.9	2.4	1	14	7
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4676	2	1.6	1	10	5
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2792	6	4.7	1	33	17
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.4437	10	6.1	1	35	23
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.8564	4.9	2.8	1	31	19
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5769	3.8	3.3	1	17	9
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4701	2.8	2.2	1	15	7
370	CESAREAN SECTION W CC	0.9633	5	4.6	1	14	9
371	CESAREAN SECTION W/O CC	0.7694	4	3.9	1	8	6
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5779	3.4	2.8	1	14	8
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3916	2.2	2	1	6	4
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6281	2.6	2.4	1	6	4
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.6221	3.1	2.5	1	15	8
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4706	3	2.5	1	15	8
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.7002	2.9	2.1	1	19	8
378	ECTOPIC PREGNANCY	0.7821	3.4	3.1	1	11	7
379	THREATENED ABORTION	0.3666	3	2.1	1	19	8
380	ABORTION W/O D&C	0.3207	1.7	1.4	1	6	3
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4018	1.4	1.2	1	4	2
382	FALSE LABOR	0.1700	1.5	1.2	1	5	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3524	3.1	2.5	1	16	8
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3282	2.6	1.9	1	17	7
385	NO LONGER VALID	.	.	.	.	.	.
386	NO LONGER VALID	.	.	.	.	.	.
387	NO LONGER VALID	.	.	.	.	.	.
388	NO LONGER VALID	.	.	.	.	.	.
389	NO LONGER VALID	.	.	.	.	.	.
390	NO LONGER VALID	.	.	.	.	.	.
391	NORMAL NEWBORN	0.1222	2.4	2.1	1	8	5
392	SPLENECTOMY AGE >17	1.9746	8.2	7.6	2	23	15
393	SPLENECTOMY AGE 0-17	2.5411	9.9	7.2	1	36	24
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.0923	4.8	3.3	1	32	18
395	RED BLOOD CELL DISORDERS AGE >17	0.9163	5	3.6	1	32	18
396	RED BLOOD CELL DISORDERS AGE 0-17	0.5717	3.5	2.7	1	24	11
397	COAGULATION DISORDERS	1.1130	4.9	3.4	1	32	16
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.5915	8.2	5.9	1	34	22
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.7367	4.6	3.3	1	32	16
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5465	10.1	6.9	1	35	23

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.0313	13	9	1	37	25
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.1805	5	3.2	1	32	19
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.8842	12	7.7	1	36	24
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1.0922	5.6	4	1	32	19
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	2.2086	7.9	5.1	1	34	22
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	3.5461	16.1	10.5	1	39	27
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.9867	9	6.5	1	35	23
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.4324	6.1	3.7	1	32	20
409	RADIOTHERAPY	0.8028	4.4	3	1	31	14
410	CHEMOTHERAPY	0.7157	3.1	2.4	1	17	8
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.2978	1.4	1.3	1	4	2
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4072 *	0	2.2	1	21	21
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.6973	9.8	5.9	1	34	22
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	1.0757	5.7	3.9	1	32	20
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5417	15.3	10.3	1	39	27
416	SEPTICEMIA AGE >17	1.9758	8.8	6.8	1	35	23
417	SEPTICEMIA AGE 0-17	0.8770	5.4	4.4	1	31	15
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9502	6.4	5.1	1	34	19
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	1.0225	6.2	5	1	33	17
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.7472	4.8	3.4	1	31	14
421	VIRAL ILLNESS AGE >17	0.5912	3.8	3.1	1	20	10
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4437	3.1	2.7	1	13	7
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.4288	6.8	5	1	33	21
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3511	19.8	14.8	1	43	31
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	1.0797	12	6.5	1	35	23
426	DEPRESSIVE NEUROSES	1.2920	12.4	9.2	1	38	26
427	NEUROSES EXCEPT DEPRESSIVE	1.8114	12.6	7.3	1	36	24
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	3.5325	14.8	9.8	1	38	26
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.9377	33.3	13.4	1	42	30
430	PSYCHOSES	1.5425	12.8	8.9	1	37	25
431	CHILDHOOD MENTAL DISORDERS	2.8787	16.4	11	1	40	28
432	OTHER MENTAL DISORDER DIAGNOSES	2.0099	21.1	13.1	1	42	30
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7189	7.7	4.8	1	33	21
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3210	13.2	8.2	1	37	25
435	NO LONGER VALID	.	.	.	.		
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	0.9873 *	0	8.1	1	37	37
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.6812	22.2	20.7	6	49	37
438	NO LONGER VALID	.	.	.	.		
439	SKIN GRAFTS FOR INJURIES	2.3198	7.2	4.2	1	33	21
440	WOUND DEBRIDEMENTS FOR INJURIES	1.9133	9.4	5.2	1	34	22
441	HAND PROCEDURES FOR INJURIES	0.8430	2.8	2.2	1	17	8
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4978	8.8	5.6	1	34	22
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0625	4	2.6	1	31	14
444	TRAUMATIC INJURY AGE >17 W CC	0.9504	6	4.1	1	33	20
445	TRAUMATIC INJURY AGE >17 W/O CC	0.5651	4.1	2.7	1	31	13
446	TRAUMATIC INJURY AGE 0-17	0.4562	2.7	2	1	17	8
447	ALLERGIC REACTIONS AGE >17	0.5197	2.9	2.1	1	18	8
448	ALLERGIC REACTIONS AGE 0-17	0.2790	2	1.5	1	11	5
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.9098	4.4	2.8	1	31	15
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5039	3.2	2	1	24	9

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4245	2.2	1.6	1	11	5
452	COMPLICATIONS OF TREATMENT W CC	1.4527	6.4	4.4	1	33	21
453	COMPLICATIONS OF TREATMENT W/O CC	0.5390	3.2	2.3	1	23	10
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.0135	3	2.1	1	21	9
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3647	1.8	1.5	1	8	4
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.5138 *	0	4.1	1	33	33
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	6.2203	11.9	8.4	1	37	25
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.1577	15.5	11.1	1	40	28
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	2.0217	11.4	7.2	1	36	24
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.8559	5.5	3.9	1	32	20
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.2927	7.4	3	1	32	20
462	REHABILITATION	3.1031	22.4	15.6	1	44	32
463	SIGNS & SYMPTOMS W CC	0.8566	6	3.8	1	32	20
464	SIGNS & SYMPTOMS W/O CC	0.5388	3.9	2.9	1	26	12
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3995 *	0	1.9	1	21	21
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7089	4.9	2.4	1	31	15
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4605	2.6	1.9	1	16	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2231	9.3	5.3	1	34	22
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.	.	.	.		
470	UNGROUPABLE	.	.	.	.		
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	4.8206	14.6	13.5	3	42	30
472	EXTENSIVE BURNS W O.R. PROCEDURE	11.7637 *	0	21	1	50	50
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	5.3447	19.3	9.9	1	38	26
474	NO LONGER VALID	.	.	.	.		
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.3450	11.1	7.6	1	36	24
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.4861	14.1	9.6	1	38	26
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.3297	6.3	3.8	1	32	20
478	OTHER VASCULAR PROCEDURES W CC	3.0829	10.7	6.9	1	35	23
479	OTHER VASCULAR PROCEDURES W/O CC	1.7071	5.3	3.8	1	32	18
480	LIVER TRANSPLANT	.	.	.	.		
481	BONE MARROW TRANSPLANT	12.4485 *	0	36.6	1	66	66
482	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.2711	11.3	10	2	39	27
483	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	11.7630	24.7	19	1	48	36
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.9972 *	0	13.5	1	43	43
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	4.8581	17.6	14.4	2	43	31
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.3864	14.8	11.1	1	40	28
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.8580	10.6	7	1	36	24
488	HIV W EXTENSIVE O.R. PROCEDURE	4.1296 *	0	18.8	1	48	48
489	HIV W MAJOR RELATED CONDITION	3.6808	13.4	10.8	1	39	27
490	HIV W OR W/O OTHER RELATED CONDITION	2.1449	7.2	4.4	1	33	21
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.7679	1	1	1	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.3424	2	1.7	1	8	4
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	4.1115	14.2	5	1	34	22
603	NEONATE, BIRTHWT <750G, DIED	6.6799	4.5	3.7	1	25	13
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	10.6475	47.8	25.7	1	54	42
605	NEONATE, BIRTHWT 750-999G, DIED	4.6898	8.6	6	1	34	22
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	13.7310	66	61.5	17	90	78
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	6.1938	31.6	22.8	1	51	39
608	NEONATE, BIRTHWT 1000-1499G, DIED	5.6951	9.6	6.9	1	35	23
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	6.1661	23	19	1	47	35

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	7.9709	33.3	32.2	12	61	49
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	5.2900	21.7	14.3	1	43	31
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.9789	19.6	15.2	1	44	32
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	2.3547	17.8	13.2	1	42	30
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.4099	12.5	9.9	1	38	26
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	6.3399	22.4	18.3	2	47	35
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	9.2240	20.8	14.1	1	43	31
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	3.7257	12.9	10.4	1	39	27
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	2.3618	11.7	8.9	1	37	25
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.4565	9.6	7.5	1	36	24
620	NO LONGER VALID	.	.	.	.		
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.4882	4.9	3.8	1	31	14
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	8.4813	24.6	17.6	1	46	34
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	3.2339	11.1	6.6	1	35	23
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.9017	4.8	3.6	1	26	13
625	NO LONGER VALID	.	.	.	.		
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	3.7213	12.3	7.7	1	36	24
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	1.1313	5.9	4	1	33	19
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.6175	4.7	3.7	1	26	13
629	NO LONGER VALID	.	.	.	.		
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1917	2.9	2.6	1	11	6
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	5.5959	15.4	9.2	1	38	26
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.7807	5.9	3.6	1	32	20
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	0.3328	1	1	1	1	1
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2.4083	5	5	4	5	5
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	1.2606	5.7	4.8	1	33	21
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	5.1998	16.2	9	1	37	25
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	2.0032	22.1	14.6	1	43	31
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	1.4233	15.6	10.3	1	39	27

NOTE: Long stay threshold B is used for children's hospital discharges.

* CHAMPUS weight is the same as the Medicare weight due to a low number of observations.

[FR Doc. 90-26062 Filed 11-2-90; 8:45 am]

BILLING CODE 3810-01-C

Equal Opportunity Management Institute Board of Visitors; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI. The Board meets annually.

DATES: November 28, 1990 (Agenda follows).

ADDRESSES: The Defense Equal Opportunity Management Institute, Patrick Air Force Base, Florida.

AGENDA: Sessions will be conducted and will be open to the public as indicated below.

Wednesday, November 28, 1990

8 a.m.—11 a.m. Review of minutes from last meeting Presentation of New Business

1 p.m.—4:30 p.m. General Conference Activities

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret P. Nagel, Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925-6685; telephone (407) 494-6017.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the Public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact no later than November 21, 1990.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy no later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: October 31, 1990.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26110 Filed 11-2-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Troop Support Command; Patent Availability

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with 34 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issued date
4,868,940	Cushioning mat for use as portable bedding.	09/26/90

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans in Natick Research, Development, and Engineering Center's Office of Research and Technology Applications on 508-651-5296, or write to: U.S. Army Natick Research, Development and Engineering Center, Kansas Street, STRNC-EML (ATTN: Robert Rosenkrans), Natick, MA 01760-5014.

John Roach,

Department of the Army Liaison, Office with the Federal Register.

[FR Doc. 90-26037 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-08-M

ROTC Affairs Advisory Panel Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following panel meeting:

NAME OF PANEL: Army Advisory Panel on ROTC Affairs.

DATE OF MEETING: February 19—20, 1991.

PLACE: Radisson Hotel, Hampton, Virginia.

TIME: 9 a.m.—5 p.m.—February 20, 1991; 9 a.m.—12 p.m.—February 21, 1991.

PROPOSED AGENDA: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting.

After opening remarks by Major General Wallace C. Arnold and the Chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the June 1990 meeting at Fort Bragg, North Carolina. Briefings on February 20-21 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold, Green to Gold Update, Campus Update, Cadet Professional Development Training, and the High School Program Update. On February 21 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

FOR FURTHER INFORMATION CONTACT: For further information contact the Commander, U.S. Army Training and Doctrine Command, ATTN: ATCC-TE/Colonel Kenneth A. Harris, Fort Monroe, Virginia 23651-5000.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90-26029 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-08-M

National Board for the Promotion of Rifle Practice, Department of the Army; Open Meeting

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF THE COMMITTEE: National Board for the Promotion of Rifle Practice Budget Committee.

DATE OF MEETING: 12 December 1990.

PLACE: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

TIME: 0930-1130.

PROPOSED AGENDA:

1. Federal Register Notice of the Meeting
2. Roll Call
3. Approval of previous Board minutes
4. Review of Fiscal Year 1990 Budget
5. Fiscal Year 1991 Budget and Obligation Plan
6. Fiscal Year 1991–92 and Out-Year Budgets
7. Approval of Budget

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Mrs. Rita G. Cooper-Williams at (202) 272-0810 prior to 15 November 1990.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90-26030 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-08-M

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10 (1) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF THE COMMITTEE: National Board for the Promotion of Rifle Practice.

DATE OF MEETING: 12 December 1990.

PLACE: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

TIME: 1345–1600.

PROPOSED AGENDA:

1. Open Prayer and Pledge of Allegiance to the Flag
2. Federal Register Notice of the Meeting
3. Roll Call
4. Approval of previous Board minutes
5. Report on the 1990 National Matches
6. Report on the Budget review/presentation
7. Old Business
8. New Business.

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Mrs. Rita G. Cooper-Williams at (202) 272-0810 prior to 15 November 1990.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90-26031 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) For The Central and Southern Florida Flood Control Project, West Palm Beach Canal, C-51, Western Section, Florida

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the project is to provide a minimum of 1 in 10 years storm flood protection for the Western Palm Beach Canal basin. The project consists of the construction of a new pumping station, control structure, new levee construction, improvements to the existing levees and channel, and proposed storm water detention area.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. William J. Fonferek, (904) 791-1690, Environmental Resources Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232-0019.

INFORMATION: 1. The West Palm Beach Canal improvements were partially authorized in the Flood Control Act of 1948. The remainder was authorized by Public Laws 87-874 and 90-483. The purpose of this DEIS is to address modifications to the design of the project.

2. *Scoping:* The scoping process involves Federal, State, the South Florida Water Management District, the US Fish and Wildlife Service—Loxahatchee Wildlife Refuge [Water Conservation Area No. 1(WCA-1)] and other local agencies, and other interested persons and organizations. A scoping letter was sent to all interested parties requesting their comments and concerns. Any person and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the above address.

3. Consultation with the State Historic Preservation Officer (SHPO) during scoping indicated that no historical and archaeological resources would be present in the project area.

4. Consultation with the U.S. Fish and Wildlife Service (USFWS) has been initiated in compliance with Section 7 of the Endangered Species Act. The original project plan called for the direct pumping of stormwater into WCA-1. USFWS determined that this plan could impact the snail kite, *Rostrhamus sociabilis sociabilis*, a species listed by the USFWS as endangered. A no effect determination was reached after the plan was modified to exclude direct discharges into WCA-1 and create a stormwater detention area as a mitigation feature. Coordination required by applicable Federal and State laws and policies will also be conducted. Since the project could require the discharge of material into waters of the United States, that discharge must comply with the provisions of Section 404 of the Clean Water Act as amended.

5. *DEIS preparation:* It is estimated that the DEIS will be available to the public in the 2nd quarter, FY 91.

Dated: October 15, 1990.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 90-26032 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-AJ-M

Termination of Preparation of a Supplemental Environmental Impact Statement (SEIS) for Proposed Mill Creek Lake Seepage Control Project Near Walla Walla, WA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of termination of preparation of an SEIS.

SUMMARY: The Walla Walla District, Corps of Engineers, is withdrawing its intent to complete preparation of an SEIS for a seepage control project for Mill Creek Lake Flood Control Project near Walla Walla, Washington. Further studies and analysis conducted by the Corps indicate that the dam is not in imminent danger of failure as originally believed, and that control of the seepage from the lake is not needed at this time. The Corps is discontinuing studies relating to controlling the seepage problem and is resuming normal operation of the project. The Corps will implement a monitoring program at the lake following the next diversion of floodflows into the lake.

FOR FURTHER INFORMATION CONTACT: Comments concerning the seepage control project or SEIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, WA 99362-9265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522-6626.

SUPPLEMENTARY INFORMATION: 1. Mill Creek Lake is part of a flood control project protecting the city of Walla Walla, Washington. The lake has a chronic seepage problem that was believed to be causing internal erosion of the dam. The Walla Walla District, Corps of Engineers, was concerned that the structural safety of the dam was in jeopardy, and prepared a report recommending that a high density polyethylene liner be placed on the lake bottom to prevent further seepage. In December 1988, the Corps issued a draft SEIS discussing the seepage problem at Mill Creek Lake and evaluating the impacts of several actions the Corps could take to address the problem, including installing the liner. Subsequent

studies and analysis conducted by the Corps in 1989 and 1990 indicate that the dam is not in imminent danger of collapse and the liner is not needed. The Corps is terminating all studies related to controlling the seepage problem and is resuming normal operation of the flood control project, including filling the lake for environmental reasons and to provide recreational opportunities. Following the next use of the lake for storing floodflows, the Corps will implement a monitoring program that will probably include borings and/or geophysical methods.

2. The Corps is notifying all interested parties by mail of the decision to terminate the seepage control project and the SEIS.

Dated: October 12, 1990.

Donald P. Kurkjian,

Major, EN, Acting Commander.

[FR Doc. 90-26033 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-GC-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting.

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meetings of the National Assessment Governing Board and two of its committees. 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 the meetings.

DATES: *November 28, 1990*—Executive and Achievement Levels Joint Committee—11 a.m. to 2 p.m. (closed). *November 29, 1990*—National Assessment Governing Board—3 p.m. to 6 p.m. (open).

LOCATION: National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Excecutive Director, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: 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. On November 28, a joint teleconference between the Achievement Levels Committee and the Executive Committee of the National Assessment Governing Board will begin at 11 a.m. and end at 2 p.m., and will be closed to the public. The teleconference will be closed under the authority of the Federal Advisory Committee Act (5 U.S.C. App 2) and exemption 9(B) of the Government in the Sunshine Act (5 U.S.C.A. 552b(c)). During the teleconference, the joint committees will review preliminary data from the 1990 Mathematics Assessment in preparation for making recommendations to the Board. Discussions will include references to specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the National Assessment of Educational Progress (NAEP). Further, premature disclosure of preliminary data have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based upon incomplete, confusing, or erroneous inferences being drawn from preliminary data. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

On November 29, 1990, a teleconference involving the full Board will begin at 3 p.m. and end at 6 p.m. The Board will review the recommendations from the joint Executive and Achievement Levels Committees and take final action on the achievement levels for reporting the 1990 NAEP math results. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations.

A summary of the activities and related matters, which are informative to the public and consist with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records of 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. 90-26132 Filed 11-2-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. 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 the open portions of the meeting.

DATES: November 15, 16, and 17, 1990.

TIMES: *November 15, 1990*—Achievement Levels Committee—4 p.m. to 6:30 p.m. (closed). Ad Hoc Committee on Issues Resolution—4 p.m. to 6:30 p.m. (open). Executive Committee—7 p.m. to 10 p.m. (open). *November 16, 1990—National Assessment Governing Board—9 a.m. to 5 p.m. (open); 5 p.m. to 6 p.m. (closed). November 17, 1990*—Full Board—9 a.m. until adjournment, approximately 1 p.m. (open).

LOCATION: Colony Square Hotel, Peachtree at 14th Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street NW., suite 7322, Washington, DC 20005-4013. TELEPHONE: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) 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 USC 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. On November 15, three committees of the National Assessment Governing Board will be in session: the Ad Hoc Committee on Issues Resolution, the Committee on Achievement Levels, and the Executive Committee. A meeting of the Ad Hoc Committee from 4 p.m. to 6:30 p.m., and of the Executive Committee 7 p.m. to 10 p.m. will be open to the public. The meeting of the Committee on Achievement Levels will begin at 4 p.m. and end at 6:30 p.m., and will be closed to the public. The proposed agenda for the meetings are as follows: the Ad Hoc Committee on Issues Resolution will consider positions the Board should take on issues related to the NAEP procurement for 1994 through 1996; the Achievement Levels Committee will review the entire achievement levels process; the Executive Committee, in addition to hearing status reports from various committees, will attend to NAEP reauthorization issues, and adding non-mandated subjects to NAEP.

The Achievement Levels Committee will be closed under the authority of 10 (d) of the Federal Advisory Committee Act (5 U.S.C.A. App 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C.S. 552b(c)). During the closed portion of the meeting, the Committee will review preliminary data from the 1990 Mathematics Assessment which will include discussion of specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the National Assessment of Educational Progress. Further, premature disclosure of preliminary data from the 1990 Mathematics Assessment may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based upon incomplete, confusing, or erroneous inferences being drawn from preliminary data. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

On Friday, November 16, the full Board will meet in open session from 9 a.m. to 5 p.m. The proposed agenda for the open meeting includes briefings on the NAEP contract and preliminary results reported on several studies: Linking Study, Alternative Assessments Study, International Assessment of Mathematics and Science, and the Evaluation of the NAGB Achievement Levels Setting Activity.

Following the open session, the full Board will meet in closed session from 5 p.m. to 6 p.m. During the closed portion of the meeting, the Achievement Levels Committee will report to the full Board on the preliminary data from the Mathematics Assessment. Premature disclosure of preliminary data from the 1990 Mathematics Assessment would significantly frustrate implementation of the NAEP. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The full Board meeting will conclude with an open session on Saturday, November 17, 9 a.m. until adjournment, approximately 1 p.m. when reports from the NAGB committees will be heard. A summary of the activities at the closed session and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc.k 90–26133 Filed 11–2–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–42–000, et al.]

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

October 26, 1990.

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

1. Central Power and Light Co.

[Docket No. ER91–42–000]

Take notice that on October 24, 1990, Central Power and Light Company ("CPL") tendered for filing: (1) A Transmission Service Agreement ("Agreement"), dated August 15, 1990, between CPL and Texas-New Mexico Power Company ("TNP"); and (2) a revised Master ERCOT Transmission Facility Charge Rate Schedule.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co.—Wisconsin

[Docket No. ER91–24–000]

Take notice that on October 23, 1990, Northern States Power Company—Wisconsin (NSP) tendered for filing copies of rate sheets which NSP requests be substituted for the rate sheets previously filed on October 11, 1990 in this docket. NSP states that the rate sheets filed October 23, 1990 are identical to the compliance rate sheets filed in response to the Commission's Opinion No. 345 in Docket No. ER88–72–000.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 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 noy 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. 90–26057 Filed 11–2–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10812–000]

Daniel Nelson Evans, Jr.; North Carolina; Availability of Environmental Assessment

October 29, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's)

regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Henrietta Mills Hydroelectric Project located on the Second Broad River in Rutherford County, in Henrietta, North Carolina, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26053 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10228-000]

WV Hydro, Inc.; Availability of Environmental Assessment

October 26, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the proposed Cannelton Hydroelectric Project located on the Ohio River in Hancock County near Hawesville, Kentucky, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-26061 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-637-005, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate filings

October 29, 1990.

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

1. ANR Pipeline Co.

[Docket No. CP89-637-005]

Take notice that on October 23, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-637-005 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to perform new transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, ANR requests authorization to construct and operate 7.4 miles of 20-inch pipeline lateral extending from ANR's Farmersville Meter Station,[1] to be located on ANR's jointly-owned (with Trunkline Gas Company) 36-inch Lebanon Extension, to an interconnection with Dayton Power & Light Company (Dayton), in Montgomery County, Ohio. The estimated cost of the facilities is $5,262,989 to be financed from funds on hand. ANR proposes to transport up to 30.8 MMcfd on a firm basis for Dayton under part 284, subpart G of the Commission's Regulations. This transportation will take place under Rate Schedule FTS-1 or Original Volume No. 1-A of ANR's FERC Gas Tariff.

Comment date: November 19, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-212-000]

Take notice that on October 22, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP91-212-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a six-inch tap and valve on existing right-of-way located in Marion County, Indiana, under its blanket certificate issued in Docket No. CP83-83-000, 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.

Panhandle proposes to construct such tap, at an estimated cost of $7,802, to provide DowBrands, Inc. (Dow) a more economical way of receiving gas supplies to their new facilities in Marion County, Indiana. It is stated that Dow is an existing customer of Panhandle. It is further stated that the total volumes delivered to Dow through both taps would not exceed existing certificated levels, and therefore, no transportation authority is requested by Panhandle. Additionally, there would be no impact on Panhandle's peak and annual deliveries.

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP91-242-000]

Take notice that on October 24, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-242-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to replace 2.0 miles of 10-inch lateral pipeline, abandon in place 0.38 miles of 10-inch lateral pipeline, and reclaim 1.6 miles of 10-inch pipeline so as to replace and relocate the KPL Gas Service Lone Elm town border setting, all located in Jasper County, Missouri, under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the projected volume of delivery through the replacement facilities is not expected to exceed the volumes currently being delivered, 1,762,567 Mcf per year with a maximum peak load of 17,882 Mcf per day. It is stated that WNG estimates the reclaim costs to be $27,900 with a salvage value of $24,597. It is further stated that WNG estimates the cost of construction to be $424,558, which will be paid from funds on hand.

WNG maintains that the herein change is not prohibited by an existing tariff and that WNG has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

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[1] The Farmersville Meter Station is to be built under either section 311 of the Natural Gas Policy Act or section 7(c) authorization in Docket Nos. CP89-637-002 and CP88-178-002.

4. Pacific Offshore Pipeline Co.

[Docket No. CP91-248-000]

Take notice that on October 25, 1990, Pacific Offshore Pipeline Company (POPCO), P.O. Box 60043, Los Angeles, California 90060, filed in Docket No. CP91-248-000 a petition pursuant to rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), requesting the Commission to issue a declaratory order to determine POPCO's rights and obligations with respect to Exxon Corporation (Exxon) under their agreements entered into on August 9, 1978, which were later modified and certificated by the Commission in two orders issued in 1981 (14 FERC 61,239A and 15 FERC 61,235).

POPCO requests that the Commission promptly order that: (1) POPCO's contractual obligations to support Exxon, under agreements previously submitted to the Commission for approval, do not extend to actions by Exxon that are inconsistent with the Commission's certificates; (2) Exxon may not construct any gas processing or gas treating facilities until such time as POPCO is operating its facilities at 50 MMcf per day as ordered by this Commission's certificates. Therefore, Exxon's construction now of the gas processing and treating facility as proposed by Exxon is inconsistent with the Commission's certificates; (3) If Exxon is allowed to construct any gas treating and processing facilities, such facilities should be strictly sized to treat no more than 3 MMcf per day to accommodate maximum oil producing capability and to be available only to treat volumes not covered by the Gas Sales and Purchase Agreement (GS&P) dated August 9, 1978, and the Gas Purchase Option Agreement (GPO) dated August 9, 1978; (4) In the event Exxon is allowed to construct its processing and treating facilities, Exxon should be precluded from later complaining that POPCO's transportation tariffs provide a single delivery point at POPCO's plant outlet and Exxon must accept all gas transported to such point unless mutually agreed to by the parties; and (5) In the event the Commission does not agree with POPCO and removes or modifies the proscription that Exxon may not construct its own gas treating facilities, POPCO urges that the GS&P, GPO and the Construction and Operating Agreement, dated August 9, 1978, must be reformed. In that regard, POPCO requests that the Commission direct that POPCO and Exxon, within 30 days of the Commission's determination, submit reformed agreements to achieve the purpose of the Commission's original orders and to reallocate the risks, costs and economics of the project to reflect that Exxon will treat gas and that POPCO's expansion to 60 MMcf per day will be further delayed or canceled altogether.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 7 days after publication of this notice in the **Federal Register.** All protests filed will be considered but will not serve to make protestants 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 petition filed in this proceeding are on file with the Commission and available for public inspection.

5. United Gas Pipe Line Co., et al.

[Docket Nos. CP91-213-000, CP91-214-000, CP91-215-000 and CP91-216-000]

Take notice that on October 22, 1990, the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[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 docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Reuglations has been provided by the Applicants and is included in the attached appendix.

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

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

	Docket No.	Applicant	Shipper name Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-213-000	United Gas Pipeline Company, P.O. Box 1478, Houston, Texas 77251.	Gulf States Gas Corp.;	41,200 41,200 15,036,000	TX, LA	LA	9-24-90, ITS	CP88-6-000, ST91-0074-000.
CP91-214-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251,	Neches Pipeline System.	[3] 100,000 100,200 36,500,000	Off LA	LA	8-22-90, IT	RP89-99-000, ST90-4811-000.
CP91-215-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Brooklyn, Inter. Nat. Gas Corp..	[3] 100,000 100,000 36,600,000	Off LA	LA	8-22-90-IT	RP89-99-000, ST90-4809-000.

	Docket No.	Applicant	Shipper name Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-216-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	P.S.I., Inc.	[3] 100,000 100,000 36,500,000	Off LA	LA	8-21-90, IT	RP89-99-000, ST90-4798-000.

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

6. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP91-185-000]

Take notice that on October 18, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-185-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon service under Rate Schedules X-89 and to fully abandon Rate Schedule X-40 and service thereunder, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it is currently providing service under X-89 and X-40 to West Texas Gas Inc. (WTG), a gas utility customer, serving certain customers in Texas. Northern also states that WTG has determined that it needs only 100 Mcf per day of firm sales entitlements under Rate Schedule X-89 and that it no longer needs service under Rate Schedule X-40.

Comment date: November 13, 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 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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

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

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

Lois D. Cashell,

Secretary.

[FR Doc. 90-26058 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-165-000, et al.]

Trunkline Gas Co., et al., Natural Gas Certificate Filings

October 26, 1990.

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

1. Trunkline Gas Co.

[Docket No. CP91-165-000]

Take notice that on October 16, 1990, Trunkline Gas Company (Trunkine), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP91-165-000 an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon the firm transportation service provided to Amoco Production Company (Amoco Production) that was authorized in Docket No. CP79-540-000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline states that the authorization provides for the firm transportation of up to 3,000 Mcf of natural gas per day from a point of receipt on Amoco Production's platform in South Timbalier Block 156, offshore Louisiana to a point of interconnection between the facilities of Trunkline and Amoco Production in Calcasieu Parish, Louisiana, pursuant to Trunkline's Rate Schedule T-57. It is stated that Trunkline and Amoco Production mutually agreed, by written statement, to terminate the underlying transportation agreement effective April 30, 1989, as provided by article V of the agreement. Trunkline asserts that the subject tansportation volumes will instead be transported on an interruptible basis under its Rate Schedule PT. Accordingly, the proposed abandonment is not expected to detrimentally impact the customers of Trunkline or Amoco Production.

Comment date: November 16, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Gas Transmission Co.

[Docket No. CP91-131-000]

Taken notice that on October 12, 1990, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-131-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application which is one file with the Commission and open to public inspection.

PGT states that by Commission order issued August 2, 1977, in Docket Nos. CP77-389, CP77-390 and CP77-436 PGT and Northwest were authorized to transport and exchange gas and that PGT was also authorized to sell gas to Northwest. PGT further states that it has been providing this sales service to Northwest pursuant to a Gas Transportation and Exchange Agreement filed as its Rate Schedule S-1. PGT asserts that it and Northwest have agreed to eliminate the sale of gas and have so amended the Gas Transportation and Exchange Agreement by letter dated July 25, 1990. PGT also states that it would cancel its Rate Schedule S-1 and requests an effective date of August 1, 1990.

Comment date: November 16, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Co. of America

[Docket No. CP91-202-000]

Take notice that on October 22, 1990, Natural gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-202-000 a request pursuant to §§ 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act for authorization to operate a delivery point which is currently being installed under section 311 of the Natural Gas Policy Act under its blanket authorization issued in Docket No. CP82-402-000 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.

Natural states that it has commenced construction of two 10-inch taps on its Amarillo mainlines in Cass County, Nebraska, 7.1 miles of 12-inch pipeline in Cass and Sarpy Counties, Nebraska, and one 6-inch meter station in Sarpy County, Nebraska on September 24, 1990. Natural states that these facilities will be used to transport gas on both a firm and interruptible basis to Arcadian Corporation's fertilizer plant in Sarpy County. Natural explains that the extimated cost of these facilities is $2,233,000.

Natural requests authority to operate these delivery facilities as a sales tap to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Co.

Docket Nos. CP91-237-000, CP91-238-000, CP91-239-000, CP91-240-000

Take notice that on October 24, 1990, ANR Pipeline Company (Applicant), 500 Rennaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, 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.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by 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: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day [1] average day annual	Receipt [2] points	Delivery points	Start up date rate schedule service type	Related [3] docket, contract date
CP91-237-000 (10-24-90)	Hadson Gas Systems, Inc.	75,000 75,000 27,375,000	LA, OK, KS, TX, OLA, OTX.	LA	9-8-90, ITS, Interruptible.	ST91-0028-000, 8-9-90.
CP91-238-000 (10-24-90)	Texpar Energy, Inc. Inc	50,000 50,000 18,250,000	LA, OK, KS, TX, OLA, OTX.	WI	9-13-90, ITS, Interruptible.	ST91-0130-000, 1-5-90.
CP91-239-000 (10-24-90)	Coastal Gas Marketing Co.	150,000 150,000 54,750,000	LA, OK, KS, TX, IL, IN, MI, WI, OH, OLA, OTX.	IL	9-8-90, ITS, Interruptible.	ST91-0024-000, 7-20-90.
CP91-240-000 (10-24-90)	Union Texas Petroleum Corp.	100,000 100,000 36,500,000	LA, OK, KS, TX, IL, IN, MI, WI, OH, KY, OLA, OTX.	WI, MI	9-5-90, ITS, Interruptible.	ST91-0026-000, 8-14-90.

[1] Quantities are shown in dt.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

5. ANR Pipeline Co.

[Docket No. CP91-236-000]

Take notice that on October 24, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-236-000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a pipeline loop for delivery of natural gas to Wisconsin Fuel and Light Company (Wisconsin) at the North Wausau Meter Station to provide gas needs of industrial, commercial and residential end-users in Wisconsin's service area, under ANR's blanket certificate issued in Docket No. CP82-480-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would construct and operate 1.6 miles of 4-inch pipeline loop adjacent to and parallel with the ANR lateral pipeline extending from the North Wausau Meter Station 1.6 miles in an easterly direction interconnecting with ANR system in Marathon County, Wisconsin. ANR states that it sells gas to Wisconsin pursuant to a service agreement dated August 1, 1989, from its general system supply under ANR's Rate Schedule CD-1. ANR indicates that the volumes to be delivered at the North Wausau Meter station are within Wisconsin's current and proposed peak day and annual entitlements and would have no impact on ANR's existing or proposed peak day and annual deliveries.

ANR states that its tariff does not prohibit the new pipeline loop and it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Eastern Transmission Corporation, et al.

[Docket No. CP91-229-000, CP91-230-000, and CP91-234-000]

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521, and U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (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. CP88-136-000, as amended and Order No. 509, 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: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-229-000 (10-23-90)	Appalachian Gas Sales (Marketer).	50,000 50,000 18,250,000	Various	NJ	6-14-90, IT-1, Interruptible.	ST91-76-000, 8-15-90.
CP91-230-000 (10-23-90)	O & R Energy Development, Inc. (Marketer).	80,000 80,000 29,200,000	Various	NJ	1-22-90, IT-1, Interruptible.	ST90-4719-000, 8-17-90.
CP91-234-000 (10-24-90)	Superior Natural Gas Corporation (Marketer).	50,000Mcf 50,000Mcf 18,250,000Mcf	OLA	LA	7-1-90, IT-1, Interruptible.	ST90-4730-000, 8-23-90.

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

7. Texas Eastern Transmission Corp. and Algonquin Gas Transmission Co.

[Docket Nos. CP88-180-010 and CP88-185-004]

Take notice that on October 25, 1990, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, and Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, jointly referred to as Applicants, filed in Docket Nos. CP88-180-010 and CP88-185-004, respectively, a petition to amend the certificate of public convenience and necessity, pursuant to sections 7 (b) and (c) of the Natural Gas Act, issued July 2, 1990 in this proceeding, so that Applicants, for an interim period, may render the level of service authorized by the July 2, 1990 order by means of alternative interim arrangements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by Order Issuing Certificates and Approving Abandonment issued July 2, 1990 [3] (Order), Applicants were authorized to render sales and transportation services scheduled to commence November 1, 1990 and construct related facilities. It is indicated that Texas Eastern was authorized to sell up to 150,000 Dth per day to thirteen distributors under Rate Schedules CD-1 and SGS, and to provide a firm transportation service with standby sales totalling 74,699 Dth per day to eleven distributors under Rate Schedule FT-1. It is further indicated that Texas Eastern was authorized to construct and operate $68.4 million of associated facilities. It is submitted that Algonquin was authorized to render firm transportation service to six distributors under Rate Schedule FTP. Applicants state that the Order authorized transportation service by Algonquin of up to 54,560 MMBtu per day on a delivered basis and up to 67,078 MMBtu per day on a delivered basis was authorized in Phase I and II respectively. It is further submitted that Algonquin was authorized to construct

[3] Texas Eastern Transmission Corporation, et al., Docket No. CP88-180-000, et al., Order Issuing Certificates and Approving Abandonment.

and operate Phase I and Phase II facilities.

Applicants state that Texas will have all facilities athorized by the Order completed and available for service by December 1, 1990, with the exception of approximately 5 miles of the 6.95 miles of 36-inch pipeline in Morris County, New Jersey (Hanover Loop). Applicants further state that, in order to provide full certificated level of service as authorized by the Order, Texas Eastern has entered into a firm transportation agreement with Algonquin for service to commence December 1, 1990. It is indicated that Algonquin will provide 50,000 Dth per day equivalent of firm transportation service for Texas Eastern under its Rate Schedule AFT-1, pursuant to its blanket certificate issued in Docket No. CP89-948-000. Applicants state that the transportation agreement between Texas Eastern and Algonquin dated October 23, 1990, has a 1-month primary term to coincide with the anticipated completion of the Hanover Loop, and will continue month-to-month thereafter as needed.

Applicants indicate that the annualized cost of the transportation service is estimated to be $4.8 million. Applicants further indicate that the transportation arrangement is an interim measure that will allow Texas Eastern to commence full deliveries of its certificated level of service on December 1, 1990. It is submitted that, upon completion and in-service of the Hanover Loop, Texas Eastern will terminate the interim firm transportation arrangement with Algonquin.

Applicants submit that the interim arrangement in no way precludes the need for the permanent facilities authorized by the Order. Applicants further submit that, in light of the fact that the service will not commence until December 1, 1990, Texas Eastern's proposed rates in Exhibit P-1 herein are subject to the outcome of Texas Eastern's pending rate proceeding in Docket No. RP90-119 *et al.* Texas Eastern proposes that, due to the fact that the cost of entering into interim arrangements exceeds the cost of certificated facilities not yet available for service, the underlying cost and the rates for the service proposed in Docket No. RP90-119 should not be adjusted.

Applicants state that Algonquin has encountered certain problems with constructing a portion of the remaining authorized Phase I pipeline facilities. Applicants indicate that Algonquin's 1.5 mile 24-inch Malden lateral; retest 13 miles of J-System from Waltham to Everett, Massachusetts, and the new metering facility at Malden, Massachusetts will not be completed by December 1, 1990. Applicants submit that Algonquin's measuring station at Bristol, Connecticut may not be completed by December 1, 1990. It is indicated that, due to operational and safety reasons, Algonquin will only be able to complete the first 1.2 miles of the 3.1 mile 16-inch pipeline loop of its C-System.

Applicants state that Algonquin has entered into interim alternative arrangements with its customers to make deliveries of its Rate Schedule FTP Phase I quantities. It is indicated that Algonquin has made arrangements with Boston Gas Company to accept on an interim basis delivery at existing delivery points at existing service agreement minimum pressures in lieu of the 200 psig delivery at the proposed Malden, Massachusetts meter station. Further, it is indicated that Algonquin has made interim arrangements with Yankee Gas Services (Yankee Gas) to make full deliveries of 2,080 MMBtu per day equivalent to Yankee Gas at existing stations until the Bristol measuring station is complete. It is submitted that Algonquin and Southern Connecticut Gas Company (Southern Connecticut) have entered into interim arrangements for Algonquin to deliver to Southern Connecticut the full 16,634 MMBtu per day equivalent authorized by the Order. Algonquin proposes to provide the following to Southern Connecticut:

Delivery point	Per 7/2/90 order	12/1/90 interim	1/1/91 interim
North Haven	15,634	13,634	13,634
Cheshire	1,000	-	3,000
Total	16,634	13,634	16,634

It is indicated that the construction of the Cheshire, Connecticut measuring station will be completed by January 1, 1990.

Applicants state that, effective on December 1, 1990, upon receipt of the authorization requested, Algonquin will be able to deliver 51,560 MMBtu per day equivalent of the 54,560 MMBtu per day equivalent certificated by the Order. Further, Applicants state that, effective on January 1, 1991, Algonquin will be able to deliver the remaining 3,000 MMBtu equivalent, bring the total deliveries to be made by Algonquin to the 54,560 MMBtu per day equivalent certificated level.

Algonquin proposes to charge an interim initial rate on December 1, 1990 to reflect the facilities and level of service to be provided. Algonquin further proposes to adjust these rates January 1, 1991 to reflect the additional facilities and level of service to be provided on that date. The following is a summary of those modifications:

Rates/MMBtu	Commission order	12/1/90 interim arrangement	1/1/91 interim arrangement
Monthly demand charge	$4.8495	$3.287	$3.419
Commodity charge	0.2458	0.1669	0.1692
Overrun charge	0.4052	0.2750	0.2816
Facility costs (1000's)	$28,068	$18,234	$20,572
Level of service (MMBtu)	54,560	51,560	54,560

Applicants state that Algonquin's interim arrangements rates are less than the initial rates approved for Phase I service by the Order.

Comment date: November 16, 1990, in accordance with the first subparagraph of 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 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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

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

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

Lois D. Cashell,

Secretary.

[FR Doc. 90-26059 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-151-000]

Arizona Corp. Commission et al.-v-El Paso Natural Gas Co. et al.; Complaint

In the matter of: Arizona Corporation Commission, Arizona Electric Power Cooperative and City of Willcox, Arizona, Arizona Public Service Company, El Paso Municipal Customer Group, Gas Company of New Mexico, Pacific Gas and Electric Co., Phelps Dodge Corporation, Public Service Commission of Nevada, Public Utilities Commission of the State of California, Salt River Project Agricultural Improvement and Power District, Southern California Gas Co., Southern Union Gas Company, Southwest Gas Corporation v. El Paso Natural Gas Company, Meridian Oil Hydrocarbons Inc., Meridian Oil Production, Inc., Meridian Oil Trading, Inc., Amoco Energy Trading Corporation, Williams Gas Marketing Company.

October 29, 1990.

On October 12, 1990, the 13 complainants named above filed a complaint under Rule 206 [1] of the Commission's Rules of Practice and Procedure against the following six defendants: El Paso Natural Gas Company (El Paso); Meridian Oil Hydrocarbons, Inc. (Meridian Hydrocarbons), Meridian Oil Production, Inc. (Meridian Production), Meridian Oil Trading, Inc. (Meridian Trading) (collectively, Meridian); Amoco Energy Trading Corporation (Amoco); and Williams Gas Marketing Company (Williams). Complainants challenge certain natural gas transportation services that El Paso is providing for Amoco, Williams, and the Meridian companies (which are affiliated with El Paso), asserting that the new services commit previously subscribed firm pipeline capacity to these shippers, and, moreover, ignore existing claims to additional capacity. Complainants further charge that El Paso has violated certain standards of conduct governing interstate pipelines with marketing affiliates.[2]

According to complainants, the transportation services can be described as follows. On May 1, 1990, El Paso commenced firm transportation for Meridian, pursuant to Section 311 of the Natural Gas Policy Act (NGPA), from receipt points in the San Juan Basin to various locations in Colorado, New Mexico, Utah, and Texas. The parties' transportation contract permits maximum daily firm deliveries of 360,500 MMBtu.[3] ON June 15, 1990, El Paso commenced firm transportation for Williams, pursuant to its blanket certificate, from receipt points in the San Juan Basin to various locations in Texas. Their contract calls for daily firm deliveries of 25,750 MMBtu.[4] Lastly, on July 1, 1990, El Paso commenced firm transportation for Amoco, under Section 311 of the NGPA, from receipt points in the San Juan Basin to various locations in New Mexico, Oklahoma, and Texas. The parties' contract permits maximum daily firm deliveries of 260,100 MMBtu. Complaints allege that these firm transportation services utilize forward haul capacity through constraint points on El Paso's San Juan Basis system (most notably at the Valve City interconnect in McKinley County, New Mexico), even though the services are denominated firm backhaul transactions.

Complainants assert that El Paso's jurisdictional San Juan Basin transmission facilities have been fully subscribed for years. They cite numerous statements by El Paso to support this claim, most recently a statement in its application filed on September 17, 1990 in Docket No. CP90-2214-000 seeking authorization to construct and operate incremental facilities on its San Juan Basin system. There, El Paso stated that, historically, virtually all of the firm capacity on its system was utilized to support its ability to provide certificated sales service at delivery points in east Texas, New Mexico, Arizona, southern Nevada, and at the Arizona-California border. Even with the advent of open access transportation on its system and the related decline in its customers' demands for sales service, its full delivery capacity to those points remained committed to the performance of its historic firm sales service function. Consequently, it stated, it has been unable to commit system capacity to provide firm transportation for the movement of gas to its historic delivery points for shippers that are not firm sales customers.

According to complainants, El Paso's service to existing sales customers is provided as either firm sales service or grandfathered interruptible transportation. Shippers under grandfathered transportation arrangements effectively utilize capacity otherwise reserved for them as sales customers since, under El Paso's FERC

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[1] CFR 385.206 (1990).

[2] Meridian Hydrocarbons is a wholly owned subsidiary of El Paso. Meridian Trading and Meridian Production are wholly owned subsidiaries of Meridian Oil Holding Inc., which, in turn, is a wholly owned subsidiary, as is El Paso, of The El Paso Company.

[3] It is not clear on the face of the complaint to what extent each Meridian defendant is involved in this transportation arrangement. At most places in the complaint, complainants refer collectively to the "Meridian Companies." At other places, they describe the transportation contract as being between El Paso nd Meridian Trading. However, in Appendix E to the complaint, which is a copy of the Commission's "Notice of Self-Implementing Transactions" issued on July 5, 1990, the recipient of the transportation service is identified as Meridian Hydrocarbons. Because of this ambiguity, we usually refer here simply to "Meridian."

[4] El Paso has sought to continue this service beyond the initial 120-day period in its application filed on August 7, 1990 in Docket No. CP90-1920-000. Complainants seek here to consolidate that proceeding with the instant.

Gas Tariff, grandfathered interruptible transportation is in a priority position in the first-come, first-served transportation queue. Complainants assert, however, that under El Paso's allocation plan, the firm transportation service for Meridian, Williams, and Amoco is given a priority over service to existing firm customers utilizing grandfathered transportation rights. As a result, Meridian, Williams, and Amoco enjoy a preference to the capacity on El Paso's system.

Complainants assert that the total volumes associated with El Paso's transportation for Meridian, Amoco, and Williams constitute approximately 40 percent of the constrained capacity at the bottleneck into the San Juan Basin system at Valve City. Thus, by committing to transort gas for these new shippers, El Paso allegedly has reduced its ability to provide service to its existing customers, who consequently are being harmed in at least two ways. First, they are being forced to purchase gas supplies from other producing basins to maintain their certificated level of service. They thus have to pay higher transportation costs because the alternative basins are farther from their sales markets. Second, by having to obtain supplies from other producing basins, they are being forced out of the San Juan Basin, which has promising future supply prospects due to substantial, new coal seam gas production.

Complainants thus charge that El Paso's transportation contracts with Meridian, Amoco, and Williams violate its own tariff,[5] Commission regulations,[6] the Commission's open access policies, and possibly El Paso's transportation log, because the contracts give these shippers preferential treatment by dedicating to them firm service subject to prior claims.

Finally, complainants charge that, in providing the Meridian companies with the transportation services described above, El Paso violated several of the standards of conduct governing interstate pipelines with marketing affiliates set forth in part 161 of the Commission's regulations, specifically §§ 161.3(b),[7] (c),[8] and (f).[9] Complainants allege that Meridian Hydrocarbons and Meridian Trading are marketing affiliates of El Paso.

In conclusion, complainants ask the Commission to: (1) Consolidate with the instant proceeding El Paso's application in Docket No. CP90-1920-000 to continue service for Williams; (2) deny that application; and (3) order El Paso to terminate immediately its transportation service for Meridian, Williams and Amoco.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with Rules 214 [10] or 211 [11] of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 28, 1990. All protests will be considered by the Commission but will not serve to make protestants 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 are due on or before November 28, 1990.

Lois D. Cashell.

Secretary.

[FR Doc. 90-26048 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[5] FERC Gas Tariff, First Revised Volume No. I-A, Orginal Sheet No. 235, section 20 of "Operating Provisions for Firm Transportation Service."

[6] 18 CFR 284.8(a)(3) (1990) (" 'Service on a firm basis' means that the service is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service."); and 18 CFR 284.8(b) (1990) ("An interstate pipeline * * * that offers transportation service on a firm basis under subpart B * * * (or) G * * * must provide such service without undue discrimination, or preference * * *.")

[7] 18 CFR 161.3(b) (1990) ("(An interstate pipeline with a marketing affiliate) must strictly enforce a tariff provision for which there is no discretion in the application of the provision.")

[8] 18 CFR 161.3(c) (1990) ("(An interstate pipeline) may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to * * * transportation * * *.")

[9] 18 CFR 161.3(f) (1990) ("To the extent (an interstate pipeline) provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.")

[10] 18 CFR 385.214 (1990).

[11] 18 CFR 385.211 (1990).

[Docket No. TQ91-2-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that on October 25, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Eleventh Revised Sheet No. 8
Eleventh Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is proposing an Out-of-Cycle PGA to reflect significant rate changes in the cost of spot gas supplies and to track recent changes in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed by Texas Eastern on October 22, 1990. The revised rates are proposed to become effective November 1, 1990, and reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91-1-63-000: A $0.4354 per Dth increase in the commodity component of its LVWS and CDS rate schedules; a $0.4329 per Dth increase in the commodity component of its LVIS rate schedule; a $0.0296 per Dth decrease in the D1 component of its LVWS and CDS rate schedules; a $0.0003 per Dth decrease in the D2 component of its LVWS and CDS rate schedules; and a $0.0002 per Dth decrease in the DCA component. No Standby Charge Adjustment is stated in this filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 5, 1990. Protests will be considered by the Commission in determing 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. 90-26049 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-108-005]

Columbia Gas Transmission Corp, Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that on October 26, 1990 Columbia Gas Transmission

Corporation (Columbia) filed a motion to place its suspended rates in this proceeding into effect on November 1, 1990, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, listed in Appendix A attached hereto. The revised tariff sheets bear an issue date of October 26, 1990, and a proposed effective date of November 1, 1990.

The revised filing is being made in accordance with the Commission's orders issued May 31, 1990, and July 13, 1990, in these proceedings and § 154.67(a) of the Commission's Regulations.

Columbia requests a waiver of § 154.63(e)(2) of the Commission's Regulations in order to include costs associated with certain "Global Settlement" facilities that will not be in service on October 31, 1990. Columbia further requests a waiver of such regulations to the extent necessary to include the Commonwealth Gas Pipeline Corporation facilities and related costs in its rates. Columbia states that the requested waivers are justified in light of the Global Settlement between Columbia, its customers, and other parties, which was approved by the Commission on October 19, 1989.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested stated commissions and each of the parties set forth on the Official Service List in the consolidated proceedings.

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 November 5, 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. 90-26050 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-107-007]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on October 26, 1990 tendered for filing revised changes in its FERC Gas Tariff, First Revised Volume No. 1 to become effective November 1, 1990.

Columbia Gulf states that it is filing the referenced tariff sheets in order to place into effect the rates and tariff provisions suspended by Commission Order issued May 31, 1990 in this proceeding.

The tariff sheets encompass Columbia Gulf's rate filing herein of April 30, 1990, with adjustments to its cost of service to (1) Reflect only the costs of facilities which are projected to be in service by October 31, 1990; and (2) reflect the level of purchased gas costs in the most recent Purchased Gas Cost Adjustment filing of Columbia Gulf Transmission Corporation (Columbia Transmission), filed in Docket No. TQ91-1-21 on October 1, 1990.

Columbia states that copies of this filing were served upon all Columbia Gulf's jurisdictional customers, interested state commissions and to each of the parties set forth on the Official Service List in this proceeding.

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 November 5, 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. 90-26051 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-000]

Equitrans, Inc.; Informal Settlement Conference

October 29, 1990.

Take notice that a conference will be convened in the above-captioned proceeding on November 7, 1990 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-0737 or Jennifer B. Corwin (202) 208-0740.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26052 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-14-000]

Exxon Corp.; Petition to Reopen and Withdraw Well Category Determination

October 26, 1990.

Take notice that on September 4, 1990, Exxon Corporation (Exxon) filed with the Federal Energy Regulatory Commission (Commission), pursuant to § 275.205 of the Commission's regulations, a petition to reopen and a request to withdraw its determination that gas produced from the Frank J. Skoda No. 1 well, located in the Sooner Trend Field, Kingfisher County, Oklahoma, qualifies under section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301;-3432 (Supp. V. 1982).

Exxon filed an application for a section 108 category determination on the subject well with the Oklahoma Corporation Commission (Oklahoma) on September 3, 1985. An affirmative determination was made by Oklahoma. A copy of this determination was received by the Commission on July 15, 1986 and became final on August 29, 1986, pursuant to § 275.202(a) of the Commission's regulations.

Exxon states that the original qualification of the Frank J. Skoda No. 1 well was based on production of 1,595 Mcf in 58 production days, resulting in an average production of 27.5 Mcf per production day. A review of the production records indicated that these data were erroneous. According to Exxon, the well actually produced in excess of 60 Mcf per production day. Exxon states that if the determination is reopened and Exxon is permitted to withdraw its filing, Exxon will not be required to make refunds to Oklahoma

Natural Gas Company because collections were based on the otherwise applicable maximum lawful price.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-26060 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-2-000]

Seagull Energy Corp.; Petition for Adjustment

October 29, 1990.

Take notice that on October 24, 1990, Seagull Energy Corporation (Seagull) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Seagull to use its tariff on file with the Railroad Commission of Texas (Railroad Commission) for services performed pursuant to section 311 of the NGPA. Seagull asserts that since it render city-gate service the Commission should issue this adjustment under section 502(c) of the NGPA to prevent special hardship and inequity that would otherwise result if Seagull were required to submit a § 284.123(b)(2) filing.

In support of its petition Seagull states that it is an intrastate pipeline which operates natural gas pipeline facilities located in offshore Texas waters known as the Shipwreck-Brazos and is engaged in the transportation, gathering and sale of gas for resale and to direct end-users, subject to the jurisdiction of the Railroad Commission. Seagull's transportation rates are subject to regulation by the Railroad Commission and have been filed with the Railroad Commission in form of tariffs.

Specifically, Seagull seeks an adjustment to allow it to use an existing tariff currently on file with the Railroad Commission that has been found by the Railroad Commission to be a cost based rate for the system, as the fair and equitable rate for transportation service to be performed under section 311 of the NGPA on the system.

The Regulations applicable to this proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.** The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26055 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-42-003]

Transwestern Pipeline Co.; Refund

October 29, 1990.

Take notice that on October 12, 1990, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission its report verifying that it has made refunds required by Ordering Paragraph (B) of the Commission's August 28, 1990 order in the above referenced docket.

Transwestern states that it was not aware of the Commission's denial of its request for an extension of time until October 1, 1990. Transwestern states that it has made refunds, together with interest, as quickly as possible for its administrative staff. Transwestern is therefore requesting waiver of the thirty-day period for the making of refunds set forth in Ordering Paragraph (B).

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 November 5, 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. 90-26056 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-01; Certification Notice—69]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Nassau District Energy Corp., White Plains, NY	10-18-90	Combine Cycle	50	Garden City, NY.
New York Power Authority, New York, NY	10-22-90	Combine Cycle	150	Ramapo, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 596-6769.

Issued in Washington, DC on October 30, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-26117 Filed 11-2-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3853-5]

Decision; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of decision and response to comments.

SUMMARY: On September 28, 1990, EPA, Region IX, issued its final decision on the lists of impaired waters, point sources, and pollutants; and Individual Control Strategies (ICSs) for the State of California developed pursuant to section 304(1) of the Clean Water Act. Copies of this decision and EPA's response to comments can be obtained from the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Doug Eberhardt by telephone at (415) 705-2181 (prior to October 1, 1990) or (415) 744-2010 (beginning October 1, 1990), or by mail at: Environmental Protection Agency, Region IX (W-3-2), 1235 Mission Street, San Francisco, CA 94103.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies (ICSs) for each point source.

On June 5, 1989, EPA issued a proposed decision on the lists of waters, point sources and amounts of pollutants, and on ICSs submitted by the State of California. At that time, EPA solicited comments from the public on its decision. EPA, pursuant to section 304(1)(1)(3), also solicitied petitions from the public to make additions to the waters already listed under section 304(1)(1). Notice of these actions appeared in the **Federal Register** on June 9, 1989 (54 FR 24748).

The public comment and petition period closed on October 13, 1989. EPA subsequently issued a public notice on May 17, 1989 opening a second public comment and petition period, which closed on June 1, 1990. This public notice appeared in the **Federal Register** on May 17, 1990 (55 FR 20523).

EPA received 40 comments, including seven petitions, on the State of California's 304(1) lists and ICSs during the public comment period. EPA has prepared a response to comments responding to these comments and petitions.

The administrative record containing EPA's decision on the State of California's lists and ICSs and the documentation supporting its decisions are on file and may be inspected at the EPA, Region IX, office between the hours of 9 a.m. and 5 p.m., Monday through Friday, except holidays. To make arrangements to examine these records, or to obtain copies of the decision and response to comments, contact the person named above.

Dated: October 28, 1990.

Keith Takata,

Acting Director, Water Management Division, U.S. EPA Region IX.

[FR Doc. 90-26119 Filed 11-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; North Carolina State Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washinton, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-2000372-001

Title: North Carolina State Ports Authority/Lauritzen Reefers A/S Terminal Agreement.

Parties: North Carolina State Ports Authority Lauritzen Reefers A/S.

Synopsis: The Agreement extends the term of the basic agreement for one year; and provides for a 28 percent reduction in the initial throughput rate for empty units, if the total number of empty units exceed 50 percent of the total number of containers, full plus empty, loaded to or discharged from a vessel.

By Order of the Federal Maritime Commission.

Dated: October 30, 1990.

Joseph C. Polking,

Secretary.

FR Doc. 90-26024 Filed 11-2-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Sea-Land Service, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washinton, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested person should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 217-011303.

Title: Sea-Land Service, Inc./Hanjin Shipping Co., Ltd. Reciprocal Space Charter Agreement.

Parties: Sea-Land Service, Inc., Hanjin Shipping Co., Ltd.

Synopsis:: The proposed agreement would permit each party to make available container space to the other party on its vessels in the trade between ports in Asia and ports on the West Coast of the United States.

Agreement No.: 217–011304.

Title: FMG/PDN/CSAV/NACL Space Charter Agreements.

Parties: Flota Mercante Grancolombiana, Promotora De Navegacion, Compania Sud Americana de Vapores, North American Caribbean Line Ltd.

Synopsis: The proposed Agreement would permit the parties to charter space to one another on their respective vessels and interchange equipment related to the carriage of cargo in the trade between United States Atlantic and Gulf ports and ports and points in Mexico, Centeral America, Bolivia, Chile, Peru, Ecuador and Colombia. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–26025 Filed 11–2–90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 1991 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1991 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public and obtain public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATES: Comments are due on or before December 1, 1990.

ADDRESSES: Send comments to: Peter L. Regner, Director, Labor-Management Grants and Projects FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1991 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY91, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities

that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, *etc.*). In addition, $77,000 will be reserved for a continuation grant to the State and Local Government Labor-Management Committee for support of the Sixth National Labor-Management Conference.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (*i.e.*, in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1991 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. Union letters should be submitted on union letterhead.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given a tentative allocation of $1 million for this program. However, this amount may be reduced by federally mandated budget reductions. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY91 appropriation to contract for program support purposes other than administration. In FY91, approximately $77,000 will be reserved to support the Sixth National Labor-Management Conference.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio. The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY91 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by both a labor and management representative and be postmarked no later than May 11, 1991. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will be the only person with whom FMCS will communicate during the application review process.

All FY91 grant applicants will be notified of results and all grant awards will be made before September 30, 1991. Applications submitted after the May 11 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY91, FMCS will offer a free half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on January 23, 1991. Individuals interested in attending the session should contact FMCS to reserve a space. See section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427; or by calling 202/653-5320.

Bernard E. DeLury,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 90-26064 Filed 11-2-90; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Mark R. Abate, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mark R. Abate*, to acquire 8.7 percent of the voting shares of Elgin State Bancorp, Inc., Elgin, Illinois, and thereby indirectly acquire Elgin State Bank, Elgin, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Keith C. Miller*, to acquire 0.77 percent of the voting shares of Commercial Bancshares, Inc., Mitchell, South Dakota, and thereby indirectly acquire Commercial Trust & Savings Bank, Mitchell, South Dakota, and Sanborn County Bank, Woonsocket, South Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Leo Van Dittie Revocable Trust*, Leo Van Dittie, Trustee, Rancho Mirage, California; to acquire 100 percent of the voting shares of Burlington Bancshares, Inc., Burlington, Colorado, and thereby indirectly acquire The Bank of Burlington, Burlington, Colorado.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26075 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

El-Yam Ships Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *El-Yam Ships Ltd.*; Financial Holding El-Yam Ltd., Tel Aviv, Israel; Israel Investment and Finance Corporation Ltd.; Israel Financial Holdings Ltd.; Gov Financial Holdings Ltd.; and Naftali Financial Holdings Ltd.; to acquire 51 percent of the voting shares of IDB Bankholding Corporation Ltd., Tel Aviv, Israel, and thereby indirectly acquire Israel Discount Bank of New York, New York, New York. In connection with this application, El-Yam Ships Ltd. and Financial Holdings El-Yam Ltd. have also applied to become bank holding companies.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Keystone Financial, Inc.*, Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Ambassador Bank of the Commonwealth, Allentown, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Bancshares of Stevenson, Inc.*, Stevenson, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Stevenson, Stevenson, Alabama.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *KSAD, Inc.*, Council Bluffs, Iowa; to acquire 32.92 percent of the voting shares of 304 Corporation, Omaha, Nebraska, and thereby indirectly acquire Mid City Bank, Inc., Omaha, Nebraska.

2. *Mid-America National Bancorp. Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 98.5 percent of the voting shares of Mid-America National Bank of Chicago, Chicago, Illinois, 100 percent of the voting shares of Security Chicago Corp., Chicago, Illinois; and thereby indirectly acquire First Security Bank of Chicago, Chicago, Illinois, and 20 percent of the voting shares of First State Bancorp of Princeton, Princeton, Illinois, and thereby indirectly acquire First State Bank of Princeton, Princeton, Illinois, and First Bank and Trust Company, Gridley, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jacob Schmidt Company* and American Bancorporation, Inc., St. Paul, Minnesota; to acquire 100 percent of the voting shares of Farmers State Bank of Rothsay, Rothsay, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Geneva State Company*, Geneva, Nebraska; to become a bank holding company by acquiring at least 90.4 percent of the voting shares of Geneva State Bank, Geneva, Nebraska.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26076 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this Notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR § 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Spectrum Properties, Inc., Denver, Colorado, and thereby engage in making and servicing loans pursuant to § 225.259b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26077 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council on Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Monday, November 26, from 1 to 5:30 p.m., and on Tuesday, November 27, from 8 a.m. to 12 noon.

ADDRESSES: The meeting will be at the Hyatt Regency Hotel, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 5600 Fishers Lane, room 18A-30, Rockville, Maryland 20857, (301) 443-9405.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council shall provide advice to the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the actions of the Agency to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of 17 members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D; George A. Beller, M.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes Bolton, Dr. P.H.; Joseph T. Curti, M.D.; Martin G. Dillard, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Mr. Walter J. McNerny; Lawrence H. Meskin, D.D.S., Ph.D.; Barbara Starfield, M.D.; and Sister M. Eileen Wilhelm.

There also are 7 Federal Ex Officio Members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

This is the first meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation. This meeting of the Advisory Council will be primarily for organization and orientation purposes. On November 26, following welcome and introductions, the members will hear descriptions of the organization and structure of the Agency for Health Care Policy and Research. On November 27, descriptions of Agency organization and structure will continue. Also to be discussed on November 27 are meeting dates and processes for grant review during 1991.

Agenda items are subject to change as priorities dictate.

Dated: October 29, 1990.

J. Jarrett Clinton, M.D.

Assistant Surgeon General, Acting Administrator.

[FR Doc. 90-26078 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-90-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800-627-8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900

CBC Clinilab, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed: formerly Chem-Bio Corporation)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Center for Human Toxicology, 417 Wakara Way—Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

DrugScan, Inc., P.O. Box 2989, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

ElSohly Laboratories, Inc., 1215-½ Jackson Ave., Oxford, MS 38655, 601-236-2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9998, 205-934-0985

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600

HealthCare/Preferred Laboratory, 3011 W. Grand Boulevard, Detroit, MI 48202, 313-875-2112

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 800-331-8670

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-251-0089

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312-595-3888 ext.671

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-6500

PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770

The certification of this laboratory (Roche Biomedical Laboratories, Inc., Research Triangle Park, NC) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirement for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 43219 (Oct. 26, 1990).

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-799-2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800-631-5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90-26108 Filed Nov. 2, 1990; 8:45 am]

BILLING CODE: 4160-20-M

Food and Drug Administration

[Docket No. 90P-0340]

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 W.H. Braum, Inc., 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 February 4, 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 food 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 issued to W.H. Braum, Inc., P.O. Box 25429, 3000 Northeast 63d, Oklahoma City, OK 73125.

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 6 percent to 1 percent; and (2) sufficient vitamin A palmitate is added to ensure that a 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 to eggnog 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 calaries" 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 calorie 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 321,740 half-gallons (608,925 liters) of the test product. The test product will be manufactured at W.H. Braum, Inc., Tuttle, OK 73089, and distributed in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

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. The 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 February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26079 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0325]

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 Muller-Pinehurst Dairy, Inc., 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 February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

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 issued to Muller Pinehurst Dairy, Inc., 2110 Ogilby Rd., Rockford, IL 61102.

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 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 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 the consumer a product that is nutritionally equivalent to eggnog 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 calorie 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 88,150 32-ounce (946-milliliter) cartons of the test product. The product will be manufactured at Muller-Pinehurst Dairy, Inc., 2110 Ogilby Rd., Rockford, IL 61102, and distributed in Illinois and Wisconsin.

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 February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26080 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0329]

Sour Cream 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 Wells' Blue Bunny to market test a product designated as "lite sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). 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 February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

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 issued to Wells' Blue Bunny, One Blue Bunny Dr., Le Mars, IA 51031.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 6 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon (28.35-ounce) serving of the product contains 4 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 the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite sour cream." 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 "1/2 fewer calories" and "2/3 less fat than sour cream."

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 fact 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 termporary marketing of 625,000 16-ounce (454-gram) units of the test product. The product will be manufactured at Well's Dairy, 12th and Lincoln Sts. SW., Le Mars, IA 51301, and distributed in Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.

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 February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26081 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0448]

Quantum Pharmics, Ltd., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 40 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70-200	Loraz (Lorazepam) Tablets, USP, 0.5 mg.	Quantum Pharmics, Ltd., 10 Edison St. East, Amityville, NY 11701.
70-201	Loraz (Lorazepam) Tablets, USP, 1 mg.	Do.
70-294	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 10 mg (White).	Do.
70-547	Temaz (Temazepam) Capsules, 30 mg.	Do.
70-564	Temax (Temazepam) Capsules, 15 mg.	Do.
70-632	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 10 mg (Yellow).	Do.
70-931	Doxepin Hydrochloride Capsules, USP, 50 mg.	Do.

ANDA no.	Drug	Applicant
70-972	Doxepin Hydrochloride Capsules, USP, 10 mg.	Do.
71-255	Haloperidol Tablets, USP, 0.5 mg.	Do.
71-256	Haloperidol Tablets, USP, 2 mg.	Do.
71-257	Haloperidol Tablets, USP, 5 mg.	Do.
71-269	Haloperidol Tablets, USP, 1 mg.	Do.
72-296	Oxybutynin Chloride Tablets, USP, 5 mg.	Do.
72-375	Doxepin Hydrochloride Capsules, USP, 100 mg.	Do.
72-376	Doxepin Hydrochloride Capsules, USP, 150 mg.	Do.
72-384	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 5 mg.	Do.
80-746	Vitamin A Capsules, 50,000 USP units.	Chase Chemical Co., L.P., 280 Chestnut St., Newark, NJ 07105.
80-747	Vitamin D (Ergocalciferol Capsules USP), 50,000 USP units.	Do.
83-059	Prednisone Tablets, 5 mg.	L. Perrigo Co., 117 Water St., Allegan, MI 49010.
83-060	Isoniazid Tablets, 100 mg.	Do.
83-061	Diphenhydramine Hydrochloride Capsules, 25 mg and 50 mg.	Do.
83-207	Vitamin A Capsules, 15 mg (50,000 USP units).	Chase Chemical Co., L.P.
83-351	Vitamin A Capsules, 15 mg (50,000 USP units).	Do.
84-542	Prednisolone Tablets, 5 mg.	L. Perrigo Co.
84-543	Propylthiouracil Tablets, 50 mg.	Do.
84-546	Meprobamate Tablets, 200 mg.	Do.
84-547	Meprobamate Tablets, 400 mg.	Do.
84-560	Sodium Pentobarbital Capsules, 100 mg.	Do.
84-561	Sodium Secobarbital Capsules, 100 mg.	Do.
85-322	Quinidine Sulfate Tablets, 200 mg.	Do.
88-514	Benztropine Mesylate Tablets, USP, 0.5 mg.	Quantum Pharmics, Ltd.
88-529	Hydroxyzine Hydrochloride Tablets, USP, 50 mg.	Do.
88-540	Hydroxyzine Hydrochloride Tablets, USP, 10 mg.	Do.
88-603	Doxylamine Succinate Tablets, 25 mg.	Do.
88-657	Hydralazine Hydrochloride Tablets, USP, 25 mg.	Do.
88-671	Hydralazine Hydrochloride Tablets, USP, 10 mg.	Do.
88-686	Hydralazine Hydrochloride Tablets, USP, 100 mg.	Do.
88-740	Q-Gesic (Meprobamate 200 mg w/Aspirin 325 mg) Tablets.	Do.
88-972	Butalbital with Aspirin & Caffeine.	Do.
89-120	Phentermine Resin Complex Slow-Release Capsules, 30 mg.	Do.

The agency has determined under 21 CFR 25.24(d)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective December 5, 1990.

Dated: October 26, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-26082 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis Studies of Tetranitromethane

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of tetranitromethane, a volatile contaminant formed during the manufacture of TNT which has been used as a rocket fuel and biochemical reagent.

Toxicology and carcinogenesis studies of tetranitromethane were conducted by exposing groups of 50 rats of each sex to air containing tetranitromethane at target concentrations of 0 (chanber controls), 2, or 5 ppm, 6 hours per day, 5 days per week for 103 weeks. Groups of 50 mice of each sex were exposed to tetranitromethane at concentrations of 0, 0.5, or 2 ppm on the same schedule.

Under the conditions of these 2-year inhalation studies, there was clear evidence of carcinogenic activity [1] of tetranitromethane for male and female F344/N rats and male and female B6C3F1 mice, based on increased incidents of alveolar/bronchiolar neoplasms in both species and squamous cell carcinomas of the lung in rates. Chronic inflammation of the nasal mucosa was related to exposure in rats and female mice, and hyperplasia and squamous metaplasia of the respiratory epithelium were increased in exposed male rates.

The study scientist for these studies is Dr. John Bucher. Questions or comments about this Technical Report should be directed to Dr. Bucher at P.O. Box 12233, Research Traingle Park, NC 27709 or telephone (919) 541-4532.

Copies of Toxicology and Carcinogenesis Studies of Tetranitromethane in F344/N Rats and B6C3F1 Mice (Inhalation Studies) (TR 386) are available from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Traingle Park, NC 27709.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("indadequate study").

Dated: October 29, 1990.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 90-26107 Filed 11-2-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3168]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 709-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 23, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Title I Monthly Statement Reconcilment of Insurance Charges.

Office: Housing.

Description of the need for the information and its proposed use: Form HUD-646 is used by HUD-approved Title I lending institutions as a vehicle for reconciling differences that occur between lender's and the Department's monthly billing statement.

Form number: HUD-646.

Respondents: Businesses or Other For-Profit.

Frequency of submission: Recordkeeping and On Occasion.

Reporting burden:

	Number of respondnets	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-646	500		12		1		6,000
Recordkeeping	500		1		.17		85

Total estimated burden hours: 6,085.

Status: Extension.

Contact: Linda J. Stowes, HUD, (202) 708-0263, Scott Jacobs, OMB, (202) 395-6880.

Dated: October 23, 1990.

Proposal: Miscellaneous Requirements for Section 8 Project-Based Certificate Program, 24 CFR part 882—subpart G.

Office: Housing.

Description of the need for the information and its proposed use: 24 CFR Part 882 requires the Department to permit a public housing agency (PHA) to attach to structures up to 15 percent of Section 8 Existing housing assistance provided by the PHA.

Form number: HUD-9800.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of submission: Recordkeeping and On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting:							
PHA	2,000		1		20		40,000
PHA	100		1		15.6		1,563
Owners	100		1		40.6		4,065
Recordkeeping	100		1		.25		25

Total estimated burden hours: 45,653.

Status: Revision.

Contact: Michael Dennis, HUD, (202) 708-3887, Scott Jacobs, OMB, (202) 395-6880.

Date: October 23, 1990.

Proposal: Relocation Payment Claim Forms.

Office: Community Planning and Development.

Description of the need for the information and its proposed use: These forms will be used by eligibile displaced persons to make proper application for relocation assistance payments. Displaced persons' forms will be used to apply for payments for moving expenses and residential occupants' forms will be

used to apply for replacement housing payments.

Form number: HUD–40054, 40055, 40056, 40057, 40058, 40061, 40072.

Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of submission: Other.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–40054	9,000		1		.5		4,500
HUD–40055	400		1		1.5		600
HUD–40056	400		1		1.0		400
HUD–40057	1,250		1		1.0		1,250
HUD–40058	5,750		1		1.0		5,750
HUD–40061	9,000		1		1.0		9,000
HUD–40072	2,000		1		1.0		2,000

Total estimated burden hours: 23,500.

Status: Reinstatement.

Contact: Melvin Geffner, HUD, (202) 708–0336, Scott Jacobs, OMB, (202) 395–6880.

Date: October 23, 1990.

Proposal: Section 8 Random Digit Dialing Fair Market Rent Telephone Surveys.

Office: Policy Development and Research.

Description of the need for the information and its proposed use: This telephone survey will provide the Department with a fast, inexpensive way of estimating Section 8 Fair Market Rents (FMR). The survey will be used to derive FMR updating factor and to test the accuracy of FMRs in selected areas.

Form number: None.

Respondents: Individuals or Households.

Frequency of submission: On Occassion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Interviews	61,710		9		.008		4,454

Total estimated burden hours: 4,454.

Status: New.

Contact: Joseph Riley, HUD, (202) 708–0577; Scott Jacobs, OMB, (202) 395–6880.

Date: October 23, 1990.

[FR Doc. 90–26066 Filed 11–2–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N-90-3167]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 26, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Public Housing Affirmative Compliance Actions Program (PHACA) Self-Assessment Instruments for PHAs.

Office: Fair Housing and Equal Opportunity.

Description of the need for the information and its proposed use: Public Housing Authorities will use the PHACA Self-Assessment Instrument to document their performance related to Title VI of the 1964 Civil Rights Act. The Department will use the results to provide a formal compliance review for PHAs who participate in this voluntary program.

Form number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of submission: One-Time.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
PHACA Self-Assessment Instrument	80		1		120		9,600

Total estimated burden hours: 9,600.
Status: New.
Contact: Eleanor Clagett, HUD, (202) 708-0404; Scott Jacobs, OMB, (202) 395-6880.

Date: October 26, 1990.

[FR Doc. 90-26067 Filed 11-2-90; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. D-90-935]

Office of the Manager, Richmond Office, Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective immediately.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106-3392. Phone number (215) 597-2655 (This is not a toll free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Housing Management Division
3. Director, Community Planning & Development Division

This designation supersedes all previous designations.

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: October 15, 1990.

Mary Ann E.G. Wilson,
Acting Manager.

[FR Doc. 90-26065 Filed 11-2-90; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-5101-B002]

Intent To Prepare an EIS Proposed Specified Hazardous Waste Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in coordination with the County of San Bernardino will prepare a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) fot the proposed Specified Hazardous Waste Facility at Broadwell Dry Lake, approximately 60 miles east of Barstow and approximately 8 miles north of Ludlow, California.

The applicant, Broadwell Corporation, has applied to the County for a Conditional Use Permit and a General Plan Amendment to develop a specified hazardous waste facility on land owned by Broadwell for the permanent storage and treatment of hazardous wastes.

Broadwell has applied to BLM for a right-of-way for an access road utilizing the existing Crucero Road from Interstate 40 in Ludlow to the site. The proposed 60 foot right-of-way would be approximately 8 miles in length, half of which would be across public lands. The existing road would be realigned for approximately one and one-half miles slightly west of its present location to be above the 100 year flood line. This realignment would involve lands within the Sleeping Beauty Mountains Wilderness Study Area (#252). Broadwell has also applied to BLM for two mineral material sales involving clay and coarse material for construction and operating purposes. These sites cover 227 acres and 363 acres, respectively.

The proposed specified hazardous waste facility would accept, treat, and dispose of hazardous wastes and other solid wastes that meet state and federal treatment standards. The facility would receive an estimated 2,000 tons per day of wastes. A range of alternatives to be analyzed include alternative access routes, facility designs, disposal methods, and site locations, as well as the no action alternative.

PUBLIC PARTICIPATION: Pre- and post-application public scoping meetings were held by the County in Newberry Springs, California. Comments presented during these meetings serve to define the scope of the EIR/EIS. Issues identified at the scoping meetings included the need for interagency/regional planning, the relationship to adjacent land uses; impacts to wilderness qualities, water, air, and threatened and endangered species; risk assessment; health and safety; geology and faults in the area; means of transportation; flooding problems; and construction of storage containers. Agencies and individuals that have already submitted comments or input during the previous public scoping periods need not submit the same comments again because the issues raised in previous comments will be incorporated into the EIR/EIS being prepared for this project.

A Local Assessment Committee (LAC) was established which meets on the second and fourth Mondays of each month in Newberry Springs, 20 miles east of Barstow, to discuss with the proponent details of the project. The LAC reports to the County Board of Supervisors and generally represents the interests of the residents of the County and adjacent communities. The LAC meetings are open to the public and provide for continual public involvement in the scoping and analysis process of this proposal.

Public meetings on this proposal will be held upon release of the draft EIR/EIS and will be announced in a Notice of Availability in the **Federal Register** and also in County notices.

Formal comments on this Notice will be accepted by BLM for 30 days after date of publication. Comments are specifically requested on issues, concerns, and alternatives, which will be considered in the EIR/EIS. As noted above, comments already submitted as part of the ongoing County review process do not need to be repeated.

ADDRESSES: Send comments to BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, Attn: Sharon Paris. For further information on this proposal or on the LAC meetings, or to be placed on the mailing list for the EIR/EIS contact BLM at the above address or by telephone at (619) 256-3591.

Dated: October 30, 1990.

Michael J. DeKeyrel,

Acting Area Manager.

[FR Doc. 90-26116 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-40-M

[WO-650-4120-02]

Federal-State Coal Advisory Board: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Denver, Colorado, December 11, 1990. The public is invited to attend. The Board will (1) Review the status of regional coal activities, (2) discuss the market outlook for coal, and (3) formulate a recommendation on a long-range lease sale plan for Federal coal.

DATES: The Board will meet at 8:30 a.m. on December 11, 1990.

ADDRESSES: The Board meeting will be held at the Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207, telephone (303) 321-3333.

SUPPLEMENTARY INFORMATION: The Board will review the status of coal leasing activities. Regional coal team representatives will present an update of coal leasing activities within their respective regions, including the outlook for lease sales and the current status of preference right lease applications and lease exchanges, where applicable. In addition, Headquarters Bureau of Land Management personnel will present for discussion information on current activities and issues that impact on the coal management program.

The Board will review the long-range outlook for coal markets and its potential impact on the demand for Federal coal. This information will be used to assist the Board in formulating a recommendation on a long-range Departmental lease sale plan at this meeting.

The public will have an opportunity to address the Board on agenda topics during the public comment period noted on the agenda below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on comments to ensure that everyone wishing to address the Board is able to do so.

Agenda—Federal-State Coal Advisory Board Meeting

December 11, 1990

Denver, Colorado

Welcome and Introductions

—BLM Director

—Assistant Director, Energy and Mineral Resources

—Other Staff

—Review and Approval of Meeting Agenda

—Approval of 1989 Meeting Minutes

—Director's Remarks

—Regional Coal Team Reports

—Washington Office Report

—Long-Range Market Outlook

—Long-Range Lease Sale Plan

—Discussion

—Public Comments

—Board Recommendation

Adjourn

FOR FURTHER INFORMATION CONTACT: Stan McKee or Dan Wedderburn, Bureau of Land Management (650), MS 3559, 1849 C Street, NW., U.S. Department of the Interior, Washington, DC 20240. Telephone: (202) 208-4636.

Cy Jamison,

Director.

[FR Doc. 90-26105 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-84-M

[WO-250-4370-02]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Wild Horse and Burro Advisory Board.

SUMMARY: Notice is hereby given that the Wild Horse and Burro Advisory Board recently appointed by the Secretary of Agriculture and the Secretary of the Interior will hold their first meeting December 5 to 7, 1990, in Reno, Nevada. The meeting will take place at the Sands Regency Hotel, 345 North Arlington Avenue, from 8 a.m. to 4:30 p.m., except on the afternoon of December 6, when the Board will attend a field tour at the Bureau of Land Management's Palomino Valley Wild Horse and Burro Placement Center, and December 7, when the meeting will adjourn at 3:30 p.m.

DATES: December 5-7, 1990.

ADDRESSES: Director (250), Bureau of Land Management, Premier Building room 901, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO SCHEDULE OR SUBMIT TESTIMONY, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: The purpose of the Board, which was chartered in May 1990, is to advise the Secretary of the Interior, the Director, Bureau of Land Management, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands.

The meeting will be open to the public. Members of the public may make oral statements to the Board on December 6, 1990, in the morning. Persons wishing to make statements should notify the Bureau of Land Management at the address or telephone number given above by November 21, 1990, so that time can be scheduled for their presentations. Depending on the number of speakers, it may be necessary to limit the length of each presentation. Speakers should address specific wild horse and burro issues and must submit a written copy of their testimony to the address given above or bring a written copy to the meeting. Persons who wish to provide testimony but who are unable to attend the meeting may submit a written statement to the address above.

Members of the public who wish to attend the field trip on December 6 must make their own arrangements for transportation to the Palomino Valley Wild Horse and Burro Placement Center.

The proposed agenda for the meeting is:

Wednesday, December 5: Morning: Introduction of the Board and Agency personnel; review of the Board's charter, Public Law 92-195, as amended, 43 CFR 4700, and wild horse and burro policies.

Afternoon: Briefing/discussion—the land use planning process and the administrative appeals process.

Thursday, December 6: Morning: Briefing on wild horses and burros in Nevada; public comments and issue identification.

Afternoon: Field trip to Palomino Valley Wild Horse and Burro Placement Center to observe preparation and care of captured wild horses and burros.

Friday, December 7: Morning: Fiscal Year 1991 budget briefing; legislative initiative; administrative matters.

Afternoon: Board goals and objectives; plans for next meeting.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 90-26072 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-84-M

[UT-060-01-4333-10]

Off-Road Vehicle Designations; Price River Resource Area, Utah

October 26, 1990.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of off-road vehicle (ORV) designation decisions and implementation of ORV closures and limitations for the Bureau of Land Management, Price River Resource Area.

SUMMARY: Notice is hereby given relating to the use of ORVs on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following described lands under administration of the Moab District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 1,087,357 acres of public land affected by the designations are within the Price River Resource Area in Carbon and Emery Counties, Utah. The designations are a result of resource management decisions made in the Price River Resource Area Management Framework Plan (MFP), 1983. Public comments were received and considered throughout the MFP process. Public comments concerning the adequacy of the implementation plan environmental assessment were accepted during the 30 day public comment period in 1989.

These designations for the public land located within the areas listed below are effective immediately and will remain in effect until modified or rescinded by the Authorized Officer.

SUPPLEMENTARY INFORMATION: ORV designations are effective for the following areas.

A. *Closed Designation*—all motorized vehicle use is prohibited year-round.

1. *Price Canyon Recreation Area*—160 acres located 15 miles northwest of Price, Utah.

2. *Cleveland Lloyd Dinosaur Quarry*—80 acres located 30 miles south of Price, Utah.

3. *Cedar Mountain Recreation Area*—205 acres located 40 miles south of Price, Utah.

B. *Limited Designations*—1. *Emma Park*—4,270 acres located 15 miles north of Price, Utah. No competitive or organized ORV events will be allowed, to protect sage grouse nesting habitat.

2. *West Benches*—44,280 acres located 5 miles west of Price, Utah. Seasonal closure between December 15 and March 15 to protect the critical winter range for deer and elk. No competitive or organized events will be allowed, to protect raptor nesting habitat and forage for wintering deer and elk.

3. *Nine Mile Canyon*—10,326 acres located 20 miles northeast of Price, Utah. Limited to designated existing roads and trails to protect archaeological and historical sites of potential National Register quality.

4. *Desolation/Turtle Canyons*—244,300 acres located 40 miles east of Price, Utah. Limited to designated existing roads and trails to protect primitive, scenic, natural, archaeological, and recreational values. The Range Creek jeep trail is closed at a point 1 and ¼ miles from the Green River to protect riparian values as well as the above-mentioned values.

5. *Mancos Shale*—212,700 acres located between Price, Huntington, and Green River, Utah. No competitive or organized events will be allowed between March 1 and May 15 (soil condition dependent) to protect sensitive watershed areas from excessive erosion.

6. *Mexican Mountain*—30,600 acres located 40 miles south of Price, Utah, Limited to designated existing roads and trails to protect primitive, scenic, natural, and recreational values.

7. *Old Spanish Trail*—1,020 acres located 35 miles south of Price, Utah. Limited to designated existing roads and trails to protect archaelogical and historical sites of potential National Register quality.

*There is an overlap of 6,120 acres between the West Benches and the Mancos Shale designation areas.

C. *Open Designation*—Motorized vehicles may be operated on the remaining 545,536 acres of public lands within the Price River Resource Area, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR part 8340).

FOR FURTHER INFORMATION CONTACT: Mark Bailey, Area Manager, Price River Resource Area, 900 North 700 East, Price, Utah 84501.

Gene Nodine,

District Manager.

[FR Doc. 90-26026 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-DQ-M

[(NV-930-01-4212-14); N-53355]

Realty Action; Direct Sale of Public Land in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action proposed direct sale of public lands.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been examined and identified as suitable for sale to the city of Carlin under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713) at no less than fair market value:

T. 33 N., R. 52 E.

Section 22, SW¼NE¼ N½NW¼, E½E½SW¼NW¼, S½SW¼SW¼NW¼, SW¼SE¼SW¼NW¼, SE¼NW¼, N½SW¼, E½SE¼SW¼, SE¼

Containing 437.50 acres.

The described lands will be offered by direct sale to the city of Carlin. The lands have been specifically identified as suitable for disposal for community expansion purposes by the Elko Resource Management Plan. The lands are not needed for any resource program and are not suitable for management by the Bureau of any other federal department or agency.

The locatable and salable mineral estates have been determined to have no value. The land is prospectively valuable for oil and gas; therefore, the mineral estate, excluding oil and gas, can be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of FLPMA. Acceptance of a direct sale offer will constitute an application for conveyance of the mineral interests. The city of Carlin will be required to submit a $50.00 nonrefundable fee with the purchase price for conveyance of the mineral interests specified above. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas.

And will be subject to:

1. Those rights for telephone purposes which have been granted to Nevada Bell, its successors or assignees, by right-of-way grant Elko-01655 under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for telephone line purposes which have been granted to Nevada Bell, its successors or assignees, by right-of-way grant CC-021089 under

the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

3. Those rights for gas pipeline purposes which have been granted to the Southwest Gas Corporation, its successors or assignees, by right-of-way grant Nev-064954 under the authority of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 185, section 28).

4. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, its successors or assignees, by right-of-way grant Nev-067173 under the authority of the Act of August 27, 1958 (72 Stat. 916; 23 U.S.C. 317).

5. Those rights for powerline purposes which have been granted to Wells Rural Electrical Co., its successors or assignees, by right-or-way grant N-3863 under the authority of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

6. Those rights for substations and access road purposes which have been granted to Wells Rural Electric Co., its successors or assignees, by right-of-way grant N-38134 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

7. Those rights for a buried telephone cable which have been granted to CP National, its successors or assignees, by right-of-way grant N-41621 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

8. Those rights for powerline purposes which have been granted to Sierra Pacific Power Co., its successors or assignees, by right-of-way grant N-48186 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

9. Those rights for a buried fiber optic communications cable which have been granted to A&TT, its successors or assignees, by right-of-way grant N-46266 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

10. Those rights for a buried telephone cable which have been granted to CP National, its successors or assignees, by right-of-way grant N-51955 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

In addition, the described lands would be conveyed subject to the privileges of Lee and Betty Taylor to graze domestic livestock on the lands according to the terms and conditions of Grazing Permit number 01587 for 28 AUMs within the Taylor Carlin Grazing Allotment which shall be continued until termination of the Grazing Permit on February 28, 1992. The city of Carlin will be entitled to receive annual grazing fees up until the expiration date of the Grazing Permit of Lee and Betty Taylor for the use of the Taylor Carlin Grazing Allotment at a rate not to exceed that which would be authorized in the grazing fee schedule published annually in the **Federal Register**.

Although addressed in previous Notices of Realty Action regarding sale of the land to the city of Carlin, it has been determined after further analysis that no direct loss of AUMs will result within the Marys Mountain Grazing Allotment to Melvin Jones Ranches (16 AUMs) and Elko Land and Livestock Co. (4 AUMs which are currently leased to Lee and Betty Taylor) as a result of this land disposal action.

On August 2, 1990, a Notice of Realty Action was published in the **Federal Register** segregating the subject lands from all appropriations under the public land laws, the mining laws, but not the mineral leasing laws, for a period of 270 days. Therefore, this segregation will terminate 270 days after the August 2, 1990, publication date in the **Federal Register**, or upon publication of a Termination of Segregation in the **Federal Register**, whichever comes first.

The land will be offered for sale no earlier than 60 days after date of publication of this notice in the **Federal Register**. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior.

Dated: October 26, 1990.

Nancy Phelps-Dailey,

Acting District Manager.

[FR Doc. 90-26023 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Application for Incidental Take Permit for Robert Edgar's Proposed Turkey-Raising Facility Near Allensworth, Tulare County, CA.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Robert Edgar has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 50 years, the incidental take of three endangered species, the San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelis silus*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). Notice of receipt of the application and Habitat Conservation Plan was previously published on August 20, 1990. The Service has prepared an environmental assessment (EA) for the incidental take permit application. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before December 5, 1990.

ADDRESSES: Comments regarding the adequacy of the EA should be addressed to: Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Interested parties may comment on the application by submitting written views, arguments, or data to: Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Nadine R. Kanim, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846 (916/978-4866 or FTS 460-4866). Individuals wishing copies of the EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species, like the San Joaquin kit fox, blunt-nosed leopard lizard, and Tipton kangaroo rat. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Robert Edgar proposes to construct and operate a turkey-raising facility on a 210-acre parcel, which is located approximately one-half mile southeast of the community of Allensworth, in Tulare County, California. The parcel is comprised of the eastern ¼ of Section 16 and a portion of the eastern ¼ of Section 9 in Township 24 South, Range 24 East (Mount Diablo Baseline Meridian). The proposed turkey-raising facility would require the construction and operation of three brooder houses, 18 grow-out houses, storage pits, roads,

one modular and two mobile homes, a workshop, and possibly a permanent residence on the site. These structures will permanently eliminate up to 210 acres of endangered species habitat. Robert Edgar proposes to mitigate for this incidental take via several off-site and on-site mitigation measures. Such measures include off-site acquisition of 630 acres of native habitat within the boundaries of the California Department of Fish and Game's (Department) Allensworth Ecological Reserve Conceptual Area, transfer of $63,000 to the Department to provide fencing around off-site mitigation lands, a maintenance endowment in the amount of $94,000 to manage the conveyed lands in perpetuity, and various on-site measures to avoid take of listed species to the maximum extent possible during construction and operation of the facility.

The EA considers the environmental consequences of the proposed action and the no action alternative. Two other alternative sites were rejected prior to the Service's receipt of the permit application because of endangered species concerns, lack of accessibility, and the absence of utilities and water connections. The proposed action would result in the extirpation of isolated populations of three listed species on the proposed project site and the preservation and enhancement of 630 acres of listed species habitat in the Allensworth Ecological Reserve Conceptual Area. Although the no action alternative would not permit the take of the three listed species on the proposed project site, periodic inundation by flood waters, illegal hunter trespass, competition and predation by feral pets, and other human activities would prevent the long-term maintenance of endangered species on the parcel.

Dated: October 31, 1990.

Richard K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-26112 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Paperwork Reduction Project (1010-0064), Washington, DC 20503, telephone 202-395-7340.

Title: Auditing and Financial System Reports on Solid Minerals.

Abstract: The information used in the Auditing and Financial System (AFS) is collected from lessees and leased operators producing minerals from leased Indian lands or from leased Federal lands. The information provides comprehensive data on solid mineral sales and royalties and is necessary to document payments, maintain royalty accounts, and audit. The AFS, a revenue accounting system, is used as a cross-check with the Production Accounting and Auditing System, which tracks mineral production. The data comparison also aids in tracking losses caused by carelessness, fraud, and theft.

Bureau Form Number: MMS-4014, MMS-4030.

Frequency: Monthly, quarterly, annually, or on occasion.

Description of Respondents: Solid mineral companies and lease operators producing minerals from leased Federal and Indian lands.

Annual Responses: 22,480 report lines.

Annual Burden Hours: 1,439.

Bureau Clearance Officer: Dorothy Christopher 703-787-1239.

Dated: July 13, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90-26028 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Gulf Islands National Seashore Advisory Commission: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that a meeting of the Gulf Islands National Seashore Advisory Commission is scheduled for Friday, December 7. The Commission was established pursuant to Public Law 91-660, January 8, 1971. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the seashore. The meeting will convene on December 7 at the Davis Bayou Visitor Center auditorium in Ocean Springs, Mississippi, at 1 p.m.

The matters to be discussed at this meeting will include:

(1) Purpose and function of Advisory Commission.

(2) Superintendent's Annual Report.

(3) Status of Natural Resource Management Projects.

(4) Status of Cultural Resource Management Projects.

(5) Other business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and it is expected that not more than 20 persons will be able to attend the meeting in addition to the Commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent. Further information concerning this meeting may be obtained from the Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

Dated: October 19, 1990.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 90-26020 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0088), Washington, DC 20503, telephone 202-395-7340.

Title: Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights 30 CFR 774.

OMB Number: 1029-0088.

Abstract: Sections 506(d), 511(a)(1) and 511(b) of Pub. L. 95-87 provide that persons seeking permit revisions, renewals, transfer, sale or assignment of permit rights for coal mining activities, submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators.

Annual Responses: 8,065.

Annual Bureau hours: 75,520.

Estimated Completion time: 9 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 2, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-26027 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-341X]

Southwestern Railroad Co., Inc.—Abandonment Exemption—In Hansford and Hutchinson Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 18-mile line of railroad between milepost 85 + 2449 feet, near Spearman, and milepost 103 + 1685.6 feet, near Morse, in Hansford and Hutchinson Counties, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 5, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 15, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 26, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: David L. Miller, Durbano & Associates, 4185 Harrison Blvd., No. 320, Ogden, UT 84403.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 9, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encourage to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Decided: October 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26114 Filed 11-2-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Michigan State Standards; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for Comment; Michigan State Standards.

SUMMARY: This notice invites comment on the State of Michigan's occupational safety standards for fixed Fire Equipment. These State-initiated standards constitute Amendment 2, adopted March 1, 1984, to the Michigan General Industry Safety Standards, part 9, adopted August 17, 1974, and approved by OSHA on December 3, 1976 (41 FR 53078). Where a State standard, adopted pursuant to an OSHA-approved State plan, differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State Standard must be "at least as effective" as the corresponding Federal standard in providing safe and healthful employment and places of employment. The different State standard encompasses topic material covered by seven OSHA standards (29 CFR 1910.158 through 1910.164). In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and must not impose any undue burden of interstate commerce. OSHA, therefore, seeks public comment as to whether the Michigan standards meet these requirements.

DATES: Written comments should be submitted by December 5, 1990.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Directorate of Federal-State Operations Occupational Safety and Health Administration, U.S. Department of Labor, room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health

Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for the adoption and enforcement of safety and health standards by a State with a State plan approved over section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On October 3, 1973, notice was published in the **Federal Register** (38 FR 27338) of the approval of the Michigan Plan and the adoption of subpart T to part 1952 containing the decision. The Michigan State Plan provides for the adoption of State safety standards in the following manner. In the Michigan Department of Labor, action on a new standard or an amendment to an existing standard is initiated by either the General Industry Safety Standards Commission or the Construction Safety Standards Commission, as is appropriate, in response to a Federal standards change or to the need for a State-initiated standards change recognized after research and consultation with persons knowledgeable in the field for which the standard is being considered. The Michigan Plan provides for the adoption of a standard as an enforceable State standard after due public notice and hearing and administrative review, in accordance with the Michigan Administrative Procedures Act and the Michigan Occupational Safety and Health Act (Act No. 154 of the Public Acts of 1974, as amended).

Michigan has submitted a State-initiated Plan change, which incorporated the subject standards as part of its occupational safety and health Plan. By letter of March 15, 1986, Amendment 2 of the Michigan General Industry Safety Standards, part 9, Fixed Fire Equipment, was submitted by Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, to Frank K. Strasheim, Regional Administrator, OSHA Region V. The standards had been subjected to normal public hearing and review, were finalized on February 15, 1984, and became effective on March 1, 1984.

B. Issues for Determination

While OSHA enforces comparable standards (29 CFR 1910.158 through 1910.164), the State amendment dealt with herein is intended to make the Michigan standards for Fixed Fire Equipment more explicit, detailed, and comprehensive. They are now under review by the Assistant Secretary to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR 1902 and 1953. Accordingly, public comment is being sought by OSHA on the following issues.

1. "At least as effective" requirement. OSHA has evaluated the State standards contained in the amendment in comparison with corresponding Federal standards and has preliminarily determined that they meet the "at least as effective" criterion of section 18(c)(2) of the Act. In many instances the Federal requirements are exceeded. For example, the State has adopted by reference the following NFPA standards: 11, 11a, 11b, 12, 13, 14, 16, 17, 72a, and 72e, thereby rendering its standards more comprehensive. Several requirements in the State standards have no Federal counterparts; e.g., that "the water supply for standpipe and hose systems shall provide a minimum of 100 gallons per minute for not less than 30 minutes" (Michigan Rule 937(4). Also, the State amendment includes clarified and expanded definitions largely absent in the Federal standards. Public comment is solicited for consideration in OSHA's final decision whether to approve the State's standards.

2. Product clause requirement. OSHA is also seeking through this notice public comment as to whether the standards:

(a) Are applicable to products which are distributed or used in interstate commerce;

(b) If so, whether they are required by compelling local conditions; and

(c) Whether they unduly burden interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, opinions, and arguments with respect to the issues described above. These comments must be postmarked on or before December 5, 1990, and submitted in quadruplicate to the Director, Directorate of Federal-State Operations, room N3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments, and requests submitted concerning these standards and will thereafter publish notice of the decision approvinig or disapproving them.

D. Location of the Supplement for Inspection and Copying

A copy of Michigan standards applicable to Fixed Fire Equipment, along with approved State provisions for the adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn, room 3244, Chicago, Illinois 60604; Office of the Director, Bureau of Safety and Regulation, Michigan Department of Labor, 7150 Harris Drive, Lansing, Michigan 48909; and Office of the Director, Directorate of Federal-State Operations, 200 Constitution Avenue NW., room N3700, Washington, DC 20210.

Authority: Sections 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; 29 CFR 1953.4.

Signed this 29th day of October, 1990, in Washington, DC.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 90-26113 Filed 11-2-90; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittees on Containment Systems and Structural Engineering; Meeting Rescheduled

The ACRS Subcommittees on Containment Systems and Structural Engineering scheduled to hold a joint meeting on November 7, 1990, 8:30 a.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD has been rescheduled to Tuesday, December 4, 1990. All other items pertaining to this meeting remain the same as previously published in the Federal Register on Tuesday, October 23, 1990 (55 FR 42788).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen'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 Designated Federal Official, Mr. Dean Houston (telephone 301/492-9521) 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 30, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-26097 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

State of Illinois: Discontinuance of Certain Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with the State of Illinois.

SUMMARY: Notice is hereby given that the Honorable Kenneth M. Carr, Chairman of the United States Nuclear Regulatory Commission, and the Honorable James R. Thompson, Governor of the State of Illinois, signed an Amendment to the existing section 274b Agreement between NRC and the State of Illinois pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Amendment permits the State to regulate 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material.

The Commission has determined that the Illinois program for regulation of 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of section 274o of the Atomic Energy Act, as amended, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, section 274o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

The proposed Amendment to the existing section 274b Agreement was published in the Federal Register for public comment for four consecutive weeks beginning March 28, 1990 (55 FR 11459).

The Amendment is hereby published in accordance with the requirements of Public Law 86-373.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555 (telephone 301-492-0326).

SUPPLEMENTARY INFORMATION: *Public Comments:* In response to the FR Notice, the NRC received 166 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the Environmental Protection Agency, the State of Illinois, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. A list of all commenters was provided to the Commission along with an analysis of the major comments which was prepared by the staff. All comments except for those presented by Kerr-McGee Chemical Corp. supported the proposed amendment to the Agreement and all comments were carefully considered by the Commission in its deliberations on the Illinois request. The comments and the staff's analysis of the major comments are available in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to section 274 of the Atomic Energy Act of 1954, as Amended.

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½, par. 241-19 to enter into this Agreement with the Commission; and

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in section 11.e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and

Whereas, article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material

ore and the management and disposal of the resulting byproduct material; and

Whereas, the Governor of the State of Illinois certified on April 11, 1989 that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on October 17, 1990 that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and where necessary compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

(1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act. As amended, article I now reads as follows:

Article I

Subject to the exceptions provided in articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to article III, and subject to the exceptions provided in articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

(2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and

4. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.,

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custory of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures

as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

(3) Article IX of the Agreement is hereby amended by redesignating it article X and by inserting a new article IX. As amended, articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to article VIII.

(4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in paragraphs (1), (2), and (3) of this Amendment Number One.

(5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on November 1, 1990 and shall remain in effect until such time as it is terminated pursuant to article VIII.

Done at Rockville, Maryland, in triplicate, this 18th day of October, 1990.

For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

Chairman.

Done at Springfield, Illinois, in triplicate, this 23rd day of October, 1990.

For the State of Illinois.

James R. Thompson,

Governor.

Dated at Rockville, MD this 26th day of October, 1990.

For the the United States Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-26098 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

[Materials License No. 29-14150-01; Docket No. 030-12145-CivP; ASLBP No. 91-622-01-CivP]

Certified Testing Laboratories, Inc.;

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Certified Testing Laboratories, Inc.
Material License No. 29-14150-01, EA 89-079

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated August 29, 1990, entitled "Order Imposing A Civil Monetary Penalty" (55 FR 36729, September 6, 1990).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Cadet H. Hand, Jr., Member, University of California, P.O. Box 247, Bodega Bay, California 94923

Administrative Judge Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830.

Issued at Bethesda, Maryland, this 30th day of October 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-26099 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

Public Service Co. of New Hampshire; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-86 issued to The Public Service Company of New Hampshire (the licensee) for operation of the Seabrook Station located in Rockingham County, New Hampshire.

The proposed amendment would revise Technical Specification Surveillance Requirements 4.8.2.1d, 4.8.2.1e, and 4.8.2.1f by deleting the phrase "during shutdown" from these Surveillance Requirements. The design of vital DC systems at Seabrook Station incorporates two 100% capacity battery banks in each train. Technical Specification 3.8.3.2, DC Sources—Operating currently allows one battery bank to be inoperable for up to 30 days. Removing one of the battery banks from service while at power does not degrade the system capabilities to a level less than that currently allowed by this Technical Specification. Additionally, in accordance with Technical Specification requirements, the alternate battery and charger in the same train and both battery banks and chargers in the opposite train will be OPERABLE during the performance of this testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR

50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed change would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed change deletes the requirement that certain surveillances be performed "during shutdown." The Seabrook design for vital DC systems incorporates two 100% capacity battery banks for each train. Technical Specifications currently allow one battery bank in one train to be inoperable for up to 30 days. Removal of one battery bank in one train from service of the performance of surveillance testing does not decrease the functional capability of the DC system below the level currently allowed by the Technical Specifications. Additionally, in accordance with Technical Specification requirements, both battery banks and chargers in the train will be OPERABLE during the performance of this testing. Performance of the surveillance testing at power with the battery removed from service will not affect any other system, structure, or component; therefore, the proposed change does not increase the probability of an accident previously evaluated. Assuming an additional single failure (*e.g.*, failure of the opposite DC train), a minimum of one 100% capacity battery bank will remain available during any postulated accident. With this minimum capability, sufficient instrumentation and control capability exists for monitoring and maintaining the unit status following an accident. Therefore, the consequences of an accident previously evaluated will not be increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated. During the performance of this testing, the battery will be isolated from the vital DC system. No other system will be affected by this testing. Additionally, in accordance with the Technical Specifications, the alternate battery of the same train and both opposite train batteries will remain OPERABLE during this testing. Therefore, the possibility of an accident of a different type than any previously evaluated is not created by this change.

3. Involve a significant reduction in a margin of safety. The Seabrook design incorporates two 100% capacity battery banks for each train; removing a battery bank from service while operating will not decrease the functional or safety capabilities of the DC system below the level currently specified by the Technical Specifications. The allowed outage time for the battery banks is based upon the guidance of Regulatory Guide 1.93. Though the Regulatory Guide indicates that a battery should only be removed from service for the performance of corrective maintenance, the recommendations of this Regulatory Guide are based upon a system design encompassing only 100% of capacity per train. With a battery bank removed from service, the affected train continues to meet assumed 100% capacity. Therefore, the proposed change does not reduce the margin of safety for any Technical Specification.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Pulic Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833. 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 the particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven,

would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expected that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. When 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 telephoone call to Western Union at 1-(800) 325-6000, (in Missouri 1-(800) 342-6700). The Western Union operator should be given the Datagram Identification Number 3737 and the following message addressed to Richard Wessman: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of the **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esq. Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 19, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local Public Document Room located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 29th day of October, 1990.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directoratge I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26100 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28587; Int. Series Rel. No. 182; File No. SR-CBOE-90-16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on the CAC-40 Index

On June 21, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commissioner"), 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 list warrants based on the Cotation Assistée en Continu 40 Index ("CAC-40" or "Index")—a broad-based index of French stocks traded on the Paris Bourse.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28225 (July 12, 1990), 55 FR 30770. No comments were received on the proposed rule change.

The Exchange proposes to list index warrants [4] based on the CAC-40,[5] an internationally recognized, capitalization-weighted index consisting of 40 leading stocks listed and traded on the Paris Bourse and calculated by the Societe des Bourses Francaises ("SBF").[6]

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[1] 15 U.S.C. section 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In France, securities may be listed on only one of seven stock exchanges. Together these bourses or stock exchanges—Paris, Bordeaux, Lille, Lyons, Marseilles, Nancy and Nantes—for a single exchange system operating under the same principles, headed by the same authorities and subject to the same rules and regulations. For purposes of calculating the CAC-40 Index, however, only securities traded on the Paris Bourse are considered. For a more complete description of the regulatory structure in France, *See* Securities Exchange Act Release No. 28544 (October 17, 1990) ("CAC-40 Warrant Approval Orders"), at note 6.

[4] Warrants on stock index are securities that incorporate certain characteristics of both stocks and options. Like stock, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants are also cash-settled and, just as with options, the risk to a buyer is known and limited. For a description of how index warrants are cash-settled, see *infra* text accompanying note 10.

[5] The Index is composed of stocks of companies from eight different industry groups, no one of which dominates the Index, and the poercentage weighing of the five largest issues, as of June 28, 1990, accounted for approximately 31.39% of the Index's value. The total capitalization of the CAC-40, as of June 28, 1990, was $166.6 billion or approximately 60% of the capitalization of the CAC-240 General Index, a benchmark of French listed-securities. In addition, the average daily trading volume during the first six months of 1990 for the five most heavily weighted stocks in the CAC was 652,990 shares collectively and 130,998 individually. The total average daily trading volume of the 40 CAC stocks for the same period was 2,874,523 shares. The Index is administered by the Scientific Advisory Commission ("SAC"), a committee composed of experts appointed by the SBF. The SAC is responsible for, among other things, the calculation of the Index, as well as a review of its composition.

[6] The SBF is a "specialized financial institution," under the direction of the Conseil des Bourses de Valeurs or Stock Exchange Council. It implements decisions taken by the Stock Exchange Council, such as day-to-day administation of French securities markets, development and promotion, and provides investors and the general public with comprehensive information on market activities. In

Continued

The CAC-40 is calculated based on 40 French stocks chosen by the SBF to provide an indication of the performance of the French stock market.[7] In particular, the Index is designed so that the economic sectors contained in the Index receive approximately the same weighing as the overall French market, for both market value and trading volume.[8]

The CAC is continuously calculated using the last sale price of each of the 40 quoted stocks comprising the Index and disseminated at 30-second intervals throughout the Paris Bourse trading day from 10 a.m. to 5.m. (Paris time) (4 a.m. to 11 p.m. Eastern Standard Time). The Index is published daily in, among other places, the Wall Street Journal, as well as being available real-time on Telefax, Reuters and other market information systems which disemminate information on a minute-by-minute basis. To calculate the CAC, the SBF takes the sum of the market values of the 40 stocks in the Index and divides this number by a base adjusted market value or divisor. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events such as new issuances of stock and other capitalization changes.

In addition, whenever there is stale last sale information for a large percentage of component securities in the Index, the CAC-40 Index is replaced with an "éclaireur." [9] The "éclaireur" provides the following information as a substitute for the CAC-40 Index when the CAC-40 would not be a meaningful measure of the French equity market: (1) The number of CAC-40 component stocks still being traded; (2) the relative weight of stocks still traded, expressed as a percentage of the aggregate market capitalization of the component CAC-40 stocks; and (3) the percentage change in market capitalization of stocks still traded with respect to their market capitalization as of the last published index. The "éclaireur" has not been used often. According to the SBF, the use of the "éclaireur" has been limited to episodes of dramatic price movement, as well as cases of technical difficulty which arise to hinder the dissemination of last sale information.

The CBOE proposes to trade CAC-40 warrants pursuant to requirements approved by the Commission when the Exchange was approved to trade stocks, warrants and other securities.[10] Among other things, the Index Warrant Approval Order permits the CBOE to list index warrants based on established market indexes, both foreign and domestic.

Specifically, consistent with the Index Warrant Approval Order, the Exchange represents that the CAC-40 warrant issue will conform to their respective index warrant listing guidelines.[11] The listing guidelines of the CBOE require that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements; (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.

The Exchange also represents that the CAC-40 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 CAC-40 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 CAC-40 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.

Because index warrants are derivative in nature and closely resemble index options, the Exchange will impose several safeguards designed to meet the investor protection concerns raised by the trading of CAC-40 index warrants. First, the Exchange proposes to apply its options suitability standards to Index warrant recommendations. Second, discretionary orders in Index warrants must be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Third, the Exchange has recommended that the CAC-40 warrants only be sold to options approved accounts. Fourth, the Exchange, prior to commencement of trading of CAC-40 warrants, will distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC-40.

Finally, to ensure that there is a mechanism for sharing surveillance information with respect to the Index's component stocks, the CBOE has entered into a Memorandum of Understanding with the SBF.[12] The memorandum will allow the CBOE to obtain trading data and other market-based information from the SBF regarding the component securieties of the CAC-40 Index.[13] The Exchange

addition, the SBF monitors and supervises the market and exchange member firms under delegated authority by the Exchange Council. The Stock Exchange Council is the regulatory authority similar to a self-regulatory organization in the United States, charged with formulating the rules under which the French market and brokerage firms operate. The rules of the Stock Exchange Council, called the Règlement Général du Conseil des Bourses de Valeurs, set forth terms and conditions for the creation of new brokerage houses, security listings, removals from listing and suspension, and takeover bids and established a code of conduct for exchange members. In addition, the Council ensures member compliance with its rules by bringing disciplinary action if necessary. The French regulatory body known as the Commission des Operations de Bourse ("COB") approves the rules of the Stock Exchange Council. The COB is an autonomous administrative body patterned after the U.S. Securities and Exchange Commission. It functions as the French market regulator with authority to undertake investigations, notify French judicial authorities, and levy fines.

[7] The CAC-240 General Index represents the total French equity market value. Calculations by the SBF show that the correlation of the monthly price settlement between the CAC-40 and the CAC-240 General Index is 97%. Moreover, the index's component stocks are highly capitalized as the mean and median capitalization for the 40 firms (as of June 29, 1990) was 23.44 billion French francs ($4.71 billion dollars) and 15 billion francs ($2.67 billion dollars), respectively. The U.S.dollar/French franc exchange rate used for these calculations was $.17808 per French franc on June 29, 1990.

[8] *See* CAC-40 Warrant Approval Orders, *supra* note 3.

[9] The "éclaireur" is a collection of indicators used to show the trend of the market based on the component stocks that are actually trading. The éclaireur is disseminated at the start of each daily trading session, prior to the establishment of an initial quoted price for each component stock, and in the event that trading has been suspended in stocks representing more than 35% of the total market capitalization of the component stocks.

[10] Securities Exchange Act Release No. 28556 (October 19, 1990) (approval of file no. SR-CBOE-90-08) ("Index Warrant Approval Order").

[11] *See* CBOE Rule 31.5(E).

[12] *See* Memorandum of Understanding Between the CBOE and the SBF Concerning the Listing of Securities Linked with an Index and the Furnishing of Information for the Purpose of Regulation and Enforcement between the CBOE and SBF, dated October 9, 1990 ("Memorandum").

[13] Specifically, the Memorandum provides for the exchange of information concerning any security traded through the facilities of the CBOE, any security underlying a derivative instrument traded through the facilities of the CBOE, or any derivative instrument based upon or including a security traded through the facilities of the CBOE. Accordingly, the Memorandum allows for the provision of information relating to the CAC-40 warrants or any securities underlying the CAC-40 warrants. In addition, this Memorandum obligates the Exchange and SBF to resolve in "good faith" any disagreements regarding requests for information.

believes that this Memorandum, together with the cooperative efforts of the CEC and the COB,[14] is an appropriate and sufficient informational sharing arrangement for surveilling trading in CAC–40 warrants on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[15] Specifically, the Commission believes that CAC–40 warrants are innovative securities instruments that can provide investors a means by which to hedge against investment decisions made in the French equity market.[16] In particular, CAC–40 warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the CAC–40 moves in a favorable direction within a specified time period. Of course, if the CAC–40 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the CAC–40 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the French equity market.

The Commission also believes that the CAC–40 warrants are consistent with the guidelines set forth in the Index Warrant Approval Order. Because the CAC–40 is a broad-based index of actively traded, highly-capitalized stocks, the index does not raise unique regulatory concerns.[17] The Commission notes that the CBOE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the CAC–40 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the CBOE has addressed adequately potential public customer problems that could arise from the derivative nature of CAC–40 warrnts. Moreover, the CBOE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC–40 and, pursuant to the CBOE listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue CAC–40 warrants.

In light of the fact that the CAC–40 is a foreign stock index, the Commission believes an adequate surveillance sharing agreement between the CBOE and the SBF is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the CBOE entered into a Memorandum of Understanding with the SBF to provide for the sharing of market information related to the trading of CAC–40 warrants on the CBOE.[18] Despite the surveillance sharing agreement between the CBOE and SBF, however, the SBF asserts that a French blocking statute [19] restricts its ability to supply the CBOE with necessary customer trading information related to trading on the Paris Bourse.[20] Therefore, in order to obtain customer information, the Commission and the COB have exchanged letters that establish a mechanism for the exchange of information, including customer information, for transactions involving a derivative security or the stocks underlying such security when that derivative security is traded in U.S. or French markets and the underlying securities are traded in the other country's markets.[21]

This SEC/COB letter exchange confirms that the SEC will be able to secure information from the COB that the CBOE may not be able to obtain from the SBF, and thus ensure that an investigation into the trading of CAC–40 warrants can occur with access to all necessary surveillance information.[22] Accordingly, the Commission believes the arrangement made pursuant to the SEC/COB exchange of letters, together with the agreement consummated by the Exchange with the SBF, is adequate to allay Commission concerns regarding the CBOE's ability to obtain information necessary to take appropriate regulatory action regarding alleged manipulation or other trading abuses between markets involving the trading of CAC warrants.

Finally, the Commission believes that trading in CAC–40 warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that CAC–40 warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in France.

It there is ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–90–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Dated: October 30, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26103 Filed 11–2–90; 8:45 am]

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[14] *See supra* notes 20–22 and accompanying test for a description of an agreement reached between the SEC and the COB to provide necessary surveillance information despite the existence of a French Blocking Statute that would otherwise have limited the CBOE's surveillance of trading in CAC warrants.

[15] 15 U.S.C. 78f(b)(5) (1982).

[16] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] The Commission has previously examined the CAC–40 in the context of proposed rule changes submitted by the American, New York, Patific and Philadelphia Stock Exchanges to list and trade Index warrants based on the CAC–40. At that time, the Commission found that the CAC–40 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the relative weighted value of the Index's component stocks, and the substantial capitalization and trading volume of the component stocks. *See* CAC–40 Index Warrant Approval Orders, *supra* note 3.

[18] *See supra* notes 12–14 and accompanying text.

[19] A blocking statute prohibits the disclosure, inspection, copying or removal of documents located in the enacting state in compliance with orders of foreign authorities. *See*, The 1980 French Law on Documents and Information, Law No. 80–538 (1980) J.O. 1799.

[20] In this regard, the SBF asserts that it does not have the legal capacity to obtain specific customer information, but instead, must rely on the COB. The COB is prohibited from furnishing customer information to a non-governmental body, such as the CBOE. As described below, pursuant to a letter exchange between the SEC and the COB, the COB confirms that it will furnish customer information directly to the Commission.

[21] *See* letter from Richard Ketchum, Director, Division of Market Regulation, SEC, to Patrick Mordacq, Secretary General, COB, dated September 18, 1990; and letter from Patrick Mordacq, Secretary General, COB, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated September 18, 1990.

[22] The SEC entered into an Administrative Agreement with the COB on December 14, 1989. *See*, CAC–40 Warrant Approval Orders for a description of this agreement.

[23] 15 U.S.C. 78s(b)(2) (1982).

[24] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–28586; File No. SR–NYSE–90–46]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Competing Specialists

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 27, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following: (1) Amendments to item numbers 11 and 12 of the NYSE's Procedures for Competing Specialists ("Procedures"); (2) a request for the Commission's permanent approval of the Procedures as amended; [1] and (3) the Exchange's responses to nine specific questions the Commission had posed in a prior order temporarily approving the Procedures.[2] These responses consist principally of what the Exchange believes are "stated policies, practices or interpretations" that are "reasonably and fairly implied" by existing NYSE rules and policies, and do not require the formal amendment of any Exchange rule.[3]

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

1. *Purpose*—The proposed rule change consists of 12 procedures for competing specialists. The first 10 of these are unchanged from the procedures used by the Exchange from May 1986 to April 1988.[4] The Exchange is proposing to make several changes to Procedures 11 and 12. The proposed amendment to Procedure number 11 would allow for the orderly termination of a competing specialists situation where either the specialist organization to whom a stock was originally assigned ("original specialist"), or a competitor which subsequently received approval to compete with the original specialist, requests that it be relieved of the stock(s) that are the subject of competition. This procedure is designed to allow members to withdraw from competition in an orderly manner without unduly prejudicing their future ability to compete, and, at the same time, to enable the Exchange to maintain the efficiency, stability and continuity of its marketplace.

Specifically, the specialist organization wishing to withdraw from the competing specialists situation would have to notify the Market Performance Committee prior to the desired date of such withdrawal. When the original specialist requests to be relieved of a stock and the Market Performance Committee is satisfied that the remaining specialist can continue to maintain a fair and orderly market in such stock, it will approve the request to be relieved as of a specified date. Where the Market Performance Committee is not so satisfied, it will refer the stock to the Allocation Committee for designation of an additional specialist.

The Market Performance Committee's review is necessary to ensure that the competing specialist can maintain market quality as the sole specialist. Unlike the original specialist's application, the competing specialist's application did not receive a prospective analysis of performance and ability to maintain market quality since only capital, manpower and experience are considered for an application to compete under Procedure numbers three, four, five and seven.

The proposed amendment to Procedure number 11 would also lengthen the time period a specialist organization which withdraws its registration in a stock would be barred from applying to compete in that same stock. Such a bar would be lengthened from three months to one year following the effective date of withdrawal. In the case of extenuating circumstances, the Market Performance Committee may waive this one year restriction at the time of withdrawal where imposition of the restriction would be inappropriate and would work to weaken rather than strengthen Exchange markets.

The Exchange endorses the concept of competing specialists and wishes to impose as few restrictions as possible upon the free entry and withdrawal of competitors. However, the Exchange also recognizes the need to make some provision for the efficient and orderly operation of its marketplace. In fairness to the original specialist, the Exchange does not think it unreasonable, and feels it will contribute to the orderly handling of competing situations, to require of a competing specialist wishing to withdraw from competition that his request not be based upon the transient events of the day, but rather that it be based upon his knowledge that he will be restricted from re-entry for a one year period. Thus, the Exchange feels that the one year re-entry restriction does not unduly restrict competition, but rather provides for a more efficient and orderly competitive environment.

The proposed amendment also consists of a "housekeeping" change to Procedure number 12 of the Exchange's Procedures to reflect the correct Article and Section, as a result of the recodification of the Exchange Constitution in 1986,[5] under which a specialist may request a review by the Board of Directors of a decision of the Market Performance Committee pursuant to Procedure number 12. Procedure number 12 reminds members that decisions of the Market Performance Committee are reviewable by the Exchange's Quality of Markets Committee, and the Exchange Constitution provides for a member to appeal to the Board of Directors any decision of the Market Performance Committee.

Finally, the purpose of this filing also is to respond to the Commission's nine specific requests for information concerning the application of specified Exchange rules and policies as to competing specialist situations.[6]

[1] The Commission approved the Procedures for a six-month period, which was subsequently extended several times but then expired on April 30, 1988. *See* Securities Exchange Act Release No. 23202 (May 5, 1986), 51 FR 17424 (May 12, 1986) (File No. SR-NYSE-77-06); Securities Exchange Act Release No. 23869 (December 9, 1986), 51 FR 45417 (December 18, 1986) (File No. SR-NYSE-86-31); Securities Exchange Act Release No. 24183 (March 5, 1987), 52 FR 7721 (March 12, 1987) (File No. SR-NYSE-87-02); Securities Exchange Act Release No. 25342 (February 11, 1988), 53 FR 5066 (February 19, 1988) (File No. SR-NYSE-88-01). At the present time, the NYSE does not have a competing specialists program.

[2] *See* Securities Exchange Act Release No. 23202, *supra* note 1.

[3] The entire text of the responses is available for inspection and copying at the Commission's Public Reference Section and at the principal office of the NYSE.

[4] *See supra* note 1.

[5] *See* Securities Exchange Act Release No. 22959 (February 28, 1986), 51 FR 8060 (March 7, 1986) (File No. SR-NYSE-86-47).

[6] The Exchange's response to the Commission's request for information is available at the

Continued

The interpretations contained in the Exchange's response to the Commission reflect the Exchange's position that competing specialists are responsible for what is, ultimately, a single auction market on the NYSE Floor in the securities in which they are specializing, and that competing specialists do not make separate NYSE markets requiring the adoption of new rules, or the formal amendment of existing rules. These interpretations have been applied in prior years whenever there have been competing specialists situations on the Exchange.

These interpretations reflect the Exchange's analysis of current market conditions and market structure. The Exchange has reviewed other rules and policies, in addition to the ones covered in the Commission's specific requests for information, and does not believe modifications or any other special interpretations or clarifications are necessary at this time. Given the natural evolution of the securities markets, however, it is reasonable to assume that these interpretations may require some subsequent modifications in appropriate cases or that new interpretations or rule changes may be required.

2. *Statutory Basis*—The procedures and policies as to competing specialists situations are designed to facilitate and enable the implementation of a system of competing specialists. As such, they are based on section 11(b) of the Act which provides for Exchange rules to permit members to be registered as specialists and section 11A(a)(1)(C)(ii) which states that the Congress finds that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed procedures for competing specialists do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

Commission's Public Reference Section and at the NYSE. *See supra* note 3.

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 the 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 NYSE. All submissions should refer to File No. SR-NYSE-90-46 and should be submitted by November 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26104 Filed 11-2-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 26, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47228. *Date filed:* October 24, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* South Atlantic-Africa Expedited Reso 002i. *Proposed effective date:* November 1, 1990.

Docket Number: 47229. *Date filed:* October 24, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* Canada Europe Resolution LA109 et al. *Proposed effective date:* January 1, 1990.

Docket Number: 47230. *Date filed:* October 26, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* SNATC Mail Vote No. 84 (Texas-London Fares), SNATC Mail Vote No. 85 (Texas-London Fares). *Proposed effective date:* December 1, 1990.

Docket Number: 47231. *Date filed:* October 26, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* Expedited Resolutions. *Proposed effective date:* January 1, 1990.

Phyllis T. Kayler,

Chief, Documentary Services Division.

[FR Doc. 90-26069 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ended October 26, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming applications, or motion to notify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket number: 37559. *Date filed:* October 26, 1990. *Due date for answers, conforming applications, or motion to modify scope:* November 23, 1990. *Description:* Application of Thai Airways International Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit which authorizes it to provide scheduled foreign air transportation between: The terminal point Bankok, Thailand via the intermediate points Tokyo, Japan and

Seattle, Washington, and the coterminal points Los Angeles, California and one additional point in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-26070 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 29, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Review Service

OMB number: New
Form number: None
Type of review: New collection
Title: Opinion Survey of Taxpayers Contacted by the EP/EO Examination Program
Description: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS EP/EO Examination Program, to identify possible areas of program improvement, and thereby improve the effectiveness of EP/EO activities.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated number of respondents: 4,000
Estimated burden hours per respondent: 10 minutes
Frequency of response: One time only
Estimated total reporting burden: 667 hours
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-26035 Filed 11-2-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the Federal Register notifying the public that the agency ahs made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency in accordance with Public Law 98-111 as amended by Public Law 101-246. USIA is requesting approval of the extension of OMB 3116-0197 entitled "Surveys, Interviews and other audience research for Radio and TV Marti conducted by the Office of Audience Research of Radio Marti; Interviews by the Miami Research Office of Radio Marti." Estimated burden hour per response averages 1.684 hours.

DATES: On or before December 5, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Inforamtion and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review; Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1.684 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for USIA.

Title: Surveys, Interviews and other audience research for Radio and TV Marti.

Form number: No form used for this information collection.

Abstract: The Office of Cuba Broadcasting needs to conduct research among recent Cuban arrivals in the United States and abroad to determine audience reaction to its radio and TV programming and to collect information about the situation in Cuba. Information gathered is used to improve Radio and TV Marti broadcasts in providing the Cuban people with news, information and other programming that is relevant, interesting, timely and appealing.

Proposed frequency of responses:

No. of respondents	7,792
Recordkeeping hours	0
Total annual burden	13,124

Dated: October 30, 1990.

Rose Royal,

Federal Register Liaison.

[FR Doc. 90-26047 Filed 11-2-90; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed additions to sentencing guidelines, policy statements, and commentary relating to the sentencing of organizations; request for public comment; Notice of public hearing.

SUMMARY: The Commission is considering amendments to its guidelines, policy statements, and commentary that would govern the sentencing of organizations in federal courts. Except for one guideline dealing with fine calculations for antitrust violations, the sentencing guidelines currently in effect do not apply to the sentencing of organizations. The Commission's proposed guidelines, policy statements, and accompanying commentary are set forth below. The

Commission may report these amendments to Congress on or before May 1, 1991. Public comment is sought on these proposals and any other aspect of the sentencing guidelines, policy statements, and commentary as they apply to the sentencing of organizations. Public comment is also sought on the suggested organizational guidelines prepared by the U.S. Department of Justice which are also set forth below.

DATES: Written comment should be received by the Commission no later than December 10, 1990. A public hearing is scheduled for December 13, 1990, at 9:30 am. in the Ceremonial Courtroom, 6th floor, United States Courthouse, Washington, DC.

ADDRESSES: Comments should be sent to the United States Sentencing Commission, 1331 Pennsylvania Avenue NW., suite 1400, Washington, DC. 20004. Attention: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director, telephone (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts.

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Background of Proposed Amendments

The proposed guidelines, policy statements, and commentary are the products of an extended period of analysis, consultation, and public comment. In 1988, the Commission completed a study of the sentencing of organizations in the federal courts from 1984 to 1987 and a survey of the literature relating to sanctions for organizations. In July 1988, the Commission distributed for public comment a discussion draft of sentencing materials. In 1989, the Commission updated its empirical analysis with a study of the sentencing of organizations and associated individuals in the federal courts in 1988. In November 1989, the Commission published for public comment Preliminary Draft Sentencing Guidelines for Organizational Defendants. Public hearings have been held on October 11, 1988, in New York City, on December 2, 1988, in Pasadena, California, and on February 14, 1990 in Washington, DC. In addition to comment from the general public, the Commission has received recommendations regarding organizational sanctions from the United States Department of Justice, from a working group of private defense attorneys appointed by the Commission's Chairman to advise the Commission regarding practical principles for sentencing organizations, and from the Commission staff. The draft guidelines, policy statements, and commentary draw upon, and have benefitted from, staff work, aid from outside experts, and the extensive public comment that has been received to date.

Availability of Background Materials

Background materials regarding the proposed guidelines, policy statements, and commentary are available for inspection at the Commission's offices. The background materials include empirical studies, a memorandum by the Commission staff working group on organizational sanctions regarding the methodology used to develop offense level tables and assign weights for mitigating factors in draft chapter eight, and public comment received by the Commission.

Format of Proposed Amendments

The proposed amendments are presented as a new chapter to the United States Sentencing Commission Guidelines Manual: Chapter Eight—Sentencing of Organizations. For certain guideline sections, alternatives are set forth. Commentators are encouraged to comment upon these alternatives. In addition, the Commission has listed Specific Issues for Comment at the end of the draft Chapter Eight to focus special attention on particular issues.

At the request of the Attorney General, an ex-officio member of the Commission, a draft of organizational guidelines prepared by the Department of Justice is printed below. Comments on all aspect of this proposal are also welcome.

Scope of Public Comment

Public comment is requested regarding any aspect of current or proposed guidelines, policy statements, and commentary that apply to the sentencing of convicted organizations. In addition, the Commission requests comment regarding the specific alternatives set forth in the proposed amendments, the Specific Issues for Comment listed at the end of the draft Chapter Eight, and the proposed organizational guidelines prepared by the Department of Justice.

William W. Wilkins, Jr.,
Chairman.

CHAPTER EIGHT—SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are held to a strict standard of vicarious criminal liability for offenses committed by their agents. At the same time, the individual agents remain responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual co-defendants who are agents of the organization. If convicted, individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment for offenses committed by organizations, adequate deterrence to organizational criminal conduct, and incentives for organizations to maintain internal mechanisms for deterring, detecting, and reporting criminal conduct.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations.

Commentary

Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. Organizations include corporations, unions, associations, and partnerships.

§ 8A1.2. Application Instructions—Organizations

(a) Determine the guideline section in chapter Two most applicable to the offense of conviction. See § 1B1.2 (Applicable Guidelines). The Statutory Index (appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply part D of chapter Three (Multiple Counts) to group the various counts and adjust the offense level accordingly.

(d) Determine from part B of this chapter (Remedying Harm from Criminal Conduct) the sentencing requirements and options relating to

restitution, remedial orders, community service, and notice to victims.

(e) Determine from part C of this chapter (Fines) the sentencing requirements and options relating to fines.

(f) Determine from part D of this chapter (Organizational Probation) the sentencing requirements and options relating to probation.

(g) Determine from part E of this chapter (Special Assessments, Forfeitures, and Costs) the sentencing requirements relating to special assessments, forfeitures, and costs.

(h)(1) The provisions of chapter One, part B (General Application Principles) apply to determinations under this chapter, except that subsections (a)–(g) above apply in lieu of § 181.1 (Application Instructions).

(2) The provisions of chapter Six (Sentencing Procedures and Plea Agreements) apply to proceedings in which the defendant is an organization.

Commentary

Guidelines and policy statements set forth in this chapter apply when the defendant is an organization. Guidelines and policy statements from other chapters that apply when the defendant is an organization are referenced in this chapter. Guidelines and policy statements not referenced in this chapter, directly or indirectly, do not apply when the defendant is an organization; e. g., the policy statements in chapter Seven (Violations of Probation and Supervised Release) do not apply to organizations.

Part B—Remedying Harm From Criminal Conduct

Introductory Commentary

As a general principle, the court should require that the defendant take all necessary steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the instant offense.

A restitution order or an order of probation requiring restitution can be used to compensate identifiable victims of the offense. A remedial order or an order of probation requiring community service can be used to reduce or eliminate the harm threatened, or to repair the harm caused by the offense, when that harm or threatened harm would otherwise not be remedied. An order of notice to victims can be used to notify unidentified individual victims of the offense.

§ 8B1.1. Restitution—Organizations

(a) Except as provided in subsection (b) below, the court shall—

(1) enter a restitution order pursuant to 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized pursuant to 18 U.S.C. 3663–3664 but for the fact that the offense of conviction was not an offense under title 18 or 49 U.S.C.1472 (h), (i), (j), or (n), sentence the organization to probation with a condition requiring restitution.

(b) Subsections (a) (1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to victims through the criminal process.

Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation. The provisions of 18 U.S.C. 3663–3664 require a sentence of restitution for convictions under title 18 or under 49 U.S.C. 1472 (h), (i), (j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims," 18 U.S.C. 3663(d). This guideline extends the requirement of restitution to offenses other than Title 18 and Title 49, section 1472 (h), (i), (j) and (n) offenses. In such cases, restitution shall be provided as a condition of a sentence of probation.

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process relative to the need to provide restitution to any victims. In determining whether the complication and prolongation of the sentencing process outweigh the need to provide compensation to victims through the criminal process, the court may consider civil or administrative remedies available. However, since 18 U.S.C. 3663(e) (2) provides that restitution ordered under that provision would be set off against a later recovery of compensatory damages in a civil proceeding, a court should order restitution to provide compensation if it is uncertain about compensation through administrative or civil proceedings, so long as the fashioning of a restitution order would not unduly complicate and prolong the sentencing process.

In a case involving multiple defendants, restitution may be apportioned on the basis of relative culpability so long as the ability of the victims to obtain restitution is not thereby compromised. In order to protect victims' ability to obtain compensation, the court should ordinarily make the obligation to pay restitution joint and several. If the court decides to apportion restitution, each defendant's restitution order should be conditional and subject to revision by the court, so that the court can revise the restitution orders in the event that one or more defendants is unable to pay the restitution ordered.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

(a) To the extent not addressed under § 8B1.1 (Restitution—Organizations), a remedial order, imposed as a condition of probation, may require the organization to remedy the harm caused by the instant offense and to reduce or eliminate the risk that the instant offense will cause further harm. Such an order should be entered unless:

(1) Available civil or administrative remedies appear more appropriate; or

(2) The expected cost of the remedial action is not justified in light of the nature of the harm caused or, in the case of threatened future harm, the nature of the harm and the likelihood of that harm resulting.

(b) If the magnitude of expected future harm can be reasonably estimated, the court may require the defendant to create a trust fund sufficient to address that expected harm.

Commentary

The purposes of a remedial order are to remedy harm that has already occurred and to prevent future harm to victims. A remedial order requiring corrective action by the defendant may be necessary to prevent future injury from the instant offense, e.g., product recalls for food and drug violations or cleanup orders for environmental violations.

§ 8B1.3. Community Service—Organizations (Policy Statement)

An organization may be ordered to perform community service as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense.

Commentary

An organization can perform community service only by employing its resources or paying its employees or others to do so. Thus, an order that an organization perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. In some instances, however, the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense. Community service directed at repairing damage may, in lieu of, or in connection with, a restitution or remedial order, provide an efficient means of remedying the harm caused.

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a) (2).

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Commentary

The provisions of § 5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

Part C—Fines

1. Determining the Fine—Criminal Organizations

§ 8C1.1. Determining the Fine—Criminal Organizations

If, upon consideration of the nature and circumstances of the instant offense and the history and characteristics of the defendant, the court determines that the organization operated primarily for a criminal purpose or primarily by criminal means, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of all of its net assets. When this section applies, §§ 8C2.1 (Determining the Fine Guideline Range—Organizations), 8C2.2 (Determination of the Fine Within the Guideline Range), and 8C4.1 (Fines Paid by Owners of Closely Held Organizations) do not apply.

Commentary

Application Note:

1. "Net assets," as used in this section, means the assets remaining after legitimate claims against assets by known bona fide creditors.

Background:

This provision addresses the case in which the court, based upon an examination of the nature and circumstances of the instant offense taken together with the history and characteristics of the defendant, determines that the organization was operated as a front for a criminal scheme (e.g., a scheme that was designed to commit fraud) or operated primarily by criminal means (e.g., a hazardous waste disposal business that had no legitimate means of disposing of hazardous waste).

2. Determining the Fine—Non-Criminal Organizations

§ 8C2.1. Determining the Guideline Fine Range—Organizations

(a) The guideline fine range shall be determined under subsections (b)–(f) below.

(b) (1) The minimum of the guideline fine range shall be calculated by multiplying the amount determined under subsection (c) below by the minimum fine multiplier determined under subsection (e) below, and by adding thereto the amount, if any, from subsection (f) below.

(2) The maximum of the guideline fine range shall be calculated by multiplying the amount determined under subsection (c) below by the maximum fine multiplier determined under subsection (e) below, and by adding thereto the amount, if any, from subsection (f) below.

(c) Subject to subsection (d), determine the greater of:

(1) The amount from the table below corresponding to the offense level determined under § 8A1.2 (Application Instructions-Organizations); [1]

(2) The gross pecuniary loss caused by the offense conduct of the defendant; or

(3) The gross pecuniary gain to the defendant from the offense.

Alternative A: Upper Bound Offense Level Amounts

(mandates the maximum single-count statutory fine absent mitigating factors at offense levels 4, 16, and 38; at these offense levels the court would be required, even when using the minimum multiplier, to impose the statutory maximum fine whenever no mitigating factors applied)

Offense level	Amount
4 or less	$5,000
5	7,000
6	10,000
7	14,000
8	19,500
9	27,000
10	37,500
11	52,000
12	71,000
13	98,000
14	135,000
15	185,000
16	250,000
17	340,000
18	460,000
19	620,000
20	830,000
21	1,100,000
22	1,500,000
23	2,000,000
24	2,650,000
25	3,550,000
26	4,650,000
27	6,100,000
28	8,100,000
29	10,500,000
30	14,000,000
31	18,000,000
32	23,500,000
33	30,000,000
34	39,500,000
35	50,000,000
36	64,000,000
37	82,000,000
38	105,000,000
39	130,000,000
40 or more	165,000,000

Alternative B: Lower Bound Offense Level Amounts

(minimally accommodates the maximum single-count statutory fine at offense levels 4, 16, and 38; at these offense levels, the court would be able, when using the maximum multiplier, to impose the statutory maximum fine so long as no mitigating factor applied)

Offense level	Amount
4 or less	$3,300
5	4,650
6	6,600
7	9,300
8	13,000
9	18,000
10	25,500
11	35,000
12	48,500
13	66,000
14	91,000
15	125,000
16	165,000
17	225,000
18	300,000
19	400,000
20	535,000
21	710,000
22	930,000
23	1,200,000
24	1,600,000
25	2,100,000
26	2,700,000
27	3,450,000
28	4,450,000
29	5,700,000
30	7,200,000
31	9,100,000
32	11,500,000
33	14,500,000
34	18,000,000
35	22,000,000
36	27,000,000
37	33,500,000
38	41,000,000
39	50,000,000
40 or more	60,000,000

Alternative C: Average Offense Level Amounts

(Values derived by averaging and rounding off the numbers calculated in constructing the upper and lower bound offense level tables)

Offense level	Amount
4 or less	$4,150
5	5,900
6	8,000
7	11,500
8	16,000
9	22,500
10	31,500
11	43,500
12	60,000
13	82,000
14	110,000
15	160,000
16	210,000
17	280,000
18	380,000
19	510,000
20	685,000
21	910,000
22	1,200,000
23	1,600,000
24	2,100,000
25	2,800,000
26	3,700,000
27	4,800,000
28	6,300,000
29	8,100,000
30	10,500,000

[1] Three alternatives for offense level amounts are shown.

Offense level	Amount
31	13,500,000
32	17,500,000
33	22,000,000
34	28,500,000
35	36,000,000
36	45,500,000
37	57,500,000
38	72,500,000
39	91,000,000
40 or more	115,000,000

(d) (1) Neither gross pecuniary loss nor gross pecuniary gain shall be used for the determination of the guideline fine range if the calculation of loss or gain would unduly complicate or prolong the sentencing process.

(2) [2][See footnote.]

(e) (1) The minimum and maximum fine multipliers are those specified in the table below corresponding to the applicable mitigation score as determined under subsection (e)(2).

Multiplier	Mitigation score	Minimum multiplier	Maximum
	0	2.00	3.00
	1	1.80	2.70
	2	1.60	2.40
	3	1.40	2.10
	4	1.15	1.80
	5	0.95	1.50
	6	0.75	1.15
	7	0.55	0.85
	8	0.35	0.55
	9	0.15	0.25

(2) The mitigation score is determined by totaling the points specified for each of the applicable factors set out in subdivisions (A) through (D) below.

(A) If both apply, use the greater:

(i) Add 4 points if the management of the organization voluntarily and promptly reported the offense to appropriate governmental authorities prior to public disclosure, the commencement of a government investigation, and the imminent threat of disclosure of the wrongdoing; or

(ii) Add 3 points if the organization prior to the offense had, and after the offense continues to maintain, an effective program to prevent and detect violations of law.

(B) Add 2 points if, despite due diligence by the organization to detect violations of law, the offense occurred without the knowledge of any person who held a policy-setting or legal compliance position within the organization or who exercised substantial managerial authority in carrying out the policies of the organization.

Provided, that no points shall be added pursuant to this subdivision if any person who held a policy-setting or legal compliance position within the organization or who exercised substantial managerial authority in carrying out the policies of the organization became aware of the offense and the organization subsequently failed to make a timely report of the offense to appropriate government authorities.

(C) Add 2 points if the organization cooperated fully with the government's investigation of the offense.

(D) Add 1 point if the organization, in a timely manner prior to adjudication of guilt, accepted responsibility for the offense, and took prompt and reasonable steps to remedy the harm caused by the offense.

(f) Gross Pecuniary Gain not Subject to Disgorgement. Determine the amount of any gross pecuniary gain to the defendant from the offense that has not been and will not otherwise be disgorged or taken from the defendant. In determining whether the gain will be disgorged, the fine determined under subsections (c), (d), and (e) above is not to be counted.

Commentary

Application Notes:

1. The court is not required to base the fine on the greater of gross pecuniary loss or gross pecuniary gain if the determination of loss or gain would unduly complicate or prolong the sentencing process. 18 U.S.C. 3571(d). Nevertheless, in certain types of cases (e.g., fraud, theft, and tax offenses), the court must ordinarily approximate the loss caused by the offense in order to determine the applicable offense level. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

2. "Gross pecuniary loss," as used in subdivision (c) (1) (A) derives from 18 U.S.C. 3571(d) and is equivalent to the term "loss" as used in chapter Two (Offense Conduct). See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). In a case of an attempted or partially completed offense, or a conspiracy to commit an offense, "gross pecuniary loss" is to be determined in accordance with the principles of § 2X1.1 (Attempt, Solicitation, or Conspiracy).

3. If the offense involved multiple participants (i.e., multiple organizations, or an organization and unassociated individuals) and the causation of the loss can be apportioned among the participants, the amount of the loss calculated pursuant to subsection (c) (1) is the amount of the loss caused by the defendant and its agents. In many cases involving multiple organizational offenders (e.g., price-fixing cases), attribution of loss among the various offenders based on causation will be determinable. If, however, there were multiple offenders and there is no clear causative link between each organization's conduct and the magnitude of harm caused, loss shall, to the extent feasible, be apportioned on the basis of relative culpability. If apportionment of loss on the basis of causation or culpability is not feasible, in part or in whole, any portion of the loss that cannot be apportioned shall be attributed to each participant.

4. "Gross pecuniary gain," as used in subsections (c) (2) and (f) derives from 18 U.S.C. 3571(d) and means the additional before-tax profit to the defendant resulting from the relevant offense conduct. The gain can result either from additional revenue or from cost savings. An example of pecuniary gain resulting from additional revenue is provided by a case of odometer tampering. In such a case, the gross pecuniary gain is the additional revenue earned because the automobiles appeared to have less mileage, i.e., the difference between the price received or expected for the automobiles with the apparent mileage and the fair market value of the automobiles with the actual mileage. An example of pecuniary gain resulting from cost savings is provided by a case involving illegal disposal of hazardous waste. In such a case, the gross pecuniary gain is the amount saved because the hazardous waste was disposed

[2] This is a place marker for a section that will identify sets of cases in which the purposes of punishment would not ordinarily be advanced by basing a fine on the amount of gross pecuniary loss caused by an offense. Alternative approaches could be used. One alternative is:

"(2) Gross pecuniary loss shall not be used for the determination of the guideline fine range if:

(A) The organization qualifies for the mitigating factor set forth in subdivision (e)(2)(A)(ii); or

(B) The offense conduct that triggered the organization's criminal liability involved neither intentional, knowing, nor reckless criminal conduct."

A second alternative is:

"(2) Gross pecuniary loss shall not be used for the determination of the guideline fine range if:

(A) The extent of the gross pecuniary loss was substantially greater than would have been anticipated by a reasonable person acting under the circumstances in which the [organization] [individual agent or agents of the organization who committed the offense] acted; or

(B) The offense conduct that triggered the organization's criminal liability involved neither intentional, knowing, nor reckless criminal conduct."

A third alternative is to revise § 8C2.1(c)(1) to give courts greater flexibility in setting fines based on gross pecuniary loss, gross pecuniary gain, or the amount derived from the offense level table. For example, the following language might be used:

"(c) Select, from the following three amounts, the amount most appropriate to achieve the purposes of sentencing as set forth in 18 U.S.C. 3553 (a)(2):

(1) The amount from the table below corresponding to the offense level determined under § 8A1.2 (Application Instructions-Organizations);

(2) The gross pecuniary loss caused by the offense conduct of the defendant; or

(3) The gross pecuniary gain to the defendant from the offense."

Finally, the Commission might specify particular offenses or types of offenses for which a fine based on gross pecuniary loss would not ordinarily be appropriate to achieve the purposes of sentencing.

illegally rather than in accordance with legal requirements.

5. In a case involving multiple wrong-doers (in addition to the defendant and its agents) in which the gain has not been divided among the wrong-doers or the manner of the division is unknown, the gross pecuniary gain to all participants shall be attributed to each participant.

6. In order for subdivision (e)(2)(A)(i) to apply, the report must be timely and must be made under the direction of the management of the organization. Timeliness will depend on when the organization was able to determine with diligent inquiry and a reasonable degree of certainty that an offense had been committed.

7. An "effective program to prevent and detect violations of the law," as used in subdivision (e) (2) (A) (ii), means a program that has been reasonably designed, implemented, and enforced so that it will generally be effective in preventing and detecting criminal conduct. Failure to prevent or to detect the instant offense does not, by itself, mean that the program was not effective.

The hallmark of an effective program under subdivision (e) (2) (A) (ii) is that the organization exercised, prior to the offense, and continues to exercise due diligence in seeking to prevent and detect criminal conduct by its agents. Due diligence requires at a minimum that the organization has taken at least seven general types of steps to assure compliance with the law. First, the organization must have had policies defining the standards and procedures to be followed by its agents and employees. Second, a specific high-level person within the organization must have been designated and assigned ultimate responsibility to ensure compliance with those standards and procedures. Third, the organization must have used due care not to delegate significant discretionary authority to persons whom the organization knew, or should have known, had a propensity to engage in illegal activities. Fourth, the organization must have effectively communicated its standards and procedures to agents and employees, e.g., by requiring participation in training programs and by the dissemination of publications. Fifth, the organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to ferret out criminal conduct by its agents and employees and by having in place and publicizing a reporting system whereby agents and employees can report criminal conduct within the organization without fear of retribution. Sixth, the standards must have been consistently enforced through appropriate disciplinary mechanisms. Seventh, after an offense has been detected, the organization must have taken all reasonable steps to prevent further similar offenses. Such steps should include any necessary modifications to the organization's program to prevent and detect violations of law and appropriate discipline of individuals responsible for the offense and, as appropriate, the individuals responsible for the failure to detect the offense. Discipline of the individuals responsible for the offense is a necessary step to prevent a recurrence of similar offenses, but the form of discipline that will be appropriate will depend on the facts of the case and can range from discharge to verbal or written censure.

In determining whether an organization has exercised due diligence in preventing and detecting criminal conduct, the court should also consider any applicable industry practice and any relevant guidelines issued by regulatory agencies.

The precise steps necessary for an organization to qualify for the mitigating factor under subdivision (e) (2) (A) (ii) will depend upon a number of factors, e.g., the size of the organization, the nature of its business, and the past history of the organization. The requisite degree of formality of the program to prevent and detect violations of law will depend upon the size of the organization; the larger the organization, the more formal the program to prevent and detect violations of law would typically be expected to be. Normally, organizations should have had written policies defining the standards and procedures to be followed by its employees. If, because of the nature of the organization's business, there was a substantial risk that certain types of offenses would occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization dealt with toxic substances, it must have had standards and procedures designed to ensure that those substances were properly handled at all times. If the organization had sales personnel who had significant flexibility in setting prices, the organization must have had standards and procedures designed to prevent and detect price-fixing, allocation of markets, etc. This mitigating factor will not [ordinarily] apply if the organization has been guilty of prior similar misconduct; such an organization was on notice that such misconduct could occur within the organization and recurrence of similar misconduct [ordinarily] means that the organization has not taken reasonable steps to ensure that future similar misconduct was not committed.

An organization will not ordinarily qualify for the mitigating factor under subdivision (e) (2) (A) (ii) unless it also qualifies for the mitigating factor set forth in subdivision (e)(2)(B).

8. An organization does not qualify for the reduction under subdivision (e) (2) (B) if a person within the organization holding a policy-setting or legal compliance position, or a person within the organization who exercised substantial managerial authority in carrying out the policies of the organization, either knew or, through the exercise of due diligence, should have known of the offense. Either willful lack of knowledge or lack of diligence in seeking to detect crimes precludes the applicability of this mitigating factor.

Persons within the organization holding legal compliance positions include inside counsel and any other person who has significant responsibility for ensuring that the organization complies with requirements imposed by law.

An organization cannot qualify for the mitigating factor set forth in subdivision (e) (2) (B) unless it also meets the conditions for the mitigating factor set forth in subdivision (e) (2) (A) (ii). Failure to have an effective program to prevent and detect violations of law means that the organization has not used due diligence to detect violations of law.

9. The proviso to subdivision (e) (2) (B) is applicable when an offense is detected but not reported in a timely manner. Timeliness will depend on when the organization was able to determine with diligent inquiry and a reasonable degree of certainty that an offense had been committed.

10. In order for subdivision (e)(2)(C) to apply, cooperation must be both timely and thorough. To be timely, the cooperation must begin essentially at the same time as the organization is officially notified of a criminal investigation. To be thorough, the cooperation should generally be sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the criminal conduct. If, despite some degree of cooperation, there is substantial remaining uncertainty regarding the role of management in the commission of the offense, subdivision (e) (2) (C) generally will not apply.

11. The conditions that will satisfy the requirements for the mitigating factor specified by subdivision (e) (2) (D) will vary from case to case. In most cases, the defendants should have made full voluntary restitution in advance of sentencing. In some cases, however, making full voluntary restitution may not be reasonable because, for example, the amount of injury may legitimately be disputed or identification of all victims may require additional time. In such cases, the organization should have taken all necessary steps to make restitution not subject to reasonable dispute or delayed due to a lack of information.

In a case that does not involve identifiable harm that can be remedied, an organization can nevertheless qualify for the mitigating factor specified by subdivision (e) (2) (D) if it clearly demonstrates a recognition and affirmative acceptance of responsibility for the offense.

Entry of a plea of guilty prior to the commencement of trial, combined with truthful admission of involvement in the offense and related conduct, will satisfy the requirement of a recognition and affirmative acceptance of responsibility for the purposes of subdivision (e) (2) (D), unless outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility. The requirement of a recognition and affirmative acceptance of responsibility is not satisfied by a defendant that puts the government to its burden of proof at trial by denying the essential elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for this mitigating factor. In rare situations, a defendant may clearly demonstrate an acceptance of responsibility for its criminal conduct even though it exercises its constitutional right to a trial. This may occur, for example, where a

defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to its conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pretrial statements and conduct.

12. Subsection (f) is designed to ensure that the amount of any gain that has not previously been disgorged or that will not otherwise be taken from the defendant is added to the punitive portion of the fine calculated pursuant to subsections (c), (d), and (e). Subsection (f) will typically apply in cases in which the defendant received gain from an offense but restitution or remedial efforts will not be required because the offense did not result in harm to identifiable victims, e.g., money laundering offenses, obscenity offenses, regulatory-reporting offenses, and violations of export controls. Money spent to remedy the adverse effects of the offense, e.g., clean-up costs for an environmental offense, should be considered as disgorged gain. Thus, if the cost of remedial efforts equals or exceeds the gain from the offense, the organization has realized no net gain from the offense and no addition should be made under subsection (f).

Background: This guideline provides for the determination of the upper and lower limits of the fine guideline range. The general design of the section is to set fine ranges based upon a combination of the seriousness of the offense (as measured by the loss caused by the offense, the gain from the offense, or the applicable offense level) and factors that indicate the organization's degree of culpability of the organization (as indicated by the applicability or inapplicability of the various mitigating factors). The mitigating factors are designed to reflect the organization's culpability both prior to and subsequent to the commission of an offense and to provide incentives for organizations to take steps to prevent and detect offenses, report offenses detected by the organization, cooperate with government investigations, accept responsibility for the offense, take prompt and reasonable steps to remedy the harms caused by offenses, and take all reasonable steps to prevent a recurrence of similar offenses.

Note: The Commission is also considering the following alternative to § 8C2.1(e) and related alternatives in the guidelines and policy statements governing probation. The Commission welcomes comment on the following alternatives.

Alternative § 8C2.1(e):

(e) (1) The minimum and maximum fine multipliers are those specified in the table below corresponding to the applicable mitigation score as determined under subsection (d) (2).

Maximum multiplier	Mitigation score	Minimum multiplier	
	0	2.00	3.00
	1	1.80	2.70
	2	1.60	2.40
	3	1.40	2.10
	4	1.15	1.80
	5	0.95	1.50
	6	0.75	1.15
	7	0.55	0.85
	8	0.35	0.55

(2) The mitigation score is determined by totaling the points specified for each of the applicable factors set out in subdivisions (A) through (C) below.

(A) If more than one applies, use the greatest:

(i) Add 4 points if the management of the organization voluntarily and promptly reported the offense to appropriate governmental authorities prior to public disclosure, the commencement of a government investigation, and the imminent threat of disclosure of the wrongdoing; or

(ii) Add 2 points if the organization prior to the offense had, and after the offense continues to maintain, an effective program to prevent and detect violations of law, and no policy-setting or legal compliance official within the organization or other person who exercised substantial managerial authority in carrying out the policies of the organization had knowledge of the offense, or would have had such knowledge had such person performed his or her responsibilities as contemplated by the compliance plan; or

(iii) Add 1 point if other factors suggest that the organization exercised due diligence to prevent and detect violations of law of a character reasonably similar to the instant offense.

(B) Add 2 points if the organization cooperated fully with the government's investigation of the offense.

(C) Add 2 points if the organization:

(i) In a timely manner, prior to the adjudication of guilt, accepted responsibility for the offense, and took prompt and reasonable steps to remedy the harm caused by the offense; and

(ii) Commenced, prior to sentencing, an internal investigation into responsibility for the offense, pursuant to which it commits to take appropriate disciplinary action against officers, employees, or other agents found to have been responsible, including through negligent inattention, for the commission of the offense.

Note: As a part of the foregoing alternative, the following possible additions to the guideline sections dealing with probation (see below) are being considered.

Alternative: Additional Subsection § 8D1.1(a)(4):

(4) If any fine imposed (or which would have been imposed) on the organization is reduced based on the presence of mitigating factors specified in §§ 8C2.1(e)(2)(A)(ii), 8C2.1(e)(2)(A)(iii), 8C2.1(e)(2)(c), or 8C5.18.

Alternative: Additional Subsection § 8D1.3(f):

(f) If probation is ordered under § 8d1.1(a)(4), it is recommended that the following conditions be imposed:

(1) The organization shall develop and submit to the court a compliance plan as provided in § 8D1.3(e)(l), shall make periodic reports to the court or probation officer as provided in § 8D1.3(e)(3), and shall submit to reasonable inspections and interrogations as provided in § 8d1.3(e)(4).

(2) The organization shall comply with all lawful regulations and orders promulgated by those federal, public, or state administrative agencies or other public authorities specified by the court whose regulatory concerns are reasonably related to the offense.

(3) The organization shall complete in good faith any internal investigation undertaken pursuant to § 8C2.1(e)(2)(C)(ii) and shall notify the court of any actions taken based on it and explain why it deems such actions sufficient.

Alternative: Additional Subsection to § 8d1.4:

(b) If probation is ordered under § 8d1.1(a)(4) and a new offense is committed within twenty-four months of the conviction of the instant offense, the Commission recommends that probation be revoked and a fine be imposed equal to the amount by which the fine was reduced because of the organization's steps to prevent and detect violations of law.

End of Alternative to § 8C2.1(e) and Related Alternatives Regarding Probation

§ 8C2.2. Determination of the Fine Within the Guideline Range (Policy Statement)

(a) Under 18 U.S.C. 3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;

(3) The defendant's income, earning capacity, size, and financial resources;

(4) The burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;

(5) Any pecuniary loss inflicted upon others as a result of the offense;

(6) Whether the defendant can pass on to consumers or other persons the expense of the fine; and

(7) Any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:

(1) The extent to which steps were taken by the defendant to prevent detection of the offense;

(2) Any prior criminal, civil, or administrative adjudication of misconduct;

(3) The defendant's role in the offense;

(4) Partial, but incomplete, satisfaction of the requirements for one of the mitigating factors set forth in § 8C2.1 (Determining the Fine Guideline Range—Organizations);

(5) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6) Any nonpecuniary loss caused or threatened by the offense;

(7) The degree of culpability of the organization's agents who committed the offense as evidenced by their mental state with respect to the offense, i.e., whether the organization's agents acted intentionally, knowingly, recklessly, negligently, or triggered the organization's criminal liability solely on a strict liability basis; and

(8) Any other pertinent equitable considerations.

Commentary

Background: Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a). 18 U.S.C. 3572(a) lists two other factors—whether restitution is ordered or made and the amount of such restitution; and the need to deprive the defendant of illegally obtained gains from the offense—that are not listed in this guideline because they are fully taken into account by other guidelines, specifically § 8B1.1 (Restitution—Organizations) and § 8C2.1(e) (Gross Pecuniary Gain not Subject to Disgorgement).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b)(1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

A fine should be set that reflects both the seriousness of the offense and the culpability of the defendant. In some cases, neither the loss, gain, nor offense level may adequately measure the seriousness of the offense. In such cases, an upward departure from the applicable fine range may be appropriate. Subpart 5 of this chapter lists aggravating factors that the Commission has identified that may warrant an upward departure from the applicable guideline fine range. Similarly, in some cases the applicable mitigating factors may not adequately measure the lack of culpability of the organization. Subpart 5 of this chapter also lists mitigating factors that the Commission has identified that may warrant a downward departure from the applicable guideline fine range.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine range required by the guidelines shall be that determined under § 8C1.1 (Determining the Fine—Criminal Organizations) or § 8C2.1 (Determining the Fine Guideline Range—Organizations), as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute, the minimum fine required by statute shall be the guideline fine.

Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute and any minimum fine required by statute for the count or counts of conviction. The general statutory provisions governing a sentence of a fine are set forth in 18 U.S.C. 3571(c).

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count (an aggregate maximum authorized fine of $1,000,000).

§ 8C3.2. Payment of the Fine—Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years. 18 U.S.C. § 3572(d).

§ 8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court may impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1) Imposition of the fine required by § 8C1.1 or § 8C2.1, as applicable, would impair its ability to make restitution to victims; or

(2) (A) The organization is not a criminal organization under § 8Cl.1 (Determining the Fine—Criminal Organizations); and

(B) The organization is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the minimum fine required under § 8C2.1 (Determining the Fine Guideline Range—Organizations).

(b) The court may reduce the fine under this section only to the extent necessary to take into account the factors set forth in subsections (a)(1) and (a)(2)(B).

Commentary

Application Note:

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under § 8C3.2 (Payment of the Fine—Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a)(1) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

4. Offset

§ 8C4.1. Fines Paid by Owners of Closely Held Organizations

The fine imposed upon a closely held organization shall be offset by the amount of any fines paid by the owners of the organization arising out of the offense conduct from which the instant offense arose.

Commentary

Application Note:

1. For purposes of this section, an organization is closely held, regardless

of its size, when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

Background: Many organizational defendants are closely held corporations. For practical purposes, most closely held organizations are the alter egos of their owner-managers. In the case of criminal conduct by a closely held corporation, the organization and the culpable individual(s) may both be convicted. As a general rule, the allocation of appropriate punishment may be achieved by offsetting the fine imposed upon the organization by the amount of any fines paid by the owner-managers in their individual capacities.

5. Departures

Introductory Commentary

18 U.S.C. § 3553(b) sets forth the general statutory provisions governing departures. Departure may be warranted if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." This subpart sets forth certain factors that, in connection with certain offenses, may not be adequately taken into consideration. Departure is not necessarily warranted, however, merely because one of these factors is present. In deciding whether departure is warranted, the court should consider the extent to which that factor is already adequately taken into consideration by the guidelines.

§ 8C5.1. Grounds for Departure Listed in Chapter Five (Policy Statement)

To the extent that any policy statement from chapter Five, part K (Departures) is relevant to the defendant, a departure from the applicable guideline range may be warranted.

Commentary

Factors listed in chapter Five, part K (Departures) that are particularly applicable to organizational defendants are also listed in this subpart. Other factors listed in chapter Five, part K may also be applicable in particular cases.

§ 8C5.2. Risk of Death or Serious Bodily Injury (Policy Statement)

If the offense resulted in death or serious bodily injury or involved a foreseeable risk of death or serious bodily injury of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.3. Threat to National Security (Policy Statement)

If the offense constituted a risk to national security of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

If an environmental offense resulted in limited pecuniary loss and gain but created a threat to the environment, an upward departure from the applicable guideline range may be warranted if that threat is not adequately measured by the offense level. If an upward departure is warranted, the extent of the departure should depend, among other factors, on the extent to which the harm was intended or knowingly risked.

§ 8C5.5. Threat to a Market (Policy Statement)

If the offense presented a substantial risk to the integrity or continued existence of a market of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

This section is potentially applicable to both private markets (e.g., a financial market or a market for consumer goods) and governmentally created markets (e.g., government contracting).

§ 8C5.6. Violation of Judicial Order or Condition (Policy Statement)

If the offense constituted a violation of a judicial order or injunction, or a condition of probation of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.7. Obstruction of Justice (Policy Statement)

If an agent of the organization who held a policysetting or legal compliance position or who exercised substantial managerial authority in carrying out the policies of the organization willfully obstructed, or willfully aided, abetted, or encouraged obstruction of the investigation or prosecution of the offense and that conduct is of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

Section 3C1.1 (Willfully Obstructing or Impeding Proceedings) is not applicable to organizations. If a high-level agent of the defendant engages in conduct that, in the case of an individual defendant, would result in an increase in the offense level under § 3C1.1, an upward departure may be warranted.

§ 8C5.8. Official Corruption (Policy Statement)

If the defendant, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official and that conduct is of a type, or to a degree, not adequately taken into account by the applicable guideline range, an upward departure from the applicable guideline range may be warranted.

§ 8C5.9. Criminal Record (Policy Statement)

If the defendant had a prior criminal record, an upward departure from the applicable guideline range may be warranted.

Commentary

[The extent to which a criminal record may justify departure will depend upon a number of factors, including, for example, the degree of similarity between the conduct upon which the instant offense is based and the conduct upon which the prior offense was based, the recentness of the prior offense, and the extent to which the organization failed to take steps to prevent similar future criminal conduct.]

§ 8C5.10. Prior Similar Misconduct (Policy Statement)

If the defendant had previously engaged in similar misconduct, an upward departure from the applicable guideline range may be warranted.

Commentary

[The extent to which prior similar misconduct may justify departure will depend upon a number of factors, including, for example, the recentness of the prior misconduct and the extent to which the organization failed to take steps to prevent similar future misconduct. For this upward departure to apply, the court should be satisfied by reliable evidence of the previous misconduct e.g., a prior civil or administrative adjudication.]

§ 8C5.11. Vulnerable Victims (Policy Statement)

If the offense targeted vulnerable victims, an upward departure from the

applicable guideline range may be warranted.

Commentary

Section 3A1.1 (Vulnerable Victim) is not applicable to organizations. Accordingly, an upward departure may be warranted in cases in which § 3A1.1 would be applicable if the defendant were an individual.

§ 8C5.12. Aggravating Role in the Offense (Policy Statement)

If the defendant and its agents took a leading role relative to other participants, an upward departure from the applicable guideline range may be warranted.

Commentary

Section 3B1.1 (Aggravating Role) is not applicable to organizations. In circumstances analogous to those in which § 3B1.1 would be applicable, an upward departure may be warranted. An upward departure based upon this factor is more likely to be appropriate when the guideline fine range is determined from the offense level table, rather than from gross pecuniary loss or gross pecuniary gain, because a defendant's role in the offense may be adequately reflected by its pecuniary gain from the offense or the amount of loss caused by its involvement in the offense.

§ 8C5.13. Public Entity (Policy Statement)

If the defendant is a public entity, a downward departure from the applicable guideline range may be warranted.

§ 8C5.14. Offenses of Which Members or Beneficiaries of the Defendant are Victims (Policy Statement)

If the members or beneficiaries of the organization are direct victims of the offense, a downward departure from the applicable guideline range may be warranted.

Commentary

If the members or beneficiaries of an organization are direct victims of an offense, imposing a punitive fine upon the organization may increase the burden upon the victims of the offense without achieving an offsetting deterrent effect. In such cases, a punitive fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted for embezzlement of pension funds. This policy statement does not apply merely because, as will commonly occur, the organization's commission of the offense has brought about harm to the organization's members or beneficiaries (e.g., a decline in the value of an organization because of criminal sanctions imposed or because of the indirect injury to the organization's reputation resulting from public awareness of the criminal conduct). Rather, it is intended to address only the unusual situation in which the members or beneficiaries were the direct victims of the offense itself.

§ 8C5.15. New Owners (Policy Statement)

If an organization is owned entirely by persons who acquired the organization subsequent to the occurrence of the offense without any knowledge that the offense had occurred, a downward departure from the applicable guideline range may be warranted.

Commentary

In a case in which the ownership of an organization has changed completely subsequent to the occurrence of an offense and the new owners had no knowledge of the prior offense, a fine within the guideline range may not be necessary to achieve just punishment and adequate deterrence. In such cases, a downward departure may be appropriate. The new owners' conduct following the discovery of the offense would, however, be relevant to the determination of whether to depart and the extent of any departure.

§ 8C5.16. Mitigating Role in the Offense (Policy Statement)

If the organization and its agents were minor or minimal participants in the offense, a downward departure from the guideline fine range may be warranted.

Commentary

Section 3B1.2 (Mitigating Role) is not applicable to organizations. In circumstances analogous to those in which § 3B1.2 would be applicable, a downward departure may be warranted. A downward departure is more likely to be appropriate in cases in which the guideline fine range is determined by the offense level since fines calculated on the basis of gain or loss may reflect the role of the defendant in the offense.

§ 8C5.17. Punitive Civil or Administrative Sanctions (Policy Statement)

If a punitive civil or administrative sanction payable to the federal, or a state or local, government has already been imposed upon the organization in connection with the conduct constituting the offense conduct, a downward departure from the applicable guideline range of up to the amount of the prior punitive sanction may be warranted.

Commentary

Application Note:

1. The magnitude of any departure under this section should not be greater than the amount of the punitive component of the previously imposed civil or administration sanction. Remedial damages designed to make the government whole, including the costs of investigation and prosecution, should not provide a basis for departure.

Background: Departure is not necessarily appropriate merely because a prior punitive civil or administrative sanction has been imposed upon the defendant. The court should consider whether Congress intended courts to impose multiple punitive sanctions, whether the imposition of multiple punitive sanctions would violate the protection against double jeopardy, and whether multiple punitive sanctions are necessary to achieve just punishment and adequate deterrence. For example, in the case of antitrust violations Congress has provided for both criminal penalties and private treble damages, as an incentive for private litigation. Accordingly, a downward departure because of an earlier private treble damage recovery would not be appropriate in the unlikely event that a private antitrust action were to precede a criminal prosecution for an antitrust violation.

§ 8C5.18. Organizations Meeting Conditions for All Mitigating Factors (Policy Statement)

If an organization meets the conditions for all mitigating factors set forth in § 8C2.1(e), including both prongs of § 8C2.1(e) (2) (A), a downward departure from the applicable guideline range may be warranted.

Commentary

The mitigating factors set in § 8C2.1(e)(2)(A)(i) and (ii) are in the alternative. Thus, an organization can qualify for the reduction under § 8C2.1(e)(2)(A)(i) even if it did not have an effective program to prevent and detect violations of the law. The reductions are set in the alternative to ensure that firms have a substantial incentive to report offenses. If an organization both has an effective program to prevent and detect violations of law and also reports an offense, its degree of culpability is less than that of an organization that failed to have an effective program to prevent and detect violations of law but nevertheless detected and reported the offense. Accordingly, if both prongs of § 8C2.l(e) (2) (A) are satisfied and a firm also qualifies for all other mitigating factors, a downward departure may be warranted.

Part D—Organizational Probation

§ 8D1.1. Imposition of Probation

(a) The court shall order a term of probation:

(1) If such sentence is necessary as a mechanism to impose restitution (§ 8B1.1), a remedial order (§ 8B1.2), or community service (§ 8B1.3);

(2) If the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions appear reasonably necessary to safeguard the defendant's future ability to make payments; or

(3) If such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct.

(b) (Policy Statement) The court may order a term of probation in any other case upon a finding that such a term is

necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. 3553(a) (2).

§ 8D1.2. Term of Probation

When a sentence of probation is imposed—

(a) In the case of a felony, the term of probation shall be at least one year but not more than five years.

(b) In any other case, the term of probation shall be not more than five years.

Commentary

Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation.

§ 8D1.3. Conditions of Probation (Policy Statement)

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. 3563(a) (1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

(c) When appropriate, the court may order the defendant to publicize, at its expense and in a format and in the media specified by the court, the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.

(d) If probation is imposed under § 8D1.1(a)(2), it is recommended that the following conditions be imposed to the extent that they appear necessary to secure the defendant's obligation to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations and accounting for the disposition of all funds received.

(2) The organization shall submit: (A) To a reasonable number of regular or unannounced examinations of its books and records by the probation officer or auditors engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of any (A) material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by government authorities regarding the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) The unpaid amount of the organization's restitution; (2) any fine; or (3) any other monetary sanction.

(e) If probation is ordered under § 8D1.1(a)(3), it is recommended that the following conditions be imposed:

(1) The organization shall develop and submit to the court a compliance plan to prevent and detect a recurrence of the criminal behavior for which it was convicted.

(2) The organization shall notify its employees and shareholders of the criminal behavior and its compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall make periodic reports to the court or probation officer, at intervals and in a form specified by the court, regarding the organization's progress in implementing its compliance plan. Such reports (A) shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigations or formal inquires by government authorities of which the organization learned since its last report, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans.

(4) In order to monitor whether the organization is following its compliance plan, the organization shall submit: (A) to a reasonable number of regular or unannounced examinations of the books and records by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

Commentary

Application Notes:

1. In determining the conditions to be imposed when probation is ordered under § 8D1.1(a)(3), the court should consider the views of any government regulatory body that oversees conduct of the defendant relating to the offense of conviction and may employ appropriate experts to assess the efficacy of a plan submitted by the defendant. The organization should not be required to adopt a compliance measure unless such measure is reasonably necessary to avoid a recurrence of the type of criminal behavior involved in the offense.

2. Periodic reports submitted in accordance with subdivision (e) (2) should be provided to any government regulatory body that oversees conduct of the defendant relating to the offense of conviction.

Background: Subsection (a) sets forth the statutory requirement that each sentence of probation contains a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case.

In addition, 18 U.S.C. 3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: A fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

§ 8D1.4. Violations of Conditions of Probation (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate when necessary to ensure compliance with court orders.

Part E—Special Assessments, Forfeitures, and Costs

§ 8E1.1. Special Assessments—Organizations

Apply § 5E1.3 (Special Assessments).

Commentary

The provisions of § 5E1.3 (Special Assessments) are applicable to organizational defendants.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeitures).

Commentary

The provisions of § 5E1.4 (Forfeitures) are applicable to organizational defendants.

§ 8E1.3. Assessment of Costs

The court may, as provided in 28 U.S.C. 1918, order that the defendant pay the costs of prosecution.

Commentary

Statutory authority for the court to order defendants to pay the costs of prosecution is provided in 28 U.S.C. 1918.

*Proposed Guidelines Drafted by the Department of Justice and Published at its Request**

(*The Attorney General is by statute an ex-officio member of the United States Sentencing Commission]

Chapter Eight—Sentencing of Organizations

Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant in a federal criminal case is an organization rather than an individual. In these cases individuals may or may not simultaneously have been convicted of offenses growing out of the same scheme or plan of criminal conduct.

The goals and purposes of sentencing for organizations are identical to those for individuals. They are: Just punishment, deterrence, protection of the public from further crimes of the defendant, and rehabilitation. See 18 U.S.C. 3553(a) (2). Thus, sentencing of a convicted organization can be instrumental in achieving a number of objectives. Restitution, notice to victims, and other corrective measures can be used to remedy harm to victims or otherwise alleviate the consequences of criminal conduct. Imposition of a fine or probation can punish the owners of an organization for its criminal conduct and induce owners and managers to take necessary steps to prevent criminal conduct by agents of the organization. Probation can also be imposed where necessary to enforce any of the above sanctions or to ensure that an organization institutes a remedial compliance program to prevent further criminal conduct by its agents.

As in the case of the guidelines for individuals, the Commission envisions an evolutionary process in which the guidelines will be subject to modification and refinement in light of experience.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations.

Commentary

Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. Organizations include corporations, unions, associations, and partnerships.

§ 8A1.2. Application Instructions—Organizations

(a) Determine the guideline section in chapter Two most applicable to the offense of conviction. See § 1B1.2 (Applicable Guidelines). The Statutory Index (appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply part D of chapter Three to group the various counts and adjust the offense level accordingly.

(d) Determine from part B of this chapter the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(e) Determine from part C of this chapter the sentencing requirements and options relating to fines.

(f) Determine from part D of this chapter the sentencing requirements and options relating to probation.

(g) Determine from part E of this chapter the sentencing requirements relating to special assessments and forfeitures.

(h) The provisions of chapter One, part B (General Application Principles) apply to determinations under this chapter, except that subsections (a)–(g) above apply in lieu of § 1B1.1(a)–(i).

Part B—Remedying Harm From Criminal Conduct

Introductory Commentary

As a general principle, a convicted organization should, as a first priority, be required to make restitution to identifiable victims of its criminal conduct and to take other remedial actions necessitated by that criminal conduct.

§ 8B1. Restitution—Organizations

(a) Except as provided in subsection (b) below, the court shall—

(1) enter a restitution order pursuant to 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized pursuant to 18 U.S.C. 3663–3664 but for the fact that the offense of conviction was not an offense under title 18 or 49 U.S.C. 1472 (h),(i), (j), or (n), sentence the organization to probation with a condition requiring restitution, in which case the amount, recipients, and other terms of the restitution condition are to be determined in accordance with 18 U.S.C. 3663(b),(c), and (e) and 3664.

(b) Subsections (a) (1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweigh the need to provide compensation to any victims.

Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation. The provisions of 18 U.S.C. 3663–3664 require a sentence of restitution for convictions under title 18 or under 49 U.S.C. 1472 (h), (i), (j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims," 18 U.S.C. 3663(d). This guideline, in addition, extends the requirement of restitution to offenses other than title 18 and title 49, section 1472 (h), (i), (j), and (n) offenses. In such cases restitution, which is to be determined under standards equivalent to those embodied in 18 U.S.C. 3663–3664, shall be provided as a condition of a sentence of probation. Under those standards, restitution in certain cases may be awarded to a third party who already has provided compensation to the victim. See 18 U.S.C. 3663(e) (I).

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process, relative to the need to provide compensation to victims.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

A remedial order, imposed as a condition of probation, may require the organization to correct harm caused by its conduct or to reduce or eliminate the risk that its criminal conduct will cause further harm. Such an order generally will be appropriate unless:

(a) available civil or administrative remedies are adequate and sufficiently expeditious; or

(b) the cost to reduce or eliminate the threat of future harm is not justified in light of the likelihood and seriousness of injury that may result.

Commentary

The purpose of a remedial order is to prevent future harm to victims or to correct harm already caused. A remedial order requiring corrective action by the defendant may include, e.g., product recalls for food and drug violations or "clean-up orders" for environmental violations.

§ 8B1.3. Community Service—Organizations (Policy Statement)

An organization may be ordered to perform community service, as a condition of probation, where such

community service consists of preventive or corrective action directly relating to the instant offense and serves one of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). Community service is not a substitute for a fine or restitution.

Commentary

In some instances the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense or to take preventive action. Community service directed at repairing damage may provide an efficient means of remedying the harm caused. See §§ 8B1.1 (Restitution—Organizations) and 8B1.2 (Remedial Orders—Organizations).

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). For example, a condition of probation requiring an organization to make its laboratory facilities available to a university would be authorized if it were subject to the limitation that the facilities be used for research to develop new anti-pollution or clean-up techniques related to the instant offense.

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Commentary

The provisions of § 5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

Part C—Fines

1. Determining the Fine—Criminal Organizations

§ 8C1.1. Determining the Fine—Criminal Organizations

If the court determines that the organization operated primarily for a criminal purpose, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of its assets. When this section applies, §§ 8C2.1 (Determining the Fine Guideline Range—Organizations), 8C2.2 (Determination of the Fine Within the Guideline Range), and 8C4.1 (Fines Imposed upon Owners of Closely Held Organizations) do not apply.

Commentary

Section 8C1.1 provides that where the court determines that an organization operated primarily for a criminal purpose, the fine shall be set at an amount sufficient to remove all of the organization's assets. If the extent of the assets of the organization is unknown, this may be achieved by imposing the greatest fine authorized by statute.

2. Determining the Fine—Other Than Criminal Organizations

§ 8C2.1. Determining the Fine Guideline Range—Organizations

(a) The guideline fine range shall be determined under subsections (b)–(d) below, except where the offense guideline in chapter Two expressly provides a different rule for determining the guideline range.

(b) Adjust the offense level determined pursuant to § 8A1.2 (Application Instructions—Organizations) for each aggravating and mitigating factor set forth below:

(1) Aggravating Factors:

(A) If high-level management aided or abetted, knowingly encouraged, or condoned the offense, add 2 levels.

(B) If the defendant within 15 years of the commencement of the current offense has one or more prior convictions (other than a conviction for a petty offense) or within 10 years of the commencement of the current offense engaged in similar misconduct, as determined by a prior civil or administrative adjudication, add 1 level.

(C) If the commission of the offense constituted a violation of a judicial order or injunction, or of a condition of probation, add 2 levels.

(D) If high-level management aided or abetted, or encouraged obstruction of the investigation or prosecution of, the offense or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction, add 1 level.

(E) If the defendant, in connection with the offense or its concealment, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, add 1 level.

(F) If the offense targeted a vulnerable victim as defined in § 3A1.1, add 1 level.

(G) If the offense presented a substantial risk to the continued existence of a financial or consumer market, add 1 level.

(H) If the offense created a substantial risk to national security, add 2 levels.

(2) Mitigating Factors.

(A) If the organization, promptly upon discovering the offense, and prior to the commencement of a government investigation, the imminent threat of a government investigation, or the imminent threat of disclosure of the wrongdoing, reported the offense to government authorities, subtract 1 level.

(B) If high-level management did not have knowledge of the offense and the lack of knowledge was reasonable, subtract 1 level.

(C) If the offense represented an isolated incident of criminal activity that was committed notwithstanding bona fide policies and programs of the organization reflecting a substantial effort to prevent conduct of the type that constituted the offense, subtract 1 level.

(D) If the organization substantially cooperated in the investigation, or if the organization has taken substantial steps to prevent a recurrence of similar offenses, such as implementing appropriate monitoring procedures, subtract 1 level.

Do not apply an adjustment from this subsection if the offense guideline specifically incorporates it or if such factor is inherent in the offense.

(c) The fine guideline range is the amount set forth below corresponding to the adjusted offense level determined above; plus the amount, if any, from subsection (d) below.

Offense level	Fine table guideline range
1	$250–$500
2	500–1,000
3	850–2,000
4	1,500–3,500
5	2,500–6,000
6	3,200–8,000
7	4,000–10,000
8	7,500–18,000
9	14,000–34,000
10	25,000–64,000
11	45,000–103,000
12	70,000–160,000
13	90,000–206,000
14	108,000–240,000
15	180,000–400,000
16	300,000–700,000
17	525,000–1,000,000
18	700,000–1,520,000
19	1,100,000–2,850,000
20	2,100,000–4,750,000
21	3,250,000–9,000,000
22	6,500,000–18,000,000
23	13,000,000–36,000,000
24	24,000,000–68,000,000
25	48,000,000–136,000,000
26	80,000,000–170,000,000
27	100,000,000–204,000,000

If the offense level is greater than 27, the court shall extend the above table using, for each offense level, the dollar increments used between levels 26 and 27.

(d) Loss or Gain not Subject to Restitution or Disgorgement. Determine the greater of—

(1) Any loss caused by the offense that exceeds the amount of restitution made or ordered, or

(2) Any gain to the defendant from the offense that exceeds the amount that will otherwise be disgorged by the defendant.

Add the amount from this subsection to the minimum and maximum of the applicable range from subsection (c) above.

Commentary

Application Notes:

1. "Similar misconduct," as used in subsection (b)(1)(B), means conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, a defendant convicted of improperly disposing of waste by burning has committed similar misconduct if the defendant in the past improperly disposed of waste by discharge into water. The past misconduct is similar to the present offense despite the fact that two different federal statutes proscribe these wrongful waste-disposal activities.

2. "Prior conviction," as used in subsection (b) (1) (B), means conviction by verdict; a plea of guilty, including an Alford plea; or plea of nolo contendere.

3. "High-level management," as used in subsection (b), means a person who is an officer; a director; a partner; or any other agent or employee of an organization having duties of such responsibility that the conduct of such person may fairly be assumed to represent the policy of the organization. This definition is derived closely from the Model Penal Code, § 2.07 (1962). The definition is relevant to the application of certain aggravating and mitigating factors as well as to the imposition of probation under § 8D1.1. In practical effect, the definition includes such persons as an organizational president or general manager, but not a foreman in a large plant, in the absence of participation at higher levels of organizational authority. "High-level management" does not apply in the case of an organization composed of 5 or fewer individuals, including employees.

4. "Aided or abetted," as used in subsection (b), includes all conduct proscribed by 18 U.S.C. 2.

5. Under subsection (b) (1) (E) an enhancement is applicable where the relevant conduct (whether or not charged in the count of conviction) included bribing or unlawfully giving a gratuity to a public official, or conspiring or attempting to do so. This enhancement applies, for example, to conduct prescribed by 18 U.S.C. 201, 205, 212, 213, 292, and 1726.

6. Subsection (d) is designed to ensure that any loss caused by the offense that is not subject to restitution (e.g. where the victims are not identifiable) or gain to the defendant that will not otherwise be disgorged by the defendant is taken into account by the fine guideline range. "Restitution," as used in subsection (d)(1), includes the defendant's expenditures for remedial action under § 8B1.2 (Remedial Orders), § 8B1.3 (Community Service), and § 8B1.4 (Order of Notice to Victims). "Any gain to the defendant," as used in subsection (d)(2), means any profit attributable to the offense.

7. "Loss" as used in this section is to be construed broadly and includes, for example, damage to the environment and natural resources and negative health consequences.

Background: This section provides for the determination of the upper and lower limits of the fine guideline range.

Subsection (a) provides that the guideline fine range for organizations is determined under subsections (b)–(d) except where chapter Two provides a different rule. Currently, chapter Two, part R (Antitrust Offenses) has a separate provision for establishing the fine guideline range for these offenses.

§ 8C2.2. Determination of the Fine Within the Guideline Range

(a) Under 18 U.S.C. 3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;

(3) The defendant's income, earning capacity, size, and financial resources;

(4) The burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;

(5) Any pecuniary loss inflicted upon others as a result of the offense;

(6) Whether restitution is ordered or made and the amount of such restitution;

(7) The need to deprive the defendant of illegally obtained gains from the offense;

(8) Whether the defendant can pass on to consumers or other persons the expense of the fine; and

(9) Any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:

(1) The degree of difficulty of detecting the violation;

(2) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct; and

(3) Any other pertinent equitable considerations, including the aggravating and mitigating factors set forth in § 8C2.1.

(c) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive. 1

Commentary

Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b) (1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine required by the guidelines shall be that determined under § 8Cl.1 or § 8C2.1, as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute for the count of conviction (or aggregate maximum fine authorized for the counts of conviction), the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute for the count of conviction (or aggregate minimum fine required for the counts of conviction), the minimum fine required by statute shall be the guideline fine.

Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute for the count or counts of conviction and any minimum fine required by statute for the count or counts of conviction. Maximum fine levels are set forth in 18 U.S.C. 3571.

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count (an aggregate maximum authorized fine of $1,000,000). If however, the offense conduct covered by the two felony counts resulted in a total loss of $750,000, the maximum authorized fine would be $1,500,000 (twice the loss).

§ 8C3.2. Payment of the Fine—Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by

requiring payment on a date certain or by establishing an installment schedule.

Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years, 18 U.S.C. 3572(d).

§ 8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court shall impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1) (A) The primary purpose of the organization was to conduct a lawful activity; and

(B) It is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the fine required under § 8C2.1; or

(2) imposition of the fine required by § 8C1.l or § 8C2.1, as applicable, would impair its ability to make restitution ordered as a result of conviction.

The court shall impose a reduced fine under this section only to the extent necessary to address the issues set forth in subdivisions (1) (B) and (2) above.

(b) If the court imposes a reduced fine under this section, it shall place the defendant on probation in accordance with part D of this chapter.

Commentary

Background: Subsection (a) (2) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

4. Offsets

§ 8C4.1. Fines Imposed Upon Owners of Closely Held Organizations

The fine imposed upon a small, closely held organization may be partially or totally offset by the amount of any criminal fines imposed upon the owners of the organization arising out of the conduct for which the organization was convicted, provided (1) there is substantial identity between the organization and the individual owners who have been convicted of offenses for such conduct, and (2) a majority of owners has been convicted of such offenses.

Commentary

Application Note:

1. For purposes of this section, an organization is closely held when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

Background: Many organizational defendants are closely held corporations, which for practical purposes, are the alter egos of their owner-managers.

The goal of this section is fairness. In cases in which there is substantial identity between the convicted organization and its convicted owners, a majority of whom have been convicted of offenses arising out of the conduct for which the organization was convicted, the fines against the organization may be offset by the individual fines. In making a determination under this section, the court should consider the likelihood of the government's collecting the fines imposed on the individual owners.

Only in a case of absolute identity between the organization and convicted individual owners should an offset completely obliterate the organization's fine.

5. Departures

§ 8C5.1. Substantial Assistance to Authorities (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of the individuals responsible for the offense for which the organization is sentenced, a downward departure may be warranted.

(b) The appropriate reduction shall be determined by the court for reasons it states that may include consideration of the following:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The nature and extent of the defendant's assistance; and

(3) The timeliness of the defendant's assistance.

§ 8C5.2. Risk of Death or Serious Bodily Injury (Policy Statement)

If the offense resulted in a foreseeable and substantial risk of death or serious bodily injury and the kind or degree of that risk was not adequately taken into consideration in setting the fine guideline range, an upward departure may be warranted. In making this determination, the court should take into account both the seriousness of the potential injury and the probability of its occurring.

§ 8C5.3. Other Grounds for Departure (Policy Statement)

To the extent that any policy statement from chapter 5, part K, Subpart 2 is relevant to the defendant, a departure from the applicable guideline range may be warranted.

Part D—Organizational Probation

§ 8D1.1. Imposition of Probation

An organization shall be sentenced to probation:

(a) If such sentence is necessary as a mechanism to impose restitution (§ 8B1.l), a remedial order (§ 8B1.2), or community service (§ 8B1.3);

(b) If the organization is sentenced to pay a monetary penalty, whether restitution, fine, or special assessment, and full payment is not to be completed within 30 days after sentence is imposed; if probation is imposed solely under this subsection, such probation shall terminate when the organization makes full payment of the penalty;

(c) If the court imposes a fine below the fine range, in accordance with § 8C3.3; or

(d) In the following circumstances:

(1) The court finds that at the time sentence is imposed the organization or a member of its high-level management had a criminal conviction within the previous five years for similar misconduct to that involved in the instant offense and any part of the instant offense occurred after that conviction; or

(2) The court finds that the offense indicated a significant problem with the organization's policies or procedures for preventing crimes, as evidenced, for example, by (A) high-level management involvement in, or encouragement or countenance of, the offense; (B) inadequate internal accounting or monitoring controls; or (C) a sustained or pervasive pattern of criminal behavior, unless the court finds that the problem has already been remedied, or that there is clear assurance that the problem will be remedied (e.g., where the defendant will be under intensive supervision by a regulatory agency); or

(3) The court finds that probation is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct.

Commentary

Application Notes:

1. "High-level management," as used in this section, has the same meaning as in Application Note 3 of the Commentary to § 8C2.1

2. "Similar misconduct," as used in this section, has the same meaning as in Application Note 1 of the Commentary to § 8C2.1.

3. Unlawful activity that has been pervasive throughout the organization or a component of the organization within the meaning of subsection (d) (2) need not be limited to the type of unlawful activity resulting in the offense of conviction.

Background: This section sets forth the circumstances under which a sentence of probation is authorized as a substantive sanction or as a means to enforce another sanction, such as a fine or restitution.

§ 8D1.2. Term of Probation

When a sentence of probation is imposed, the term of probation shall be sufficient to accomplish the purposes for which probation is imposed but in no event more than five years, and in the case of a felony, at least one year

Commentary

Within the limits set by the guidelines, the term of probation should not extend beyond the court's immediate objectives in imposing the term of probation.

§ 8D1.3. Conditions of Probation (Policy Statement)

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. 3563(a) (1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing.

(c) If probation is imposed under § 8D1.1(b) or (c), it is recommended that the following conditions be imposed to the extent that they appear necessary to secure the defendant's obligation to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations and accounting for the disposition of all funds received.

(2) The organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records by the probation officer or auditors engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of any (A) material adverse change in its business or financial condition or prospects; or (B) the commencement of any criminal investigation or prosecution, bankruptcy proceeding, or major civil litigation or administrative proceeding against the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) The unpaid amount of the organization's restitution; (2) any fine; or (3) any other monetary sanction.

(d) If probation is ordered under § 8D1.1(d), it is recommended that the following conditions be imposed:

(1) The organization shall be required to develop and submit for approval by the court a. compliance plan for avoiding a recurrence of the criminal behavior for which it was convicted. The court may employ appropriate experts, including government agency experts, to assess the efficacy of a submitted plan, if necessary. The experts shall be afforded access to all material possessed by the organization that is necessary to a comprehensive assessment of the compliance plan. The court shall approve any plan that appears reasonably calculated to avoid recurrence of the criminal behavior, provided it is consistent with any applicable statutory or regulatory requirement.

(2) Upon approval of a compliance plan by the court, the organization shall notify its employees and shareholders of the criminal behavior and the compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall be required to make periodic reports to the court or probation officer, at intervals specified by the court, regarding the organization's progress in (A) implementing any compliance plan required and approved by the court under this subsection; and (B) avoiding the commission of future criminal offenses. Such reports shall be in a form to be prescribed by the court, and (A) shall disclose any criminal investigation or prosecution, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans. Such reports shall be available for review by a government agency with regulatory responsibility over the organization.

(4) In order to monitor whether the organization is following the approved compliance plan, the organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

Commentary

Subsection (a) sets forth the statutory requirement that each sentence of probation contain a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purpose of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case. For example, the court may determine that a condition of probation is necessary to assure that a defendant not avoid the impact of a fine by inappropriately passing the costs thereof to consumers or other persons.

In addition, 18 U.S.C. 3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

Part E—Special Assessments and Forfeitures

§ 8E1.1. Special Assessments—Organizations

Apply § 5E1.3 (Special Assessments).

Commentary

The provisions of § 5E1.3 (Special Assessments) are applicable to organizational defendants.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeitures).

Commentary

The provisions of § 5E1.4 (Forfeitures) are applicable to organizational defendants.

[FR Doc. 90-25915 Filed 11-2-90; 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 214
Monday, November 5, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 2, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26209 Filed 11–1–90; 11:46 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 9, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26210 Filed 11–1–90; 11:46 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 16, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26211 Filed 11–1–90; 11:46 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 23, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26212 Filed 11–1–90; 11:46 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, November 27, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for contract designation in Three Month ECU Interest Rate Futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26213 Filed 11–1–90; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday November 30, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26214 Filed 11–1–90; 11:47 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday November 30, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–26215 Filed 11–1–90; 11:47 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, October 30, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of Kentucky Bank, F.S.B., a proposed new federal savings bank to be located at 1304 Paris Pike, Georgetown, Kentucky, for Federal deposit insurance.

Matters relating to the probable failure of certain insured banks.

Recommendation concerning administrative enforcement proceedings.

Recommendation regarding an assistance agreement with a depository institution.

Matters relating to the Corporation's assistance agreements with insured banks.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 31, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-26158 Filed 10-31-90; 5:08 pm]

BILLING CODE 6714-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME & DATE: 8 a.m., Friday, November 16th, 1990.

STATUS: Open.

ADDRESS: Old Post Office Pavilion, 1100 Pennsylvania Avenue, NW., Main Floor—Room M09, Washington, DC 20506, (202) 786-0536.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board and Deputy for Administration, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of November 16, 1990 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510—1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536, TDD (202) 786-9136 at least seven (7) days prior to the meeting.

I. NMSB Chairman's Report & Approval of Minutes of July 27, 1990 Meeting
II. IMS Director's Report
III. Agency Agenda Reports
  A. IMS Appropriation Issues
  B. IMS Program Reports
  C. IMS Public Affairs Update
  D. IMS Legislative Affairs

Dated: October 29, 1990.

Daphne Wood Murray,

Director, Institute of Museum Services.

[FR Doc. 90-26034 Filed 11-1-90; 11:45 am]

BILLING CODE 7036-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 45719, October 30, 1990].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, October 25, 1990.

CHANGE IN THE MEETING: Deletions.

The following items were not considered at a closed meeting on Tuesday, October 30, 1990, at 2:30 p.m.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Commissioner Lochner, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272-2300.

Dated: November 1, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-26264 Filed 11-1-90; 4:04 pm]

BILLING CODE 8010-01-M

federal register

Monday
November 5, 1990

Part II

Department of Education

Office of Special and Rehabilitative Services

Reauthorization of the Early Intervention Program for Infants and Toddlers With Disabilities; Notice of Public Meeting

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Reauthorization of the Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary of Education announces a public meeting on the reauthorization of the Early Intervention Program for Infants and Toddlers with Disabilities under part H of the Education of the Handicapped Act, as amended. The purpose of the meeting is for the Federal Interagency Coordinating Council to receive input on the issues to be considered in developing proposals for the reauthorization of this Program.

Meeting Information: The public meeting is scheduled to be held from 10 a.m. to 3 p.m. on Wednesday, November 28, 1990 at the Wilbur J. Cohen Building, (North Building) First Floor Auditorium, 330 Independence Avenue, SW., Washington, DC 20202.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their comments. The meeting facilities and proceedings will be accessible to individuals with disabilities.

Comments: The Secretary also invites written comments regarding the issues to be considered in developing proposals for the reauthorization of part H of the Education of the Handicapped Act, as amended: Early Intervention Program for Infants and Toddlers with Disabilities. Comments must be received on or before the date of the public meeting.

ADDRESSES: Written comments should be addressed to Judy Schrag, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3086), Washington, DC 20202-2651. Telephone: (202) 731-1007; deaf and hearing-impaired persons may also call (202) 732-1054 for TDD services.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact Judy Schrag, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue (Switzer Building, room 3086), SW., Washington, DC 20202-2651. Telephone: (202) 732-1007; deaf and hearing-impaired persons may also call (202) 732-1054 for TDD services.

Dated: October 30, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-26036 Filed 11-2-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday,
November 5, 1990

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3818-5]

RIN 2060-AC39

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rule, EPA is announcing the availability of and rates for nonconformance penalties (NCPs) for heavy-duty vehicles (references to vehicles are intended to include engines, and vice versa), as well as upper emission limits for heavy-duty vehicles subject to the 1991 and later model year emission standards for oxides of nitrogen and particulate matter. The availability of NCPs will allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs, which include heavy light-duty trucks) whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty.

EPA is also finalizing several revisions and additions to the generic NCP rule (50 FR 35374, August 30, 1985) that were included in the Notice of Proposed Rulemaking (55 FR 17532, April 25, 1990) for this final rule. These include:

- Defining the interaction between the NCP and emission averaging programs,
- Specifying the method of calculating the NCP usage factor (FRAC),
- Revising the annual production data and quarterly reporting requirements,
- Allowing the refund of NCP overpayments,
- Specifying rounding procedures used in NCP calculations,
- Defining the selection of configurations for Production Compliance Audit (PCA) testing,
- Specifying the interest calculations for delayed NCP payments, and
- Stipulating a special labeling requirement for 1991 and 1993 model year heavy-duty diesel engines.

DATES: This final rule will become effective on December 5, 1990.

Petitions for judicial review must be filed on or before January 4, 1991.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket EN-87-02 at the Air Docket of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC, 20460, and are available for review in Room M-1500 between the hours of 8:30 a.m. to noon and 1:30 to 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. H. Scott Rauenzahn, U.S. Environmental Protection Agency, Manufacturers Operations Division (EN-340F) 401 M Street SW., Washington, DC 20460, telephone: (202) 382-2496.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. In enacting section 206(g) as part of the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which HDV standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs, which are engines to be installed in HDVs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). HDVs include the part of the light-duty truck (LDT) class between 6,001 and 8,500 pounds GVWR (the heavy light-duty trucks, or HLDTs). It is important to note that HLDTs are not synonymous with another category referred to as light-duty trucks—category 2 (LDT2s). LDT2s are trucks with loaded vehicle weight greater than 3,750 pounds, while HLDTs are that portion of the LDT2 category which have a GVWR greater than 6,000 pounds. It is possible to have a LDT2 with GVWR less than or equal to 6,000 pounds. Such trucks are not HDVs and are not eligible for NCPs.

Section 206(g)(3) requires that NCPs:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, it becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use. The manufacturer using an NCP does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. NCP Availability and Penalty Rates

The generic NCP rules governing availability and use of NCPs (Phase I) were published in a previous rulemaking (50 FR 35374, August 30, 1985). In Phase I, EPA published regulations covering how NCPs will be made available for emission standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. Phase I requires EPA to make NCPs available if: (1) An emission standard becomes more difficult to meet; (2) substantial work is required to meet the standard; and (3) a

technological laggard is likely to develop.

In a separate NCP rulemaking (Phase II, 50 FR 53454, December 31, 1985), NCPs were offered and penalty rates and upper limits established for five emission standards. They were:

• 1987 and later model year light-duty diesel trucks exceeding 6,000 lbs. GVWR, also referred to as heavy light-duty diesel trucks (HLDDTs), particulate matter (PM) standard of 0.26 grams per vehicle mile (g/mi),

• 1987 and later model year light heavy-duty gasoline-fueled engine (LHDGE) hydrocarbon (HC) standard of 1.1 grams per brake horsepower-hour (g/BHP-hr),

• 1987 and later model year light LHDGE carbon monoxide (CO) standard of 14.4 g/BHP-hr,

• 1990 model year heavy-duty diesel engine (HDDE) oxides of nitrogen (NO_x) standard of 6.0 g/BHP-hr, and

• 1988 through 1990 model year HDDE PM standard of 0.60 g/BHP-hr.

As discussed in the Notice of Proposed Rulemaking (NPRM) (55 FR 17532, April 25, 1990), EPA has applied the generic NCP concepts to the emission standards which become more stringent in the 1991 model year and is identifying emissions standards for which NCPs will be available, the upper limits for those standards and the numerical values for the variables in the penalty rate formula for particular subclasses of engines.

There are several emission standards which will become more stringent and will be offered NCPs in the 1991 model year. The more stringent standards are:

• 1991 and later model year petroleum-fueled HDDE NO_x emission standard of 5.0 g/BHP-hr,

• 1991 through 1993 model year petroleum-fueled HDDE PM emission standard of 0.25 g/BHP-hr,

• 1991 and later model year petroleum-fueled urban bus engine PM emission standard of 0.10 g/BHP-hr, and

• 1991 and later model year petroleum-fueled light-duty diesel trucks greater than 3750 lbs. loaded vehicle weight (LDDT2s) PM emission standard of 0.13 g/mi.

EPA addressed availability of NCPs for the methanol-fueled heavy-duty diesel engine and heavy-duty gasoline engine standards in the NPRM and concluded that those standards did not meet the eligibility criteria established in the generic rule. Also, NCPs for 1994 model year standards will be addressed in a future rulemaking.

B. Interaction Between NCP and Emission Averaging Programs

Also, as part of the final rule (50 FR 10606, March 15, 1985) establishing more stringent HDE NO_x and PM emission standards, EPA instituted a new program called emissions averaging. Under the averaging program, heavy-duty engine manufacturers can certify engine families both above and below emission standard(s) set by EPA and still be in compliance as long as the production weighted average of the engine familiies' emissions are at or below the standard. Industry has raised the question of whether they could use both credits from the averaging program and NCPs concurrently to certify an engine. EPA held a public workshop on May 4, 1987, to address the issue of how best to interrelate the NCP and averaging programs. As a result of that workshop, EPA proposed in the NPRM that engine families participating in the NCP program will be excluded from participating in the averaging program. EPA's final decision regarding the interaction between NCPs and averaging is described below.

Recently, EPA promulgated the trading and banking final rule (55 FR 30584, July 26, 1990), which expands the averaging program to include intermanufacturer and intertemporal trades. The interaction between NCPs and the trading and banking program was explained in that rulemaking.

C. Other Issues

Below is a discussion of other issues addressed in the NPRM.

1. Use of NCPs To Remedy In-Use Noncompliance

Prior to the publication of the NPRM, manufacturers requested that EPA reconsider allowing the payment of NCPs as a remedy for in-use noncompliance. Specifically, manufacturers wanted the ability to pay an NCP rather than recalling and fixing in-use HDEs from engine families which failed Selective Enforcement Audits or Recall Program testing. In the NPRM, EPA reviewed manufacturers arguments and concluded that the statute does not permit NCPs to be used as a remedy for in-use noncompliance. EPA received no further comments on this issue.

2. NCP Usage Factor (FRAC)

The usage factor (FRAC) increases the NCP each year depending on the extent of NCP usage the previous year. When EPA attempted to calculate the usage factor, an issue arose regarding whether optionally certified vehicles (engines certified in accordance with § 86.087 10(a)(3) and vehicles certified in accordance with § 86.085–1(b)) should be counted in the subclass in which they were certified or in the subclass in which they were intended to be used based on GVWR. IN the NPRM, EPA proposed that for the purposes of the FRAC calculation, optionally certified vehicles (engines or vehicles) certified under § 86.085–1(b) and § 86.087–10(a)(3)(i) should be included in the subclass in which they were certified, and requested comments on that proposal. EPA received no comments on this issue; thus, EPA is finalizing the provision as proposed for the reasons stated in the NPRM.

3. Annual Production Data Reporting Requirements

Another problem that arose in calculating the FRAC was lack of information. In order to calculate the FRAC, EPA needs as many manufacturers as possible to submit production data and production estimates. EPA accordingly proposed that manufacturers participating in the NCP program be required by April 30 of each year to report actual production of all (both NCP and non-NCP) engine families produced through March 31 of the model year and to estimate production of all engine families for the remainder of the current model year. These manufacturers would also be required to include in this report actual year-end NCP and non-NCP production from the previous model year. For those manufacturers who do not participate in the NCP program, EPA proposed the voluntary reporting of production by April 30 of each model year. EPA received no comments on this issue; thus, the provision is being finalized as proposed for the reasons stated in the NPRM.

4. Quarterly NCP Reporting Requirements

When administering the NCP program, EPA found that it could not always confirm that the interest payments made were accurate or verify whether an NCP payment was due. To obtain the necessary information, EPA proposed that manufacturers using NCPs for the model year include the interest payment calculation, if applicable, in the quarterly report and submit it even if the manufacturer has no NCP production in a given quarter. There were no comments on this provision, and it is being finalized as proposed for the reasons stated in the NPRM.

5. Refund of NCP Overpayments

One manufacturer overpaid the NCP penalty in the 1987 model year. The

manufacturer informed EPA of its mistake and asked that the overpayment be refunded. To address this type of situation, EPA proposed that the regulations be changed to allow an overpayment to be refunded to a manufacturer or offset by withholding future payment. The manufacturer would have the choice of the option. EPA received no comments on this issue, so its proposal is being finalized for the reasons stated in the NPRM.

6. Rounding of Values Used in NCP Calculations

Another problem discovered during the implementation of the NCP program was the inconsistency in rounding procedures. EPA accordingly proposed that the values COC_{50}, COC_{90}, and MC_{50} continue to be rounded to the nearest dollar and that the other predefined terms (CL, S, UL, F, and A_i) have unrounded values at least five figures after the decimal point. The Agency received no comments on this issue, and is finalizing the provision as proposed for the reasons stated in the NPRM.

7. Selection of Configuration for PCA Testing

EPA proposed to allow PCA testing on a configuration other than the configuration used for certification testing in appropriate cases, such as when the configuration used in certification is not being produced in sufficient numbers to be tested in a PCA. Further, EPA proposed that this alternate configuration be the one expected to have the highest level of emissions for the pollutant(s) for which the NCP is to be paid. EPA received no comment on this issue and is finalizing the provision as proposed for the reasons stated in the NPRM.

8. Interest Payments

EPA found during the implementation of the NCP program that the regulations did not cover the payment of interest in the case of an approved alternate payment plan. Also, the Agency discovered that the interest rate specified in § 86.1113–87(g)(2) is not consistent with the Debt Collection Act of 1982. EPA proposed to revise the regulations to indicate that the current regulations pertaining to interest payments also pertain to delayed payments resulting from an alternate payment plan and to amend the regulations so that the interest charged is the interest rate published annually by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982. EPA received no comments on this provision and is finalizing the provision as proposed for the reasons stated in the NPRM.

9. Special Labeling Requirements for 1991 to 1993 Model Year Heavy-Duty Diesel Engines (HDDEs)

For the 1991 to 1993 model years, the PM standard which applies to HDDEs depends on the type of vehicle into which the engine is installed. HDDEs installed in urban buses must meet a 0.10 gram per brake horsepower-hour (g/BHP–hr standard. To eliminate any confusion as to which HDDE can be installed on a particular vehicle, EPA proposed that manufacturers be required to include specific language on the emission label indicating the application for which the engine has been certified. EPA received two comments on this issue and has modified the original proposal to allow waiving the labeling requirements for heavy-duty engines not used in urban bus applications in appropriate cases. This issue is discussed further in section (D)(2) of the Summary and Analysis of Comments, below.

III. Summary and Analysis of Comments

A public hearing was not requested and, therefore, was not held for this rulemaking. Several comments were received after May 25, 1990, which was the close of the comment period, and have been incorporated in this discussion. Comments were received from seven entities: the Engine Manufacturers Association (EMA), the City of New York Department of Environmental Protection (NYCDEP), the American Public Transit Association (APTA), the Manufacturers of Emission Controls Association (MECA), General Motors Corporation (GM), the Metro-Dade Transit Agency (MDTA), and The Flxible Corporation (Flxible). Comments will be addressed below by topic.

A. Availability of Nonconformance Penalties

Most parties supported the NCP availability determinations EPA announced in the April 25, 1990 NPRM. MECA stated that "EPA has correctly applied the eligibility criteria for determining for which 1991 standards NCPs will be available." MDTA indicated "the approach outlined in the notice is reasonable and satisfactory." However, MDTA stated that "the proposed rule may be unnecessary in light of the provisions of the new clean air act." APTA supported the NCP proposal, but "believes that NCPs should be available regardless of any controls that may be placed on diesel fuel sulfur." EMA has "no specific comments concerning the technical aspects of the proposed rulemaking" but took "issue with EPA for delaying promulgation of nonconformance penalties for 1991 model year emissions standards beyond the point when they can offer engine manufacturers an opportunity to make a reasoned business decision concerning their use." GM "strongly supports the implementation of nonconformance penalty (NCP) programs for the 1991 model year heavy-duty engine and vehicle standards proposed in the NPRM." GM also supported EMA's comments. Flxible also "supports EPA's proposed regulations on NCPs."

One party, NYCDEP, stated: "If indeed not one manufacturer can meet the 1991 model year emission standard, a penalty is preferable to no program at all." NYCDEP also stated that "if the emission standards still cannot be met after the 1991 model year, the NCP program should only be utilized upon a determination that not one manufacturer is able to meet the standards, and the penalty should be increased for each model year of application."

EPA believes that MDTA may have been looking at the proposed rule too narrowly when it stated that "the proposed rule may be unnecessary in light of the provisions of the new Clean Air Act." It is true that the proposed Clean Air Act Amendments would delay the 0.10 g/BHP-hr urban bus PM standard. However, this rule also applies to diesel-fueled heavy-duty engines to be used in trucks, and the Agency has made a determination that these engines meet the NCP eligibility criteria for the 1991 model year HDE PM and NO_x standards. Also, Congress has yet to pass the final version of the Clean Air Act amendments. The Agency cannot rely on proposed changes to the Act which may affect this rule. Instead, the Agency must act on current statutory and regulatory requirements. If the Clean Air Act amendments as eventually enacted do affect the basis for decisions reached in this rulemaking, those decisions will be revisited in a later rulemaking.

In response to NYCDEP, EPA notes that Congress intended NCPs to be available when some manufacturers could meet the revised standard. The statute and the legislative history make clear that Congress contemplated that some manufacturers would be meeting the standards while other manufacturers, lagging in their development of necessary technology, would be paying NCPs. EPA joined manufacturers, environmental groups, other individuals, and government agencies in a negotiated rulemaking to

implement section 206(g). EPA believes that the NCP eligibility criteria contained in the generic NCP rule (50 FR 35374) achieve the goals of that section.

With regard to APTA's comment that "NCPs should be available regardless of any controls that may be placed on diesel fuel sulfur," EPA believes APTA misinterpreted the Agency's intentions when APTA assumed the use of low sulfur diesel fuel in the calculation of the urban bus PM penalty rate. The Agency agrees with APTA and did not intend to legally mandate the use of low sulfur fuel at this time when it proposed penalty rates based on low sulfur fuel. Rather, EPA believes that the use of low sulfur fuel on a captive fleet such as urban buses is a cost effective step that could be taken to lower PM emissions from urban buses. Also, since a low sulfur diesel-fueled engine would accumulate less sulfur-based particulate matter (which is not regenerated), trap replacement would be less frequent with a low sulfur diesel-fueled engine, reducing maintenance costs. Largely for these two reasons, and EPA's belief that low sulfur diesel fuels will become more readily available in the coming years, EPA expects low sulfur fuel to be used in urban buses, especially trap-equipped urban buses.

B. Penalty Rate Costs

EPA received comments on the Penalty Rates from three groups. MDTA stated that "the same standards and penalties should apply to trucks and buses, as well as truck and bus engines." MECA stated that "EPA's estimates of the cost of diesel particulate trap oxidizers (MC-50 and MC-90) are low in light of public statements made by engine manufacturers and others regarding the cost of these controls." GM stated that EPA's "late publication" of this rule may cause late NCP payments. GM noted that "under the proposed changes in § 86.113-87(g)(5)(i), we become responsible for an interest payment on the late payments." GM stated that "such a result is unreasonable" and suggested "that provisions be included that would allow late payments, without interest, if they are the result of situations beyond the control of the manufacturer."

Regarding MDTA's statement, in the case of NO_x penalties, where both truck and bus engines must meet the same emission standard, the same penalties do apply to both truck and bus engines. However, in the case of PM, truck and bus engines must meet different standards, and the bus engine cost of compliance takes into account the added costs associated with meeting the more stringent standard. The question of whether truck and bus engines should meet the same standards is beyond the scope of this rule.

To support its statement that EPA underestimated particulate trap oxidizer costs, MECA included in its comments cost figures supplied by member trap manufacturers, as well as briefing papers presented by Cummins Engine Company (Cummins) to APTA at APTA's 1990 Bus Clean Air Workshop in Los Angeles, California on April 17-20, 1990. MECA indicated that EPA's cost calculation was incorrect in four ways: (1) It underestimated the cost of trap hardware for HLDDTs, (2) it failed to take into account that a replacement filter would be necessary, (3) it failed to take into account warranty costs, and (4) it underestimated the cost of manufacturing trap for urban buses.

In Attachment I of its submittal, MECA stated its belief that EPA's trap hardware cost for HLDDTs of $440 is too low and should be increased to $1,200. From the context of MECA's comments, EPA understands MECA as referring to trap hardware costs for the heavy light-duty diesel truck (HLDDT) class. EPA based its cost estimates on information from GM, the only producer of HLDDTs, on the particulate trap it is developing for that class, and on additional information submitted by Sierra Research as part of the development of the NPRM (see Appendix 1 of the support document of the NPRM, Item III-B-1 in Docket EN-87-02). EPA's close look at the GM trap program gives the Agency confidence in the cost estimates it used in the NPRM. MECA's estimates, on the other hand, are not substantiated in any way. Consequently, EPA continues to believe that its cost estimates are the best available.

In Attachment II of its comment, MECA mentioned that a replacement filter would be necessary every 150,000 miles at a cost of $1,500 to $2,000. EPA, in fact, included the cost of a replacement filter in its assessment of maintenance costs. The Agency estimated maintenance costs to be $1,200, discounted over ten years. However, EPA did detect a typographical error in this maintenance cost. Endnote 8 on page 24 of the attachment to the support document (item III-B-1 in docket EN-87-02) should have read "$300/year and $1800/vehicle for transit buses" and not "$300/year and $1200/vehicle for transit buses." Discussion of this matter is further explained in the support document for the Final Rule (item IV-B-1). Both the COC_{50} and COC_{90} values for the urban bus PM standard NCP have been increased $600 to correct this error.

Attachment II also stressed that "full warranty costs to meet proposed federal requirements in 1991 will be necessary" and that "estimates for those warranty costs * * * are not currently available." As in past NCP rulemakings, EPA did not break out warranty costs in its calculation of the proposed penalty rates. EPA does not believe warranty costs will be considered because the Agency assumes manufacturers will adequately develop their products to assure general reliability in use. Moreover, warranty costs would be difficult to predict. MECA itself could not provide warranty cost estimates, nor could it, until after manufacturers gain in-use experience with the traps. EPA, however, must make penalty rate decisions now, so that manufacturers can make plans for the upcoming model year. Since warranty costs are likely to be small in comparison to development and manufacturing costs and cannot be accurately predicted in any event, EPA believes it is reasonable not to account for them separately in determining penalty rates. For the reasons stated above, EPA continues to believe that its estimate of trap oxidizer costs accurately reflect the cost of this equipment.

MECA provided two estimates from unnamed trap manufacturers of the cost of manufacturing a trap that would permit compliance with the urban bus standard: $5,000 and $4,000 to $8,000. It also forwarded the Cummins paper that estimates that an engine with a trap system used for the 0.10 g/BHP-hr standard "will cost approx[imately] 2 times what today['s diesel engine costs." EPA had previously estimated the manufacturing cost of a particulate trap system for urban buses to be approximately $1,000. Based on MECA's comment, EPA reevaluated its original analysis included in the proposal. EPA contacted MECA and several industry sources to obtain cost estimates for manufacturing the components of a trap system for urban buses. MECA was unable to provide a breakdown of its cost estimates. However, after discussions with industry sources EPA believes it underestimated the cost of the ceramic filter element in particulate trap for urban buses. In this final rule EPA is revising its estimate of the manufacturing cost of a particulate trap system for urban buses from $1,000 to an average cost of $1,585 and a high cost of $2,000. As a result EPA is revising the COC_{50}, COC_{90} and MC_{50} values for urban buses as follows:

COC_{50} = $4,500
COC_{90} = $7,165
MC_{50} = $22,971 per g/BHP-hr

The basis for this revised cost is detailed in the support document for the final rule (Docket EN-87-02, Item IV-B-1.)

GM expressed concern that the late publication of this rule may cause it to be responsible for interest on NCP payments due prior to the publication of the rule. EPA agrees that manufacturers should not be responsible for interest on NCP payments due before this rule is published. EPA expects to publish this rule in time for manufacturers to make NCP payments prior to the final date these payments are due. However, if this rule is not published by that date, manufacturers will not be held responsible for interest on NCP payments for standards covered under this rule if those payments are received within 60 days after the date the rule is published.

C. Averaging/Credit Use Issues

MECA was the only party to comment on this aspect of the rulemaking. MECA stated that "averaging should not be available for subclasses eligible for NCPs or, at a minimum unavailable if a manufacturer elects to use NCP for any engine in that subclass." MECA then said that EPA's proposal was not acceptable because it would "allow manufacturers to pay NCPs on some engine families" and that this would lead to a compliance program in which ". . . emission reductions are achieved on paper, but real world reductions are not."

EPA does not agree. MECA does not explain why emission reductions "would be achieved on paper," but not in the "real world," and EPA sees no basis for believing the proposed rule would have such an effect. The averaging program has been constructed to assure that emission levels that exceed the standard are offset by emission levels below the standards, so that required emission reductions are achieved with or without averaging.

In the case of NCPs, Congress contemplated that their use would result in emissions levels in excess of those permitted by the standards. Allowing such temporary exceedances, however, was Congress' answer to the dilemma posed by technology-forcing emission standards: if standards were to be based on what most manufacturers could accomplish in the available leadtime, the potential existed for such standards to drive technologically lagging manufacturers out of the market. NCPs thus provide technological laggards with more time to comply, but at an ever-increasing price, so that they have no incentive to comply as quickly as possible.

The proposed interrelationship between the averaging and NCP programs (prohibiting engine families which use NCPs from participating in the averaging program) preserves the purposes and safeguards of both, while affording manufacturers maximum flexibility to meet the standards. The proposed interrelationship would also benefit the environment by encouraging manufacturers to offset a noncompliance by manufacturing cleaner engines, and reducing fleetwide emissions that would have occurred if only NCPs were available. For the reasons given here and in the NPRM, the Agency has decided to make final its proposal without change.

The trading and banking rule (55 FR 30584, July 26, 1990) also restricts the manufacturers ability to generate credits from averaging sets in which the manufacturer is using an NCP. Section 86.091-15(g)(4) of the trading and banking rule forbids a manufacturer that has any engine family in a given averaging set which is using NOx and/or particulate NCPs from generating credits for banking and trading from any engine family in the averaging set.

D. Administrative Issues

1. APTA's Petition for the Repeal of the 1991 Urban Bus PM Standard

In February 1989, APTA filed a petition with the Agency requesting that the Agency relax the 1991 urban bus particulate matter standard because APTA believes that manufacturers of HDDEs will not be able to meet the standards, citing a lack of existing technology to address the problem. In APTA's comments on this rulemaking, APTA urged "that EPA act swiftly on our (APTA's) petition." Also, Flxible requested EPA to "grant APTA's petition." EPA recognizes APTA's and Flxible's concern, however, the issue of whether the urban bus standard should be relaxed is outside the scope of this rulemaking and cannot be dealt with here.

2. Labeling Requirement

Two parties, APTA and GM, addressed the proposed labeling requirement to distinguish urban bus engines from other heavy duty diesel engines. EPA proposed that engines certified to the urban bus requirements be labeled to indicate they are certified for use in urban buses and that other heavy duty diesel engines be labeled as not certified for use in urban buses. APTA and GM commented that it is necessary only to label the urban bus engines. However, EPA has received a number of inquiries regarding the purchase of other engines for use in urban buses and believes that the dual labeling requirement is appropriate to help reduce potential confusion by the purchaser over what is and what is not a certified urban bus engine. GM also commented that its 1991 heavy duty engine labels had already been printed and that it would be unfair at this late date to require new labels. To address this concern (which we believe may affect other manufacturers as well as GM), we have included a provision in the regulatory language in the final rule indicating that EPA will consider temporarily waiving the labeling requirement for non-urban bus engines in cases such as this.

3. Trading and Banking of Emission Credits

MECA commented "that EPA's trading and banking program is inconsistent with the requirements of the Clean Air Act, will impede the development and use of control technology, and result in less emission control than otherwise would be achieved."

MECA's comment is outside the scope of this rulemaking and is addressed in the preamble to the Trading and Banking final rule (55 FR 30584, July 26, 1990).

4. Terminology Used in This Rulemaking

Flxible mentioned that it thought EPA's term petroleum-fueled heavy-duty diesel engine was "redundant at best, and at worst misleading" and suggested that the term heavy-duty diesel engine (HDDE) be used instead. EPA does not agree that this term is misleading. The term diesel refers, not to the fuel type, but to the thermodynamic cycle under which the engine operates. The term petroleum-fueled refers to the acceptable petroleum based fuel(s) outlined in the CFR for engines operating under that particular thermodynamic cycle. For instance, the term petroleum-fueled heavy-duty diesel engine refers to an engine which is fueled by DF-1 or DF-2 and operates using the diesel thermodynamic cycle while the term methanol-fueled heavy duty Otto cycle engine would refer to an engine which is fueled by methanol and operates under the Otto thermodynamic cycle.

This distinction is necessary because the engine family, the applicable standard(s), and the status under the NCP, averaging, and trading and

banking programs are determined by what type of fuel the engine family uses and what thermodynamic cycle it operates under. If EPA were to use the term HDDE in this rulemaking, as Flxible has requested, it would not be clear whether EPA is referring to methanol- or petroleum-fueled engines. Since EPA has determined that methanol fueled engines do not meet the eligibility requirements for NCPs but petroleum-fueled engines do, this distinction is particularly warranted in this case. For these reasons, EPA rejects Flxible's arguments.

IV. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Major regulations are defined 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, individuals, 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1991 and later model year emission standards. Without this rule a manufacturer experiencing difficulty in complying with the 1991 model year emission standards (after the use of credits) has only two alternatives: fix the nonconforming engines or prevent their introduction into commerce. A manufacturer would be prevented from introducing nonconforming engines into commerce if a fix was not readily available. NCPs provide relief from these disruptions.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator has determined that this proposal does not constitute a "major" regulation according to these established criteria and that a RIA is not required.

V. OMB Review

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA response to those comments are available in the public docket (EN-87-02).

VI. Impact on Small Entities (Compliance With the Regulatory Flexibility Act)

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Administrator is required to certify whether this regulation will have a significant impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Even if some were small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

VII. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060-0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VIII. Judicial Review

The final actions described in this notice are made under the authority of section 202, 203, 206, 207, 208, and 301(a) of the Clean Air Act, and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia.

Petitions for judicial review must be filed on or before January 4, 1991. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 24, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86 is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Sections 202, 203, 206, 207, 208, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Paragraphs (a)(1)(iii)(C) and (a)(1)(iv)(C) of § 86.091-9 of subpart A are revised to read as follows:

§ 86.091-9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) * * *

(iii) * * *

(C) A manufacturer may elect to include any light-duty truck engine families in the NO_x averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Petroleum-fueled and methanol-fueled engine families may not be averaged together. Otto-cycle and diesel engine families may not be averaged together. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 2.3 grams per mile. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3750 lbs loaded vehicle weight included in the average, and is calculated as defined in § 86.088-2.

* * * * *

(iv) * * *

(C) A manufacturer may elect to include any diesel light-duty truck engine families in the appropriate particulate averaging program (petroleum and methanol), provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section. Averaging is not permitted between fuel types. If the manufacturer elects to average both light-duty trucks subject to the standards of paragraphs (a)(1)(iv)(A) of this section and light-duty vehicles together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks that are included in the average and is calculated as defined in § 86.088–2.

* * * * *

3. Paragraphs (g)(2) and (g)(3) of § 86.091–15 of subpart A are revised to read as follows:

§ 86.091–15 NO_x and particulate averaging, trading, and banking for heavy-duty engines.

* * * * *

(g) * * *

(2) Engine families paying an NCP for noncompliance of any emission standard *may not*:

(i) Participate in the averaging program,

(ii) Generate emission credits for any pollutant under banking and trading, and

(iii) Use emission credits for any pollutant from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs *and* averaging, banking, and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only, while the other, whose FEL does not equal the standard, must use emission credits only.

* * * * *

4. Section 86.091–35 of subpart A is amended by adding paragraph (a)(3)(iii)(N) to read as follows:

§ 86.091–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(N) For diesel engines which have been certified to comply with the urban bus particulate standard of 40 CFR 86.091–11(a)(1)(iv), the statement "This engine is certified for use in an urban bus as defined at 40 CFR 86.091–2." Unless waived by the Administrator on the basis of impracticality, for diesel engines not certified to comply with the urban bus particulate standard, the statement "This engine is not certified for use in an urban bus as defined at 40 CFR 86.091–2. Sales of this engine for use in an urban bus is a violation of Federal law under the Clean Air Act."

* * * * *

5. Paragraph (b) of § 86.1102–87 of subpart L is revised to read as follows:

§ 86.1102–87 Definitions.

* * * * *

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

Compliance level means the deteriorated pollutant emissions level at the 60th percentile point for a population of heavy-duty engines or heavy-duty vehicles subject to Production Compliance Audit testing pursuant to the requirements of this subpart. A compliance level for a population can only be determined for a pollutant for which an upper limit has been established in this subpart.

Configuration means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

NCP means a nonconformance penalty as described in section 206(g) of the Clean Air Act and in this subpart.

PCA means Production Compliance Audit as described in § 86.1106–87 of this subpart.

"Subclass" means a classification of heavy-duty engines of heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage (gasoline-, diesel-, and methanol-fueled), vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

(i) Light-duty gasoline-fueled Otto cycle trucks (6,001–8,500 lb. GVW)

(ii) Light-duty methanol-fueled Otto cycle trucks (6,001–8,500 lb. GVW)

(iii) Light-duty petroleum-fueled diesel trucks (6,001–8,500 lb. GVW)

(iv) Light-duty methanol-fueled diesel trucks (6,001–8,500 lb. GVW)

(v) Light heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)

(vi) Light heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)

(vii) Heavy heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 14,001 lb and above GVW)

(viii) Heavy heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 14,001 lb. and above GVW)

(ix) Light heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(1))

(x) Light heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(1))

(xi) Medium heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(2))

(xii) Medium heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(2))

(xiii) Heavy heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(3))

(xiv) Heavy heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(3))

(xv) Petroleum-fueled Urban Bus engines (see § 86.091–2)

(xvi) Methanol-fueled Urban Bus engines (see § 86.091–2).

For NCP purposes, all optionally certified engines and/or vehicles (engines certified in accordance with § 86.087–10(a)(3) and vehicles certified in accordance with § 86.085–1(b)) shall be considered part of, and included in the FRAC calculation of, the subclass for which they are optionally certified.

Test Sample means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected for emission testing.

Upper limit means the emission level for a specific pollutant above which a certificate of conformity may not be issued or may be suspended or revoked.

6. Section 86.1105–87 of subpart L is amended by revising paragraphs (c) and (d) to read as follows:

§ 86.1105–87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards:

(1) Petroleum-fueled diesel urban bus engine (as defined in § 86.091–2)

particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.091–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{50}: $4,500
(B) COC_{90}: $7,165
(C) MC_{50}: $22,971 per gram per brake horsepower-hour.
(D) F: 1.2
(E) UL: 0.60 grams per brake horsepower-hour

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.091–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.05

(2) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $1,480
(2) COC_{90}: $1,513
(3) MC_{50}: $5,833 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.07

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $905
(2) COC_{90}: $2,169
(3) MC_{50}: $7,083 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $930
(2) COC_{90}: $1,630
(3) MC_{50}: $22,500 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11

(3) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $830
(2) COC_{90}: $946
(3) MC_{50}: $1,167 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.12

(ii) For petroleum-fueled medium heavy-duty diesel engines;

(A) The following values shall be used to calculate an NCP in accordance with § 86.113–87(a):

(1) COC_{50}: $905
(2) COC_{90}: $1,453
(3) MC_{50}: $1,417 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $930
(2) COC_{90}: $1,590
(3) MC_{50}: $2,250 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11

(4) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $711
(B) COC_{90}: $1,396
(C) MC_{50}: $2,960 per gram per vehicle mile.
(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.01

(d) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67.

* * * * *

7. Section 86.1106–87 is amended by revising paragraph (a)(2) to read as follows:

§ 86.1106–87 Production compliance auditing.

* * * * *

(a) * * *

(2) PCA testing must be conducted on the same configuration tested during Certification, unless an alternate configuration is approved by the Administrator.

* * * * *

8. Section 86.1113–87 is amended by revising paragraphs (a)(3)(iv), (a)(6), (g)(3) introductory text, (g)(3)(i), and adding paragraphs (g)(5) and (g)(6) to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(3) * * *

(iv) In calculating the NCP for year n, the value $frac_{i-1}$ for i = n will include actual NCP usage through March 31 of model year n–1 and EPA's estimate of additional usage for the remainder of model year n-1 using manufacturer input. All manufacturers using NCPs must report by subclass actual NCP and non-NCP production numbers through March 31, an estimate of NCP and non-NCP production for the remainder of the model year, and the previous year's actual NCP and non-NCP production to EPA no later than April 30 of the model year. If EPA is unable to obtain similar information from manufacturers not using NCPs, EPA will use projected sales data from the manufacturers' application for certification in computing the total production of the subclass and the $frac_{i-1}$. The value of $frac_{i-1}$ will be corrected to reflect actual year-end usage of NCPs and a corrected AAF will be used to establish NCPs in future years. The correction of previous year's AAF will not affect the previous year's penalty.

* * * * *

(6) In calculating the NCP, appropriate values of the following predefined terms should be used: CL, S, UL, F, and A_i. For all other terms, unrounded values of at least five figures beyond the decimal point should be used in calculations leading up to the penalty amount. Any NCP calculated under paragraph (a) of this section will be rounded to the

nearest dollar in accordance with ASTM E29–67.

* * * * *

(g) * * *

(3) A manufacturer making payment under paragraph (g)(1) or (g)(2) of this section shall submit the following information by each quarterly due date to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This information shall be submitted even if a manufacturer has no NCP production in a given quarter.

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), NCP payment calculations and interest payment calculations, if applicable.

* * * * *

(5)(i) Interest shall be assessed on any nonconformance penalty for which payment has been withheld under § 86.113–87(g) (1) or (2). Interest shall be calculated from the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until either the date on which the Presiding Officer or the Administrator renders the final decision of the Agency under § 86.1115–87 or the date when an alternate payment schedule (approved pursuant to § 86.1113–87(g)(1)) ends.

(ii) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g) (1) or (2) shall be calculated according to the formula:

$$QNCP(1+R).25n$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding.

(ii) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed throughout the duration of a hearing request, or alternate payment schedule.

(iv) The interest rate applicable to a quarter for purposes of this paragraph shall be the rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 and effective on the date on which the NCP payment was originally due.

(6) A manufacturer will be refunded an overpayment, or be permitted to offset an overpayment by withholding a future payment, if approved in advance by the Administrator. The government shall pay no interest on overpayments.

* * * * *

§ 86.1115–87 [Amended]

9. In § 86.1115–87, paragraph (z) is removed, and (aa) is redesignated as (z).

[FR Doc. 90–25867 Filed 11–2–90; 8:45 am]
BILLING CODE 6560–50–M

federal register

Monday
November 5, 1990

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

Changes to the Minimum Property Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-90-1495; FR-2599-P-01]

RIN 2502-AE64

Changes to the Minimum Property Standards

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S by (1) referencing the latest editions of private sector standards now in the MPS; (2) standardizing requirements to control termites and wood decay; (3) removing Federal agency standards for thermal insulation standards and referencing a model energy code instead; and (4) revising the time for periodic changes to the MPS and by making changes of an editorial nature. These changes to the MPS are needed to keep referenced standards current, to eliminate unnecessary duplicate and confusing federal standards, and to protect the Department's insurance fund.

DATES: Comment Due Date: January 4, 1991.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this document. A copy of each comment will be available for public inspection during regular business hours at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.).

FOR FURTHER INFORMATION CONTACT: Donald Fairman, Manufactured Housing and Construction Standards Division, Room 6270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone, voice: (202) 708-0718; (TDD) (202) 708-4594 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The National Housing Act, 12 U.S.C. 1702 *et seq.* authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of one and two family residential structures, multifamily residential structures, and care-type facilities (nursing home, intermediate care facility, combined nursing home and intermediate care facility, board and care home, hospital or group practice facility). See *e.g.*, 12 U.S.C. 1715*l*(f). Some general statutory guidelines govern the nature of these standards. For example, the standards are "to establish the acceptability of * * * propert(ies) for mortgage insurance * * *." 12 U.S.C. 1715*l*(f). In addition, the standards must be consistent with the declared national housing policy of realizing "the goal of a decent and suitable living environment for every American family * * *", 42 U.S.C. 1441.

Accordingly, the Secretary prescribed Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, for determining the acceptability of one and two family, multifamily and care-type housing. 24 CFR part 200, subpart S, in turn, currently references additional MPS in HUD Handbooks 4910.1 and 4930.2 which are incorporated into the Department's regulations by authority of 24 CFR 200.927. The current MPS for multifamily housing and one and two family dwellings were last revised at 53 FR 11270 on April 6, 1988; and the MPS for care-type housing were last revised at 51 FR 28696 on August 11, 1986.

These revisions to the MPS were adopted in light of section 526 of the National Housing Act, 12 U.S.C. 1735f-4, as amended by the Housing and Urban-Rural Recovery Act of 1983, Public Law 98-181, section 405, 97 Stat. 1153 (1983). As amended, section 526(b) permits the Secretary to require, with respect to health and safety, that properties, other than manufactured homes, "comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent." The Secretary is "responsible for determining the comparability of the State and local codes to such model codes * * *".

The current MPS were also adopted in light of OMB Circular A-119 published at 47 FR 49496 on November 1, 1982. The Circular establishes a Federal policy that, whenever feasible, model codes and standards developed by private organizations should be adopted by the government when their use will eliminate the necessity for separate Federal agency standards covering the same technical issues.

The current MPS, therefore, represent a change in the basic structure of previous MPS. The MPS were changed by eliminating all but a few necessary standards not generally found in the private sector and instead relying, by reference, on acceptable private sector model building codes and standards for health, safety and welfare, or on comparable State or local building codes and standards that covered the same technical issues.

Since 1984, 1985 and 1986, most of the private sector model building codes and standards that were then referenced in the MPS have been changed. The Department has, therefore, proposed these MPS revisions to be consistent with section 526 of the National Housing Act, OMB Circular A-119, and the goals of the Department.

In this proposal, the Department has made a singular exception to the use of a material accepted for use in building codes. In the codes, the use of fire retardant plywood is permitted in the construction of roofs for town or row houses. During the past several years, there has been increasing evidence that some of the fire retardant plywood has suffered severe structural deterioration resulting in millions of dollars expended in replacement costs. Given these problems and due to a lack of standards and a need for acceptable testing and quality control protocols, the Department feels there is not sufficient protection for the mortgage insurance fund to continue acceptance of this technology. The Department is, however, in close touch with industry and is studying ways to provide for acceptance of this product where HUD's financial responsibilities can be adequately protected.

I. The Proposed Rule

A. Referenced Standards

Unless noted elsewhere in this proposed rule, the Department is proposing to adopt current editions of public and private sector model codes or standards now referenced in the MPS at

§§ 200.925–200.933 and in HUD Handbook 4910.1. Those now referenced in HUD Handbook 4910.1 are also listed in appendix A to 24 CFR part 200. Those now referenced in § 200.926 are also listed in appendix B in part 200, and the few remaining are now listed in § 200.925 and § 200.929. In addition, the Department is proposing changes that have occurred in the addresses of the approximately 36 sources where copies of the referenced codes or standards are now available.

The Department is also proposing to reference an additional nationally recognized model plumbing code—the National Standard Plumbing Code.

In some cases, the proposed standards or source addresses will be the same as those now referenced in the MPS, but in most cases the model code or standard edition now in the MPS is no longer available and would be replaced by the current edition listed in this proposed rule. In other cases, the standards now referenced in the MPS have been combined with others, have been adopted by the model codes, or are available from a different source. In some cases the standard may have a new publisher. These changes are reflected in appendix A.

B. Termite and Decay Protection Standards

The Wood Protection Council of the National Institute of Building Sciences reports that Americans spend $750 million every year replacing or repairing wood in their houses and buildings as a result of decay and termite attack. Therefore, in 1984 when the MPS for multifamily housing were last revised, the Department retained Federal agency standards for the control of termites and wood decay rather than relying on model or State or local building standards, which often lack a standard for termite barriers and the chemical treatment of soil and wood as recommended in the Department of Agriculture Publications referenced in appendix A to 24 CFR part 200. The current MPS that reference those publications (and which now apply to care-type housing as well) can be found in section 606 of HUD Handbook 4910.1.

When the MPS for one and two family housing units or townhouses were revised in 1985, a reference in § 200.926(b)(3)(i) to the MPS in section 606 of HUD Handbook 4910.1 for termites and wood decay was inadvertently omitted. The Department, therefore, is proposing to include such a reference to assure uniform housing requirements in the MPS.

C. Solar and Thermal Insulation Standards

In 1984, 1985 and 1986, acceptable private sector standard were found that could be referenced in place of the Federal agency MPS that covered the same technical issues, except for one—the thermal insulation standards for one and two family dwellings. Section 526(a) of the National Housing Act requires the Secretary to "promote the use of energy saving techniques through the MPS" and assure that the MPS are "at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982." A private sector standard, the Model Energy Code used widely by States and local jurisdictions, was found to have thermal insulation standards for multifamily and care-type housing that comply with section 526(a). They are now referenced in HUD Handbook 4910.1, section 607–1.1, in lieu of the previous Federal agency standards. However, no such comparable standards were found at that time for one and two family dwellings.

In 1987 and 1988, after years of national debate that included HUD, Farmers Home Administration, and many national, State and local experts, the Model Energy Code became the first such private sector standard to "promote the use of energy saving techniques" for one and two family dwellings and became "at least" as effective as the standards in the MPS for one and two family dwellings. The Department, therefore, is proposing to withdraw the Federal agency standards at § 200.926d(e) and instead to reference the thermal insulation standards in the current Model Energy Code developed by the private sector for States and local jurisdictions.

In a related action, the Department of Energy in 1980 funded the development of a document entitled "Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems", DOE/CS/34281–01, to be used in conjunction with existing model building codes on which the Department now relies.

The Department is also replacing the standards in HUD handbook 4930.2, titled Intermediate Minimum Property Standards Supplement for Solar Heating and Domestic Hot Water Systems, with non-mandatory guidelines that are contained in the 1989 edition of the same HUD handbook. The 1989 revision reflects a joint effort by HUD and the solar heating industry represented by the National Institute of Standards and Technology to incorporate current technology. Copies of the revised edition are available from the HUD user at P.O. Box 6091, Rockville, Maryland 20850.

D. Proposed Changes to Minimum Property Standards for Housing 4910.1: Chapter 1

At the time this proposed rule is published as a final rule, HUD Handbook 4910.1 will be changed to be consistent with the rule and will be published by the Government Printing Office as the 1990 edition of the Minimum Property Standards for Housing.

The proposed changes to the Minimum Property Standards for Housing (MPS) 4910.1; chapter 1 are as follows:

Section 100–1.2 Housing for the Elderly

The first two paragraphs from 100.1.2 would be removed. These requirements are in § 100.1.3 of the handbook and in the Uniform Federal Accessibility Standard (UFAS) (24 CFR part 40), which is referenced at 100–1 in appendix E. This change eliminates unnecessary duplication. This subsection would then start with subsection "a. Handrails."

Section 100–1.2 Paragraph b.1

The requirement for covered walks would be eliminated. Covered walks have not been considered a necessary requirement for some time. They are, in fact, an expensive luxury that frequently has been waived at the local level, and they are not required by the Uniform Federal Accessibility Standard (UFAS). Removal will eliminate confusion and still provide for sidewalk accessibility requirements consistent with those called for in section 4 of the UFAS.

Section 100.1.2c

The requirement for Community Social Rooms would be removed. The removal of this section is required to eliminate possible conflicts and unnecessary duplication. Social room requirements are addressed by the various program requirements.

Section 100–1.2d(6); (7); (8); (i); (ii) and (iv)

These paragraphs would be revised to read as follows:

(6) Central Dining—Where required by the program requirements, space shall be provided for meals.

(7) Central Kitchen Facilities—The first sentence would be deleted.

(8) Central Bathing Facilities—(A) Place a period after the word "served." (B) Paragraphs (i) and (iv) would be eliminated. Paragraph (ii) would be revised to read as follows: Space for

dressing and for the movement of wheelchairs shall be provided in accordance with the requirements of UFAS, section 4. (These changes are editorial. They eliminate tub and shower optional requirements and they clarify space requirements where required for the movement of wheelchairs.) The present (ii) and (iii) would be redesignated as (i) and (ii) respectively.

Section 100.1.2f. Bathrooms

Paragraphs 1. and 2. would be revised to read as follows:

1. Bathtubs shall be provided with grab bars as specified in section 4.26 of the UFAS.

2. A stall shower, when installed, shall meet the requirements of the UFAS section 4.21, Shower Stalls.

These changes are editorial and are intended to clarify the Department's requirements for housing for the elderly. The M.F/C–86 edition includes requirements for the UFAS at 24 CFR part 40, and variations, additions and exceptions to the MPS when housing is for the elderly. (See § 100–1.2.)

Section 100–1.2i. Elevators

This paragraph would be revised to read as follows:

(1) Elevators complying with UFAS shall be provided in buildings of three or more stories or two stories if any accessible living unit is located on a floor which does not have all common facilities.

This revision would comply with section 4.10 of the UFAS. Paragraph 2 of § 100–1.2i would be removed. The requirements removed from this section are covered in the UFAS and are therefore unnecessary. This is an editorial change intended to clarify the requirements by referencing the standards adopted for use by the Department. The elevator requirements for minimum car size and load capacity are specified in the UFAS and in ANSI A17.1.

Section 100–1.3. Requirements for Accessibility to Physically Handicapped People

(A) The first paragraph of 100–1.3 would be eliminated.

(B) The word "housing" in the first line of the second paragraph be changed to "living."

(C) The third paragraph would be replaced by the following: Accessible housing units shall comply with the requirements of UFAS. Projects with accessible units shall also meet all of the facility accessibility requirements of UFAS.

This proposed revision eliminates recommendations for accessibility in non-assisted projects where they are not currently required. However, where financial assistance programs are involved and projects are constructed under HUD insured programs, accessible housing units for the physically handicapped are required to comply with the requirements of UFAS. The number of housing or living units will be determined on a project-by-project basis, based upon program.

This change is considered editorial, in that it removes a recommendation and clarifies the accessibility requirements for the physically handicapped in accordance with HUD policy.

Readers should note that the Fair Housing Amendments Act of 1988 (Amendments Act) provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings available for first occupancy after March 31, 1991, in accordance with stated requirements associated with accessibility to the handicapped. On January 23, 1989 (54 FR 3232) HUD published a final rule implementing the Amendments Act. At 24 CFR 100.205(c), this final rule contains the following language:

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design;

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The final rule of January 23, 1989 stated that HUD would publish accessibility guidelines to provide builders and developers with guidance on how to comply with the specific accessibility requirements of the Act. On June 15, 1990 (55 FR 24370) HUD published the Accessibility Guidelines for public comment. When today's proposed rule revising the MPS reaches final rule stage, HUD proposes to incorporate 24 CFR 100.205(c) (see text above) into the MPS by conforming the material now appearing at paragraph 100–1.3 to the Amendments Act rule's requirements. When the final Accessibility Guidelines are published, they will be cross-referenced in this rule making as one acceptable means of satisfying the requirements of § 100.205(c) and paragraph 100–1.3.

Section 100–1.3a. Variation Procedures

In the last line, the phrase "the Secretary" would be changed to "Headquarters". This change is editorial.

Section 100–1.3f. Emergency Call Systems

This paragraph would be removed. Emergency call systems are not typically specified or required for physically handicapped people. Their requirements are for accessibility and availability to meet particular needs. Emergency call systems today are generally required for care type housing. Recognizing this, a new section for care type facilities has been included as § 100–1.4.

A new § 100–1.4 for Construction of Care Type Facilities would be added as follows.

Section 100–1.4 Requirements for Care Type Facilities

a. Construction

Care Type Facilities shall comply with the requirements of The Guidelines for Construction and Equipment of Hospitals and Medical Facilities as published by the AIA press, 1987 edition.

b. Housing Units and Patient Rooms

At least 50 percent of living units, patient rooms or bedrooms and associated facilities shall comply with the requirements of UFAS.

This is a new section that recognizes the special requirements for Care Type Facilities and provides for that need.

Section 100–3. Rehabilitation Construction

This section is outlined or detailed in the various program regulations, eliminating the need for it here. It would therefore be removed.

Chapter 6 Construction

Section 603–1.2(i) Add Footnote to Paragraph 603–1.2(i)

Note: Acceptable base course materials are gravel, slag, crushed rock, sand, cinders and certain types of earth when approved by the local HUD field office. See ASTM C–33–86, Table 2. Base course material shall be clean, washed and free from deleterious substances, consistent with ASTM C–33, with 100% of the material passing a 1" sieve and less than 2% passing a #4 sieve.

Section 607–1.1 Energy Efficiency

Revise the 3rd and 4th lines to update the standard to the "1989 edition except sections 101.3.1, 101.3.2, 104 and 105," but including the appendix.

Appendix "E" 4910.1 Section 607—Thermal and Moisture Protection

Update the CABO Model Energy Code, 1983 edition to the, "1989 Edition", including the 1990 amendments.

G. *MPS Changes*

Private sector codes now incorporated in the MPS publish new editions every 3 years, and most, but not all, publish amendments yearly. Private sector standards now incorporated in the MPS publish reaffirmed or revised editions every 5 years in no particular sequence. The Department is therefore proposing to change the time interval in § 200.933 for periodically publishing new editions of the MPS from 3 months to 3 years, to be consistent with the appearance of significant numbers of new editions of referenced private sector codes. This publishing schedule will not, however, preclude changes for the purpose of adopting standards in more frequent amendments, where they are considered urgent.

II. Comments Requested

The Department invites comments concerning each of the private organizations whose model codes or standards are now used or proposed to be used in lieu of Federal agency standards previously in the MPS, as to the adequacy of the standards adopted and the accuracy of the reference to the standard in the proposed rule.

III. Miscellaneous Information

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 11291 on Federal Regulations issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have 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.

Consistent with the provisions of 5 U.S.C. 605(b) the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would not alter the current practice by which housing is designed or constructed. It would reduce the burden of compliance which already exists for both small and large entities. In all cases, housing must be built in compliance with local codes. Upon the effective date of this rule, the Department generally would accept such compliance as satisfying the Department's concerns relating to the health and safety aspects of those structures.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16227, 16239) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule only revises HUD's Minimum Property Standards, and presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

Accordingly, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 would continue to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715a–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 200.925a would be amended by revising paragraph (d)(3)(iii) to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(d) * * *

(3) * * *

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

* * * * *

3. Section 200.925b would be amended by revising paragraph (k)(1) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(k) * * *

(1) Reference ANSI Standard A 17.1–1987;

* * * * *

4. Section 200.925c would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2); by adding a paragraph (a)(3); and by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 200.925c Model codes.

(a) * * *

(1) * * *

(i) The BOCA National Building Code, 1990 Edition, excluding Article I, Administration and Enforcement and the words "or fire retardant treated wood for a distance of 4 feet (1219 mm) from the wall in exception number 1 of paragraph 905.6 and 907.6.2 number 2 (Article 9), place a period after the word materials in the 2nd line and omit rest of sentence, but including the appendices of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(ii) Standard Building Code, 1988 Edition, including the 1989 amendments but excluding Chapter I—Administration and the phrase "or fire retardant treated wood" in reference note (a) of table 600 (Chapter VI), but including appendices C, E, M and R of the Code. Available from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(iii) Uniform Building Code, 1988 Edition, including the 1990 supplements but excluding part I–Administrative, and the reference to fire retardant treated plywood in section 2504(c)3 and to fire retardant treated wood in 1–HR type III and V construction referenced in paragraph 4203.2., but including the appendix of the Code. Uniform Plumbing Code, 1988 Edition, excluding part I—Administrative, but including the appendix of the Code. Uniform Mechanical Code, 1988 Edition, excluding Part I—Administrative, but including the appendix of the Code. All available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) National Electrical Code, NFPA 70, 1990 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(3) National Standard Plumbing Code, 1990 Edition, including appendices. Available from the National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, Virginia 22046.

(b) * * *

(c) * * *

(1) The BOCA National Building Code, 1990 Edition.

(2) Standard Building Code, 1988 Edition, including the 1989 amendments and the National Electrical Code, 1990 Edition.

(3) Uniform Building, Plumbing and Mechanical Codes, 1988 Editions, including amendments through 1990 and the National Electrical Code, NFPA 70, 1990 Edition.

* * * * *

5. Section 200.926 would be amended, by revising paragraphs (d)(1)(i)(B)(*2*), (d)(1)(i)(C)(*1*), (d)(1)(ii)(B)(*2*)(*ii*), and paragraph (d)(3) to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(C) * * *

(*1*) The CABO One and Two Family Dwelling Code as identified in § 200.926b(a); and

(ii) * * *

(B) * * *

(*2*) * * *

(*ii*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(3) *Notification of decision.* (i) Fire Retardant Treated plywood, where approved by a State or local code, shall not be permitted for use in roof construction unless a technical suitability bulletin has been issued by the Department for that product.

(ii) The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

* * * * *

5. Section 200.926b would be amended by revising paragraphs (a)(1) and (a)(2), and (c), to read as follows:

§ 200.926b Model codes.

(a) * * *

(1) *CABO one and two family dwelling code,* 1989 Edition, including the 1990 amendments, excluding Chapter I–Administration, and the phrase "or fire retardant wood" contained in the exception of paragraph R–202.4(2), but including the Appendices of the Code. (Available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041.)

(2) *Electrical code for one and two family dwellings,* NFPA 70A, 1990 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

* * * * *

(c) *Designation of model codes.* When a one or two family dwelling or townhouse is to comply with portions of the model code or the entire model code, the dwelling shall comply with the CABO One and Two Family Dwelling Code 1989 Edition including the 1990 supplements or portion thereof as modified by § 200.926e and designated by the HUD Field Office serving a jurisdiction in which a property is located. In addition, the property shall comply with all of the standards which are referenced for any designated portions of the model code, and with the Electrical Code for One and Two Family Dwellings, NFPA 70A/1990.

§ 200.926c [Amended]

7. Section 200.926c would be amended in the schedule (table) by revising the heading in the second column now reading "Portions of the CABO 1- and 2-family dwelling code/1983 with 1984 and 1985 amendments with which property must comply" and "Electrical code for 1- and 2-family dwellings (NFPA 70A–1984)", to read as follows: "Portions of the CABO One and Two Family Dwelling Code, 1989 Edition including the 1990 supplements with which a property must comply" and "Electrical code for 1- and 2-family dwellings (NFPA 70A–1990)."

8. Section 200.926d would be amended by revising paragraph (a)(1), by revising paragraph (b)(3)(i) to reference a termiticide standard in the last sentence, and by revising all of paragraph (e) to reference a nationally recognized model energy code.

§ 200.926d Construction requirements.

(a) * * *

(1) *General.* These standards cover the agency requirements for accessibility to physically handicapped people, variations to standards, real estate entity, trespass and utilities, site conditions, access, site design, streets, dedication of utilities, drainage and flood hazard exposure, special construction and product acceptance, thermal requirements, and water supply system.

* * * * *

(b) * * *

(3) * * *

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use

and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection.

* * * * *

(d) * * *

(3) *Standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards and practices to which compliance is required, *see* HUD Handbook 4910.1, appendix C and appendix E.

(e) *Energy efficiency.* All detached one and two family dwellings and one-family townhouses not more than three stories in height shall comply with the CABO Model Energy Code, 1989 Edition including the 1990 supplements for Type A-1 Group R, Residential Buildings, except for §§ 101.3.1, 101.3.2, 104 and 105, but including the appendix, and HUD intermediate MPS Supplement 4930.2 Solar Heating and Domestic Hot Water Systems, 1989 edition.

* * * * *

9. Section 200.929 would be amended by revising paragraph (b)(2) and by removing paragraph (b)(3) without substitution, to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1989 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. In also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (1).

10. Section 200.933 would be amended by revising the first sentence to read as follows:

§ 200.933 Changes in minimum property standards.

Changes in the Minimum Property Standards will generally be made every three years. * * *

11. Appendix A to part 200 would be amended by listing the standards and sources that would be unchanged, updated, added or removed and incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1). As revised, Appendix A to part 200 reads as follows:

Appendix A to 24 CFR part 200

Standards incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1).

The following standards contained in HUD Handbook 4910.1, are incorporated by reference in the HUD Minimum Property Standards (MPS) (24 CFR 200.927). Copies of the Handbook may be purchased from the U.S. Government Printing Office, Washington, DC 20402. The Handbook is also available for public inspection at the HUD Program Information Center, room 8141, 451 Seventh Street SW., Washington, DC, at each HUD Regional and Field Office, and at the Office of the Federal Register, 1100 L Street NW., Washington, DC.

The individual standards referenced in the list below are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, room 6270, 451 Seventh Street SW., Washington, DC, and the Office of the Federal Register.

Aluminum Association, 900 19th Street NW., Washington, DC 20006. Telephone (202) 862-5100
- AA-ASM 35-88—Specifications for Aluminum Sheet Metal Work in Building Construction

American Concrete Institute, P.O. Box 19150, Redford Station, Detroit, Michigan 48219. Telephone (313) 532-2600
- ANSI/ACI 211, 1-1—Practice for Selecting Proportions for Normal, Heavyweight, and Mass Concrete (Revised 1985)
- ANSI/ACI 211.2-81—Practice for Selecting Proportions for Structural Lightweight Concrete
- ACI 213R-79—Guide for Structural Lightweight Aggregate Concrete (Reaffirmed 1983)
- ANSI/ACI 214-77—Recommended Practice for Evaluation of Strength Test Results of Concrete (Reaffirmed 1983)
- ANSI/ACI 301-84—Specifications for Structural Concrete for Buildings (Revised 1988)
- ACI 302.1R-80—Guide for Concrete Floor and Slab Construction
- ANSI/ACI 304R-73—Recommended Practice for Measuring, Mixing, Transporting and Placing Concrete
- ACI 305R-77—Hot Weather Concreting (Revised 1982)
- ACI 306R-78—Cold Weather Concreting (Revised 1988)
- ACI 311.4R-80—Guide for Concrete Inspection (Revised 1988)
- ACI SP-66-80—ACI Detailing Manual
- ANSI/ACI 318-83—Building Code Requirements for Structural Plain Concrete (Revised 1987)
- ANSI/ACI 347-78—Recommended Practice for Concrete Formwork (Revised 1984)
- ACI 504R-77—Guide to Joint Sealants for Concrete Structures
- ANSI/ACI 506-66—Recommended Practice for Shotcreting (Revised 1983)
- ACI 515.1-79—A Guide to the Use of Waterproofing, Dampproofing, Protective, and Decorative Barrier Systems for Concrete (Revised 1985)
- ACI 533.1r-69—Quality Standards and Tests for Precast Concrete Wall Panels
- ACI 533.2r-69—Selection and Use of Materials for Precast Concrete Wall Panels
- ACI 533.3r-70—Fabrication, Handling and Erection of Precast Concrete Wall Panels

American Hardboard Association, 520 North Hicks Road, Palatine, Illinois 60067. Telephone (708) 934-8800
- ANSI/AHA A135.4-82—Basic Hardboard (Revised 1988)
- ANSI/AHA A135.6-89—Hardboard Siding
- ANSI/AHA A194.1-85—Cellulosic Fiber Insulation Board

American National Standards Institution, 1430 Broadway, New York, New York 10018. Telephone (212) 354-3300
- ANSI/APA 1-84—Mosaic-Parquet Hardwood Slat Flooring
- ANSI A108.1-85—Installation of Glazed Wall Tile, Ceramic Mosaic Tile, Quarry Tile and Paver Tile with Portland Cement Mortar
- ANSI A117.1-86—Buildings and Facilities—Providing Accessibility and Useability for Physically Handicapped People
- ANSI 17.1-87—Elevators, Escalators & Moving Walks
- ANSI A137.1-80—Ceramic Tile
- ANSI A156.2-89—Locks and Lock Trim
- ANSI A161.1-85—Recommended Construction and Performance Standards for Kitchen and Vanity Cabinets
- ANSI A208.1-89—Mat Formed Wood Particleboard (Revised 1989)
- ANSI Z34.1-87—American National Standard for Certification, Third Party Certification Program
- ANSI Z 124.5-89—American National Std. for Plastic Seats (water closet seats)

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, Georgia 30329. Tel. 404-636-8400

ASHRAE Handbook of Fundamentals—1985
ASHRAE Handbook of HVAC Systems and Applications—1987
ASHRAE Handbook of Equipment—1983

ASHRAE Cooling and Heating Load Calculations Manual—GRP 158-1979

American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. Tel. 215-299-5400
ASTM C 12-86—Installing Vitrified Clay Pipe Lines
ASTM C 208-82—Insulating Board (Cellulosic Fiber), Structural and Decorative (Reaffirmed 1982)
ASTM C 209-84—Methods of Testing Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 220-84—Flat Asbestos-Cement Sheets (Reaffirmed 1984)
ASTM C 221-84—Corrugated Asbestos-Cement Sheets
ASTM C 223-84—Asbestos-Cement Siding (Reaffirmed 1984)
ASTM C 509-84—Cellular Elastomeric Preformed Gasket and Sealing Material
ASTM C 516-85—Vermiculite Loose Fill Thermal Insulation (Reaffirmed 1985)
ASTM C 549-86—Perlite Loose Fill Insulation (Reaffirmed 1986)
ASTM C 578-87a—Insulation Board, Thermal (Polystyrene)
ASTM C 640-83—Insulation Board, Thermal (Cork)
ASTM C 726-81—Mineral Fiber and Mineral Fiber Rigid Cellular Polyurethane Composite Roof Insulation Board
ASTM C 739-86—Insulation Thermal (Loose Fill for Pneumatic or Poured Application)
ASTM C 754-88—Installation of Steel Framing Members to Receive, Screw Attached Gypsum Wallboard, Backing Board or Water Resistant Backing Board
ASTM C 834-86—Latex Sealing Compounds (Reaffirmed 1986)
ASTM C 841-87—Installation of Interior Lathing and Furring
ASTM C 842-85—Application of Interior Gypsum Plaster
ASTM C 843-85—Application of Gypsum Veneer Plaster (Reaffirmed 1985)
ASTM C 844-85—Application of Gypsum Base to Receive Gypsum Veneer Plaster
ASTM C 846-82—Application of Structural Insulating Board (Fiberboard) Sheathing (Reaffirmed 1982)
ASTM C 864-84—Specification for Dense Elastomeric Compression Seal-gaskets setting Blocks and Spaces
ASTM C 926-86—Application of Portland Cement-Based Plaster
ASTM C 1036-85—Glass, Float or Plate, Sheet, Figured (Flat, For Glazing, Mirrors and Other Uses)
ASTM D 1037-87—Wood-Base Fiber and Particle Panel Materials
ASTM C 1048-88—Glass, Plate (Float), Sheet, Figured, and Spandrel (Heat Strengthened and Fully Tempered)
ASTM D 1557-78—Moisture-Density Relations of Soils, and Soil-Aggregate Mixtures Using 10-lb (4.5 kg) Rammer and 18-in. (457 mm) Drop
ASTM D 2316-84—Installing Bituminized Fiber Drain and Sewer Pipe (Reaffirmed 1984)
ASTM D 2321-83*a*—Underground Installation of Flexible Thermoplastic Sewer Pipe
ASTM D 3656-83—Insect Screening and Louver Cloth Woven From Vinyl-Coated-Glass Fiber Yarn
ASTM D 3679-86—Rigid Polyvinyl Chloride (PVC) Siding
ASTM E 72-80—Methods of Conducting Strength Tests of Panels for Building Construction
ASTM E 283-84—Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors
ASTM E 330-84—Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 331-86—Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 380-86—Metric Practice

American Welding Society, 550 NW Le Jeune Road, P.O. Box 351040, Miami, Florida 33126, Telephone (305) 443-9353
ANSI/AWS D1.1-88—Structural Welding Code—Steel
ANSI/AWS D1.4-79—Structural Welding Code—Reinforcing Steel

American Architectural Manufacturers Association, Suite 118, 2700 River Road, Des Plaines, Illinois 60018, Telephone (305) 699-7310
ANSI/AAMA 101-88—Aluminum Prime Windows and Sliding Glass Doors
ANSI/AAMA 1002.10-83—Aluminum Insulating Storm Products
ANSI/AAMA 1102.7-89—Aluminum Storm Doors and Frames
AAMA 1402.-86—Aluminum Siding, Soffits and Facia
AAMA-1503.1-88—Voluntary Test Method for Thermal Transmittance, Condensation Resistance of Windows, Doors and Glazed Wall Sections
AAMA 1504-88—Thermal Performance of Windows, Doors, and Glazed Wall Sections
ANSI/ASHE A 112.18.1M89—Plumbing Fixture Fitings, P.O. Box 1405z, Lexington, KY 40512, Telephone (606) 288-4960

The Asphalt Institute, Asphalt Institute Building, College Park, Maryland 20740, Telephone (301) 277-4258
MSI-1-81—Thickness Design-Full-Depth Asphalt Pavement Structures for Highways and Streets

Asphalt Roofing Manufacturers Association, 6288 Montrose Road, Rockville, Maryland 20852, Telephone (301) 231-9050
Residential Asphalt Roofing Manual—1988

Carpet and Rug Institute, 310 Holiday Avenue, Box 2048, Dalton, Georgia 30722-0048, Telephone (404) 278-3176
How to Specify Commercial Carpet Installation, 1984

Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, Virginia 22041, Telephone (703) 931-4533
Model Energy Code—1989 Edition

Flat Glass Marketing Association, White Lakes Professional Building, 3310 Harrison Street, Topeka, Kansas 66611, Telephone (913) 266-7013
FGMA Glazing Manual—1986
FGMA Sealant Manual—1983

Hardwood Plywood Manufacturers Association, P.O. Box 2789, 1825 Michael Faraday Drive, Reston, Virginia 22090 Telephone (703) 435-2900
ANSI/HPMA LHF-1987 Laminated Hardwood Flooring

Insect Screening Weavers Assn., 2000 Maple Hill Street, P.O. Box 309, Yorktown Heights, NY 10598
IWS-089 Insect Wire Screening (wire fabric)

National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418
Publication 1571 Criteria for Selection and
Design of Residential Slabs-on-Ground, Report
#33, Building Research Advisory Board (BRAB)

National Association of Home Builders, Research Center, 400 Prince Georges Boulevard, Upper Marlboro, Maryland 20772, Telephone (301) 249-4000
Insulation Manual for Homes and Apartments—1979

National Assn. of Plumbing-Heating & Cooling Contractors, P.O. Box 6808, Falls Church, VA 22046 Telephone (703) 237-8100
National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, Telephone 1-800-344-3555
NFPA 54-88 National Fuel Gas Code (ANSI Z223.1—1988)
NFPA 70-90 National Electrical Code
ANSI/NFPA 58-86 Standard for the Storage and
Handling of Liquefied Petroleum Gases
National Oak Flooring Manufacturers Association, 22 North Front Street, Memphis, Tennessee 38103
Official Grading Rules for Oak, Beech, Birch,
Hard Maple and Pecan (OFGR/Vol. 1, No. 1/1986 and the 1988 Addendum)
Hardwood Flooring Finishing/ Refinishing Manual, 1986
Hardwood Flooring Installation Manual, 1986
National Roofing Contractors Association, One O'Hare Centre, 6250 River Road, Rosemont, Illinois 60018, Telephone (708) 318-6722
NRCA Roofing and Waterproofing Manual, 1989
National Terrazzo and Mosaic Association, 3166 Des Plaines, Avenue, Suite 132, Des Plaines, Illinois 60018, Telephone (708) 635-7744
NTMA Specifications, Details and Technical Data,
Terrazzo Ideas & Design Guide 1990
National Wood Window and Door Association, 205 West Touhy Avenue, Park Ridge, Illinois 60068, Telephone (703) 299-5200
ANSI/NWWDA IS 1-87 Industry Standard for Wood Flush Doors
ANSI/NWWDA IS 2-87 Industry Standard for Wood Window Units
ANSI/WWDA IS 3-88 Industry Standard for Wood Sliding Patio Doors
ANSI/NWWDA IS 6-86 Industry Standard for Wood Doors
Post-tensioning Institute, 301 West Osborn, Suite 3500, Phoenix, Arizona 85013, Telephone (602) 870-7540
Design and Construction of Post-tensioned Slabs-on-Ground—1980
Prestressed Concrete Institute, 175 West Jackson Boulevard, Suite 1859, Chicago, Illinois 60604
PCI MNL 116 Manual for Quality Control for Plants and Production of Precast Prestressed Concrete Products—1985
PCI MNL 117 Manual of Quality Control for Plants and Production of Architectural Precast Concrete Products—1977
Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12-B, Rockville, Maryland 20850, Telephone (301) 340-8580
Recommended Installation Specifications for Vinyl Composition, Solid Vinyl and Asphalt Tile Floorings, 1978
Safety Glazing Certification Council, c/o ETL Testing Laboratories, Industrial Park, Route 11, Cortland, New York 13045, Telephone (607) 753-6711
Certified Products Directory—1990
Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Avenue, Cleveland, Ohio 44107, Telephone (216) 226-7700
ANSI/SDI A123.1-82 Nomenclature for Steel Doors and Steel Door Frames
Southern California Association of Cabinet Manufacturers, 1933 South Broadway, L. 39, Los Angeles, California 90007, Telephone (213) 749-4355
Certified Construction Standards and Specifications, Guide for Uniform Cabinet Specifications—1973 (Revised 1985)
Tile Council of America, Inc., Box 326, Princeton, New Jersey 08542-0326, Telephone (609) 921-7050
Handbook for Ceramic Tile Installation—1990
Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062, Telephone (708) 272-8800
Electrical Appliance and Utilization Equipment Directory, 1989
U.S. Department of Agriculture, Publications Division, 14th and Independence Avenue, SW., Washington, DC 20050, Telephone (202) 447-3957
Agriculture Handbook No. 73, Wood Frame House Construction Handbook, 1989
Home and Garden Bulletin No. 73, Wood Decay in Houses, How to Prevent and Control It, 1986
U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, Telephone (301) 975-4025
NBS SP 330 The International System of Units, 1986
PS 1-83 Product Standard for Plywood
U.S. Department of Defense, Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120, Telephone (215) 697-2179
Federal Specifications:
L-S-125B—Screening, Insect, Non-metallic and Notice 1
L-F-001641—Floor Covering, Translucent or Transparent Vinyl Surface with Backing and Amendment 1—1971
L-F-475A—Backed Vinyl Plastic Sheet or Tile and Amendment 2—1971
HH-I-521F—Insulation Blankets, Thermal (Mineral Fiber-for-Ambient Temperatures—1988)
HH-I-526C—Insulation Board, Thermal (Mineral Fiber)—1968
HH-I-529B—Insulation Board, Thermal (Mineral Aggregate)—1971
HH-I-530B—Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate and Interim I—1982
HH-I-551E—Insulation Block and Boards, Thermal (Cellular Glass) Fiber, for Ambient Temperatures
HH-I-558B—Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type) and Amendment 3—1976
HH-I-574B—Insulation, Thermal (Perlite) and Interim Amendment—1976
HH-I-1030B—Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application)—1980
HH-I-1972/Gen; 1, 2, 3, 4, 5 & 6—Insulation Board, Thermal, Faced, Polyurethane and Polyisocyanurate and Amendments—1985
SS-S-346C—Siding (Shingles, Clapboards, and Sheets) 1968
SS-T-312B—Tile, Floor: Asphalt, Rubber, Vinyl-Composition and Interim Amendment—1979
4940.3-1972—Minimum Design Standards for Community Sewage Systems
4950.1-1979—Technical Suitability of Products Program, Technical and Processing Procedures
Commercial Standards:
CS 138-55—Insect Wire Screening
Federal Specifications:
L-F-00450A (GSAFSS)—Flooring, Vinyl Plastic
HH-I-585C—Insulation, Thermal (Vermiculite) and Interim Amendment 1—1976
HH-I-1252B—Insulation, Thermal Reflective, (Aluminum Foil) and Interim Amendment 1—1976
LLL-I-535B—Insulation Board, Thermal, Cellulosic Fiber
U.S. Environmental Protection Agency, Office of Drinking Water, 401 M Street SW., Washington, DC 20460, Telephone (202) 382-5533
EPA 570/9-82-004 Manual of Individual Water Supply (NTIS-PB 85242279) Systems (Reprinted 1982)
Water Quality Association, 4151 Naperville Road, Lisle, Illinois 60532, Telephone (708) 505-0160

WQA S-100—Water Softeners—1985
WQA S-200—Water Filters—1988
Wood Molding and Millwork Producers, P.O. Box 25278, Portland, OR 97225, Telephone (503) 292-9288
WM 3-79—Exterior Wood Door Frames

12. Appendix B to part 200 would be amended by listing the standards and sources that would be unchanged, updated, added or removed and incorporated by reference in the Minimum Property Standards for One and Two Family Dwellings and Townhouses (200.929, 200.926a-e). As revised, Appendix B to 24 CFR part 200 reads as follows:

Appendix B to 24 CFR Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One and Two Family Dwellings and Townhouses

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) for One and Two Family Dwellings and Townhouses in 24 CFR 200.926 and 24 CFR 200.926 a-e. The MPS for One and Two Family Dwellings and Townhouses have also been reprinted as appendix K in the HUD Handbook 4910.1. The MPS in either the CFR or HUD Handbook may be purchased from the U.S. Government Printing Office, Washington, DC 20402. The MPS are also available for public inspection at the HUD Program Information Center, Room 8141, 451 Seventh Street SW., Washington, DC, at each HUD Regional, and Field Office and at the Office of the Federal Register, 1100 L Street NW., Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Room 9156, 451 Seventh Street SW., Washington, DC and at the Office of the Federal Register.

American National Standards Institute, 1430 Broadway, New York, New York 11018, Telephone (212) 354-3300.
ANSI A58.1-82—Minimum Design Loads in Building and other Structures
American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, Telephone (215) 299-5400
ASTM C 62-87—Standard Specification for Building Brick (Solid Masonry Units Made from Clay or Shale)
Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, Telephone (703) 931-4533
CABO One and Two Family Dwelling Code, 1989 Edition, including the 1990 amendments, excluding Chapter I—Administrative Conservation, but including the Appendices of the Code
CABO Model Energy Code, 1989 Edition, including the 1990 amendments, excluding sections 101.3.1, 101.3.2, 104 and 105, but including the appendix
U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 755-6590
Handbooks:
4940.2-1973—Minimum Design Standards for Community Water Supply
4950.1-1988—Technical Suitability of Products Program, Technical and Processing Procedures. (Rev. 2) HUD's Intermediate MPS Supplement for Solar Heating & Domestic Hot Water Systems 1989
U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone (202) 382-5533
EPA 570/9-82-004 Manual of Individual Water Supply Systems (NTIS-PB 8542279)
(Reprinted 1982)

Dated: September 14, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-26068 Filed 11-2-90; 8:45 am]

BILLING CODE 4210-27-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3888/Pub. L. 101-479

To allow a certain parcel of land in Rockingham County, Virginia, to be used for a child care center. (Oct. 31, 1990; 104 Stat. 1158; 2 pages) Price: $1.00

H.R. 5749/Pub. L. 101-480

American University Incorporation Amendments Act of 1990. (Oct. 31, 1990; 104 Stat. 1160; 2 pages) Price: $1.00

H.J. Res. 519/Pub. L. 101-481

Designating August 29, 1990, as "National Sarcoidosis Awareness Day". (Oct. 31, 1990; 104 Stat. 1162; 1 page) Price: $1.00

H.J. Res. 566/Pub. L. 101-482

Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 19, 1990, as "National Military Families Recognition Day". (Oct. 31, 1990; 104 Stat. 1163; 2 pages) Price: $1.00

H.J. Res. 587/Pub. L. 101-483

Committing to the private sector the responsibility for support of the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes. (Oct. 31, 1990; 104 Stat. 1165; 2 pages) Price: $1.00

S. 1747/Pub. L. 101-484

Ponca Restoration Act. (Oct. 31, 1990; 104 Stat. 1167; 4 pages) Price: $1.00

S. 2059/Pub. L. 101-485

Wier Farm National Historic Site Establishment Act of 1990. (Oct. 31, 1990; 104 Stat. 1171; 3 pages) Price: $1.00

S. 2203/Pub. L. 101-486

Zuni Land Conservation Act of 1990. (Oct. 31, 1990; 104 Stat. 1174; 3 pages) Price: $1.00

S. 3032/Pub. L. 101-487

To designate the planned Department of Veterans Affairs Medical Center in Honolulu, Hawaii, as the "Spark M. Matsunaga Department of Veterans Affairs Medical Center". (Oct. 31, 1990; 104 Stat. 1177; 1 page) Price: $1.00

S. 3216/Pub. L. 101-488

To designate the Department of Veterans Affairs Medical Center in Charleston, South Carolina, as the "Ralph H. Johnson Department of Veterans Affairs Medical Center". (Oct. 31, 1990; 104 Stat. 1178; 1 page) Price: $1.00

S.J. Res. 293/Pub. L. 101-489

To designate November 16, 1990, as "National Philanthropy Day". (Oct. 31, 1990; 104 Stat. 1179; 1 page) Price: $1.00

S.J. Res. 307/Pub. L. 101-490

Designating November 11 through November 17, 1990, as "National Women Veterans Recognition Week". (Oct. 31, 1990; 104 Stat. 1180; 1 page) Price: $1.00

S.J. Res. 324/Pub. L. 101-491

Designating June 2 through 8, 1991, as a "Week for the National Observance of the 50th Anniversary of World War II". (Oct. 31, 1990; 104 Stat. 1181; 1 page) Price: $1.00

S.J. Res. 353/Pub. L. 101-492

To designate September of 1991 as "National Rice Month". (Oct. 31, 1990; 104 Stat. 1182; 2 pages) Price: $1.00

H.R. 5209/Pub. L. 101-493

Drug and Household Substance Mailing Act of 1990. (Oct. 31, 1990; 104 Stat. 1184; 1 page) Price: $1.00

H.R. 5933/Pub. L. 101-494

To provide for the temporary extension of the certain laws relating to housing and community development. (Oct. 31, 1990; 104 Stat. 1185; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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600-End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
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140-199	10.00	Jan. 1, 1990
200-1199	21.00	Jan. 1, 1990
1200-End	13.00	Jan. 1, 1990
15 Parts:		
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20 Parts:		
1-399	14.00	Apr. 1, 1990
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170-199	17.00	Apr. 1, 1990
200-299	5.50	Apr. 1, 1990
300-499	29.00	Apr. 1, 1990
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1300-End	9.00	Apr. 1, 1990
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

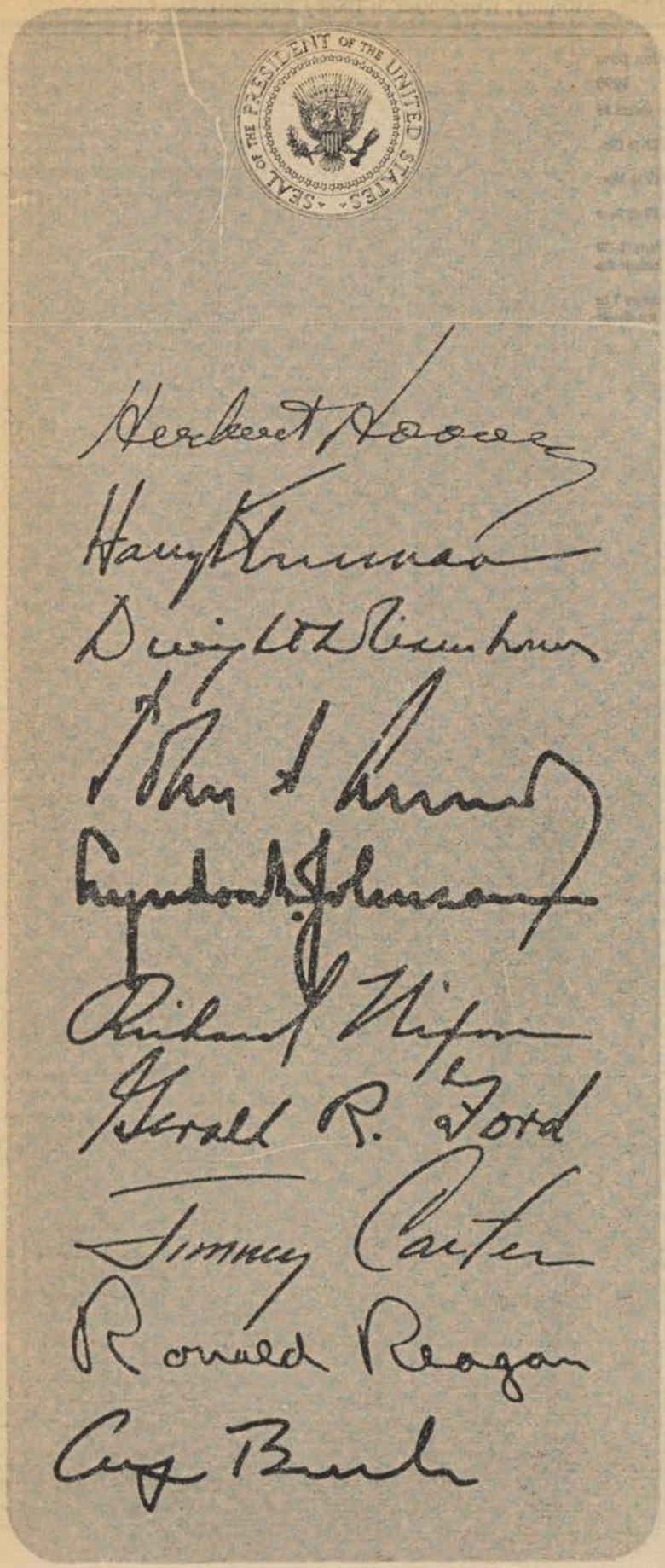
[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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