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Briefing on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: November 27, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
WHO: Donna Rickett, Doris Tucker.
RESERVATIONS: Karen, Ruth
202–523–5240
Accept 90 reservations.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 743]

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 11 through November 17, 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 743 (7 CFR part 910) is effective for the period from November 11 through November 17, 1990.

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

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

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

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

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

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

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The 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, 1990-91 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 1990-91 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 November 6, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 1 vote, recommended that 240,000 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 85,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on November 3, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 308,000 cartons compared with 209,000 cartons shipped during the week ending on November 4, 1989. Export shipments totaled 185,000 cartons compared with 181,000 cartons shipped during the week ending on November 4, 1989. Processing and other uses accounted for 391,000 cartons compared with 245,000 cartons shipped during the week ending on November 4, 1989.

Fresh domestic shipments to date for the 1990–91 season total 4,283,000 cartons compared with 4,079,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,056,000 cartons compared with 2,202,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 3,536,000 cartons compared with 2,235,000 cartons shipped by this time during 1989–90.

For the week ending on November 3, 1990, regulated shipments of lemons to the fresh domestic market were 308,000 cartons on an adjusted allotment of 52,000 cartons which resulted in net undershipments of 51,000 cartons. Regulated shipments for the current week (November 4 through November 10, 1990) are estimated at 310,000 cartons on an adjusted allotment of 364,000 cartons. Thus, undershipments of 54,000 cartons could be carried over into the week ending on November 17, 1990.

The average f.o.b. shipping point price for the week ending on November 3, 1990, was $10.98 per carton based on a reported sales volume of 302,000 cartons compared with last week's average of $12.99 per carton on a reported sales volume of 311,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.99 per carton. The average f.o.b. shipping point price for the week ending on November 4, 1989, was $13.96 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.54 per carton.

The Department's Market News Service reported that, as of November 6, the demand for lemons is "fairly light" and the market for lemons is "about steady." At the meeting, various Committee members indicated that the current market for lemons is unstable, that prices have dropped considerably, that inventory levels have increased, and that high levels of undershipments have been carried over from previous weeks. Several members indicated that a lower allotment level was necessary to stabilize the market.

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, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 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 11 through November 17, 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 November 6, 1990, and this action needs to be effective for the regulatory week which begins on November 11, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and hanlders 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.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

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

2. Section 910.1043 is added to read as follows:

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

§ 910.1043 Lemon Regulation 743.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 11 through November 17, 1990, is established at 240,000 cartons.

Dated: November 5, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26749 Filed 11–9–90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 90-183]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by lowering the designation of Kansas and Oklahoma from accredited-free States to modified accredited States. We have determined that Kansas and Oklahoma no longer meet the criteria for designation as accredited-free States but meet the criteria for designation as modified accredited States.

DATES: Interim rule effective November 13, 1990. Consideration will be given only to comments received on or before January 14, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-183. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION: .

Background

The "Tuberculosis" regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program.

Before publication of this interim rule, Kansas and Oklahoma were designated in § 77.1 of the regulations as accredited-free States. However, the Administrator has determined that Kansas and Oklahoma no longer meet the criteria for designation as accredited-free States, but instead meet the criteria for designation as modified accredited States. Therefore, we are amending the regulations by removing Kansas and Oklahoma from the list of accredited-free States in § 77.1 and adding them to the list of modified accredited States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Kansas and Oklahoma as modified accredited States. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

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

Executive Order 12291 and Regulatory Flexibility Act

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

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

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Kansas and Oklahoma may affect the marketability of cattle and bison from those States, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in Kansas and Oklahoma, and will therefore not have a significant economic impact on those persons affected by this action.

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

Paperwork Reduction Act

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

Executive Order 12372

This progam/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are amending 9 CFR part 77 as follows:

1. The authority citation for part 77 continues to read as follows:

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

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for *Accredited-free state* is amended by removing *Kansas,* and *Oklahoma,*.

§ 77.1 [Amended]

3. Section 77.1, paragraph (2) of the definition for *Modified accredited state* is amended by adding *Kansas,* immediately before *Louisiana,* and by adding *Oklahoma,* immediately before *Puerto Rico,*.

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

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26704 Filed 11–9–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ANE–15; Amdt. 39–6685]

Airworthiness Directives; Garrett Engine Division, Allied-Signal Incorporated, Models TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal and replacement of certain thermocouple lead assemblies and requires testing of these suspect assemblies to determine if any additional engine maintenance actions are required. This AD is needed to prevent erroneous interstage turbine temperature (ITT) indications which could mask deteriorated engine performance and cause overtemperature of turbine components.

DATES: Effective—November 13, 1990.

Comments for inclusion in the docket must be received on or before December 12, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the **Federal Register** as of November 13, 1990.

ADDRESSES: Submit comments in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 90–ANE–15, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to Room 311 at the above address.

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

The applicable engine manufacturer's service bulletin (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225–2548, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5246.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain thermocouple lead assemblies produced in late 1989 and early 1990 were manufactured with wire having an incorrect alloy. These improperly manufactured leads affect the ITT signal coming from the engine to the cockpit indicator or to the engine control, or both. The error can be approximately 100° F (56° C) resulting in an indicated ITT that is lower than the actual ITT. In certain circumstances the error may be present, but not readily apparent. The error introduced by the lead can mask deteriorated engine performance and cause an overtemperature and subsequent uncontained failure of the turbine components. Such a failure could lead to uncontained rotor fragments causing structural/system damage to the aircraft.

Since this condition is likely to exist or develop in other engines with thermocouple lead assemblies of the same type design, this AD requires incorporation of Garrett SB TFE731–A77–3020, dated April 27, 1990, to correct the unsafe condition by removing and replacing suspect thermocouple lead assemblies and testing of assemblies to determine if additional engine maintenance is necessary.

Since this condition could lead to uncontained rotor fragments causing structural/system damage to the aircraft, there is a need to limit the exposure of revenue service engines to operation with improperly manufactured thermocouple lead assemblies. In addition, based on the above, and the need for accomplishment within 25 hours after the effective date of this AD, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure thereon, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket 90–ANE–15, 12 New England Executive Park, Burlington, Massachusetts 01803.

All communications received by the deadline date indicated above will be considered by the Administrator and the AD may be amended in light of comments received.

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 had 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 Rules 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, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) 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:

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AIResearch Manufacturing Company of Arizona). Applies to Models TFE731–2, –2A, –3, –3A, –3AR, –3B, –3BR, –3R, –5, –5AR, and –5R turbofan engines equipped with thermocouple lead assemblies, part numbers (P/N) 307395–1/–2/–7/–15, 3074175–1, and P/N 3073950–1 reworked to P/N 3077031–1/–2, installed in aircraft certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent overtemperature and damage of turbine components, accomplish the following:

a. Remove from service and replace with a serviceable part thermocouple lead assemblies with serial numbers listed in Table 1, in Garrett Service Bulletin (SB) TFE731–A77–3020, dated April 27, 1990, within 25 operating hours in service after the effective date of this AD, in accordance with the accomplishment instructions of the above Garrett SB. Engines with thermocouple lead assemblies with serial numbers having a "T" suffix are excluded from the requirements of this AD.

b. Test suspect lead assemblies in accordance with Accomplishment Instructions of Garrett SB TFE731–A77–3020, to determine if additional maintenance action is required before further operation of the engine in service.

c. Remove from service engines that had suspect lead assemblies removed as required by paragraph a. of this AD, in which the removed lead assembly tested faulty, until the engine has been determined to be airworthy in accordance with the accomplishment instructions of the SB.

d. Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

e. Upon submission of substantiating data by an owner or operator through a FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806–2425, may approve an equivalent means of compliance or an adjustment of the compliance schedule which provides an equivalent level of safety.

The removal, replacement, and testing of certain thermocouple lead assemblies and the testing of certain engines shall be done in accordance with Garrett SB TFE731–A77–3020, dated April 27, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–26678 Filed 11–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ANE–13; Amdt. 39–6760]

Airworthiness Directives; Textron Lycoming ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that supersedes Telegraphic Airworthiness Directive (TAD) No. T89–13–52, applicable to Textron Lycoming ALF502R series turbofan engines, which currently requires initial and repetitive inspections of the high compressor (HC) rotor third stage disk bore for evidence of corrosion or cracking. This amendment incorporates all the requirements of TAD T89–13–52, except for altering one compliance criterion and adding an additional method of inspection. This amendment is prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

DATES: Effective—November 13, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 13, 1990.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

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

SUPPLEMENTARY INFORMATION: On June 22, 1989, the FAA issued TAD No. T89–13–52, applicable to Textron Lycoming ALF502R series turbofan engines, requiring visual and fluorescent penetrant or magnetic particle inspections of the third stage HC disk bore for evidence of corrosion. Disks found with evidence of corrosion pitting in the bore or found cracked are to be removed from service prior to further flight. Disks found serviceable are to be repainted with aluminum paint or coated with "Sermetel W" or "ALSEAL–518" surface finish. That action was prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft. Since the issuance of TAD T89–13–52, two additional third stage HC disks have been found cracked. These disks were found cracked below the 8,500 cycles since new (CSN) inspection threshold defined in TAD T89–13–52. This AD reduces the inspection threshold required for visual inspection of the third stage HC disk bore, for those disks with less than 7,000 CSN on the effective date of this AD, to 7,500 CSN. This AD also introduces an additional alternate method for reinspection, allowing for "on-wing" borescope inspections. However, if reinspection is accomplished using borescope or ultrasonic methods, modification of the second stage compressor spacer is required. As modified the second stage compressor spacer has a reduced low cycle fatigue life and must be removed from service prior to accumulating 5,000

cycles since modification, not to exceed 16,600 total part cycles.

Since this condition could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this failure mode. Therefore, safety is air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to reduce the inspection threshold for certain disks as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure 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 Rules Docket (otherwise, an evaluation is not required). A copy of it, if filled, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) 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:

Textron Lycoming: Applies to ALF502R series turbofan engines installed on, but not limited to British Aerospace BAE146 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, accomplish the following:

(a) Inspect and recoat with "Sermetel W", "ALSEAL-518" or aluminum paint, third stage high compressor (HC) disks in accordance with Textron Lycoming Service Bulletin (SB) ALF502R-72-203, Revision 2, dated August 8, 1990, as follows:

(1) For those third stage HC disks with 7,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 500 cycles in service (CIS) not to exceed 8,500 CSN.

(2) For those third stage HC disks with less than 7,000 CSN on the effective date of this AD, at or prior to accumulating a total of 7,500 CSN.

(b) Reinspect third stage HC disks recoated with aluminum paint as follows:

(1) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-203, Revision 2, dated August 8, 1990, at intervals not to exceed 6,000 CIS from last inspection.

(2) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-218, Revision 1, dated December 1, 1989, at intervals not to exceed 1,500 CIS from last inspection. Remove the modified second stage compressor spacer, Part Number 2-100-047R10, from service prior to accumulating 5,000 additional CIS since modification, not to exceed 16,600 CSN.

(3) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-237, dated November 30, 1989, at intervals not to exceed 1,000 CIS from last inspection. Remove the modified second stage compressor spacer, Part Number 2-100-047R10, from service prior to accumulating 5,000 additional CIS since modification, not to exceed 16,600 CSN.

(c) No reinspection is required for those third stage HC disks recoated with "SERMETEL W" or "ALSEAL-518" surface finish in accordance with Textron Lycoming SB ALF502R 72-203, Revision 2, dated August 8, 1990.

(d) Actions accomplished in accordance with SB ALF502R 72-203, dated January 31, 1989; SB ALF502R 72-203, Revision 1, dated June 16, 1989; or with SB ALF502R 72-218, dated May 26, 1989, in complying with Telegraphic Airworthiness Directive T89-13-52 dated June 22, 1989, are considered to be in compliance with the corresponding requirements of this AD, if applicable.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The inspection procedures shall be done in accordance with the following Textron Lycoming Service Bulletins:

Service bulletin No.	Page No.	Issue/revision	Date
ALF502R 72-203	1-4, 6	2	August 8, 1990.
ALF502R 72-203	5	1	June 16, 1989.
ALF502R 72-218	1, 2, 3, 4, 5, 6, 9	1	December 1, 1989.
ALF502R 72-218	7, 8	Original	May 26, 1989.
ALF502R 72-237	1-12	Original	November 30, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

This amendment supersedes TAD 89-13-52 dated June 22, 1989.

This amendment becomes effective on November 13, 1990.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26790 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-19]

Alteration of Transition Area; Petersburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the 700 foot Transition Area established at Petersburg, WV, due to the pending establishment of a new LDA/DME-A Standard Instrument Approach Procedure (SIAP), and the pending decommissioning of the DORCAS Nondirectional Radio Beacon (NDB). This action realigns that amount of controlled airspace which is deemed necessary by the FAA to contain arriving and departing aircraft at the Grant County Airport, Petersburg, WV.

EFFECTIVE DATE: 0901 u.t.c. December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 16, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot Transition Area at Petersburg, WV, due to the pending establishment of a new LDA/DME-A SIAP and the proposed decommissioning of the DORCAS NDB (55 FR 32097). The proposed action would realign that amount of airspace deemed necessary by the FAA to contain arriving and departing aircraft at the Grant County Airport, Petersburg, WV, within controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at Petersburg, WV, due to the development of a new LDA/DME-A SIAP and the pending decommissioning of the DORCAS NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Petersburg, WV [Revised]

"That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center (lat. 38°59'35" N., long. 79°08'32" W.) of the Grant County Airport, Petersburg, WV; within 4 miles each side of the 207° (T) 213° (M) radial of the Kessel, WV, VOR (lat. 39°13'31" N., long. 78°59'23" W.) extending from the VOR to the 6.5-mile radius area; within 4.5 miles each side of a 124° bearing from the airport extending from the 6.5-mile radius area to 17 miles southeast of the airport."

Issued in Jamaica, New York, on November 1, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-26680 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AGL-10]

Control Zone Establishment and Transition Area Alteration, Woodruff, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish a control zone area, alter the existing transition area airspace near Woodruff, WI, and, change the airport name from Lakeland to Noble F. Lee Memorial Field Airport. The airport manager requested a control zone due to increasing numbers of Visual Flight Rules (VFR) operations in the vicinity of Noble F. Lee Memorial Field during marginal and below VFR weather conditions. The intended effect of this action is to enhance safety for all potential users of this airspace. The establishment of a control zone will segregate aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace. The Woodruff, WI, transition area is being altered to accommodate existing Standard Instrument Approach Procedures (SIAP's) at Noble F. Lee Memorial Field, Woodruff, WI.

EFFECTIVE DATE: 0901 UTC, February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 3, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone and alter the existing transition area near Woodruff, WI (55 FR 27474).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received from the Wisconsin Department of

Transportation (WDOT), Bureau of Aeronautics.

WDOT was concerned about the effects the proposed control zone would have on pilots navigating VFR when the weather conditions are: ceiling less than 1000' AGL and/or visibility less than three (3) miles. A synopsis of their comments is as follows: (a) A pilot would have to abandon the roadway system to circumvent the airport; (b) A common practice is to fly an approach to Noble F. Lee Memorial Airport, cancel IFR and proceed VFR to the North. Establishing a control zone would require a special VFR clearance; and (c) Would the control zone effect operations at Manitowish Waters Airport?

For the majority of the time, the airspace is available to both IFR and VFR operations. However, when weather conditions are not being met for VFR operations, the control zone will allow for use of the airspace during those weather conditions which would otherwise prohibit any use. This will enable the IFR-rated pilot to safely transition from VFR flight to IFR flight in order to land at the airport. The control zone will only be in effect when weather conditions are less than VFR. Under these weather conditions VFR pilots would be required to find other routes. Pilots on an IFR flight plan could still execute the approach procedure, reach VFR conditions and cancel their flight plan upon exiting the control zone. The pilot would then not need a special VFR clearance.

The FAA does not believe the establishment of a control zone will hinder standard instrument approach procedures into Manitowish Waters Airport. However, under certain conditions delays may be incurred because of overlapping protected airspace. If delays occur, they will be distributed evenly between both airports. The intent of a control zone is to enhance safety when weather conditions are below three (3) miles visibility and/or 1000' ceiling for both VFR and IFR traffic.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a control zone area, alters the existing transition area near Woodruff, WI, and changes the airport name from Lakeland to Noble F. Lee Memorial Field Airport.

This control zone is necessary to enhance safety due to the increasing number of VFR flights in the vicinity of Noble F. Lee Memorial Field Airport, Woodruff, WI during marginal and below VFR weather conditions.

The FAA believes this control zone will reduce the risk of midair collisions and promote the efficient control of air traffic. The existing situation includes commuter airlines, jet traffic, and air ambulances mixed with VFR operations. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a 5.5-mile radius of the geographic center of Noble F. Lee Memorial Field Airport, and within 2 statute miles, each side of the 182° bearing from the airport, extending from the 5.5-mile radius to 6 miles south of the airport; and within 3 miles each side of the 348° bearing from the airport, extending from the 5.5-mile radius to 8.5 miles northwest of the airport. The control zone would be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

The present transition area is being modified to accommodate existing SIAP's to Noble F. Lee Memorial Field Airport. The modification consists of adding an extension from the 9-mile radius to 10.5 miles east of the airport within 2.75 miles each side of the 110° bearing from the airport and extending from the 9-mile radius to 10 miles south of the airport within 2.5 miles each side of the 182° bearing from the airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rules requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Woodruff, WI [New]

Within a 5.5 mile radius of Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.) within 2.75 miles each side of the 110° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 8 miles east of the airport, and within 2 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 6 miles south of the airport, and within 3 miles each side of the 348° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 8.5 miles northwest of the airport. The control zone shall be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Woodruff, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.), within 2.75 miles each side of the 110° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10.5 miles east of the airport, and within 2.5 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10 miles south of the airport.

Issued in Des Plaines, Illinois on October 20, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90–26679 Filed 11–9–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

[Docket No. 24722, Amdt. 91-213]

RIN 2120-AB04

Night-Visual Flight Rules Visibility and Distance from Clouds Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects an error which appeared in a final rule, published on July 19, 1990 (55 FR 29552), which restored paragraphs (c), (d), and (e) to § 91.155 of the Federal Aviation Regulations (FAR). This amendment corrects the language in paragraph (c) which inadvertently transposed language contained in another paragraph.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1990, the FAA published a correction to Amendment No. 91-213 which restored paragraphs (c), (d), and (e) to § 91.155 (55 FR 29552). These paragraphs were inadvertently omitted from this section by a previous rulemaking.

The language contained in § 91.155(c) in the July 19, 1990, amendment inadvertently transposed a portion of the language contained in § 91.155(d). This action corrects that error and restores § 91.155(c) to its intended form.

Need for Immediate Adoption

This amendment corrects an error and restores an agency regulation to its intended version. Because this action is a technical amendment, I find that good cause exists for making the amendment effective in less than 30 days to eliminate the possibility of misinterpretation of the intent of published agency regulations.

List of Subjects in 14 CFR Part 91

Visual flight rules.

The Amendment

For the reasons set forth above, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223) through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.155(c) is revised to read as follows:

§ 91.155 Basic VFR weather minimums.

* * * * *

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

* * * * *

Issued in Washington, DC, November 2, 1990.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 90-26681 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 6, 1990.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending part 11 of its regulations (Order No. 469, 52 FR 18,201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1990)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1990, through September 30, 1991, the fees in this notice will become effective October 1, 1990. The fees will apply to fiscal year 1991 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Olive J. Wallace, Chief, Revenue and Funds Control Branch, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219-2903.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission also provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in Room 3104 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

George L.B. Pratt,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Accordingly, the Commission, effective October 1, 1990, amends part 11 of chapter I, title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

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

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In part 11, appendix A is revised to read as follows:

Appendix A to Part II

FEE SCHEDULE FOR FY 1991

State	County	Rate per acre
Alabama	All Counties	$20.61
Arkansas	All Counties	15.46
Arizona	Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River.	5.15
	Coconino South of Colorado River, Greenlee, Maricopa, Pinal, Santa Cruz.	20.61
California	Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino.	10.30
	Siskiyou	15.46
	Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.	25.76
	Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura.	30.92

FEE SCHEDULE FOR FY 1991—Continued

State	County	Rate per acre
Colorado	Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma.	5.15
	Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel.	10.30
	Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Denver, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller.	20.61
Connecticut	All Counties	5.15
Florida	Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, LaFayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington.	30.92
	All Other Counties	51.53
Georgia	All Counties	30.92
Idaho	Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls.	5.15

FEE SCHEDULE FOR FY 1991—Continued

State	County	Rate per acre
	Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington.	15.46
Kansas	All Other Counties	5.15
	Morton	10.30
Illinois	All Counties	15.46
Indiana	All Counties	25.76
Kentucky	All Counties	15.46
Louisiana	All Counties	30.92
Maine	All Counties	15.46
Michigan	Alger, Baraga, Delta, Chippewa, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.	15.46
	All Other Counties	20.61
Minnesota	All Counties	15.46
Mississippi	All Counties	20.61
Missouri	All Counties	$15.46
Montana	Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone.	5.15

FEE SCHEDULE FOR FY 1991—Continued

State	County	Rate per acre
	Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Park, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass.	15.46
Nebraska	All Counties	5.15
Nevada	Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine.	2.58
	Carson City, Douglas, Storey.	25.76
New Hampshire	All Counties	15.46
New Mexico	Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance.	5.15
	Rio Arriba, Sandoual, Union.	10.30
	Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia.	20.61
New York	All Counties	20.61
North Carolina	All Counties	30.92
North Dakota	All Counties	5.15
Ohio	All Counties	20.61
Oklahoma	All Other Counties	5.15
	Beaver, Cimarron, Roger Mills, Texas.	10.30
	Le Flore, McCurtain	15.46
Oregon	Harney, Lake, Malheur.	5.15
	Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.	10.30

FEE SCHEDULE FOR FY 1991—Continued

State	County	Rate per acre
	Coos, Curry, Douglas, Jackson, Josephine.	15.46
	Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill.	20.61
Pennsylvania	All Counties	20.61
Puerto Rico	All	30.92
South Dakota	Butte, Custer, Fall River, Lawrence, Meade, Pennington.	15.46
	All Other Counties	5.15
South Carolina	All Counties	30.92
Tennessee	All Counties	20.61
Texas	Culberson, El Paso, Hudspeth.	5.15
	All Other Counties	30.92
Utah	Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Jaub, Kane, Millard, San Juan, Tooele, Uintah, Wayne.	5.15
	Washington	10.30
	Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber.	15.46
Vermont	All Counties	20.61
Virginia	All Counties	20.61
Washington	Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Spokane, Walla Walla, Whitman, Yakima.	10.30
	Ferry, Pend Oreille, Stevens.	15.46

FEE SCHEDULE FOR FY 1991—Continued

State	County	Rate per acre
	Callam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.	20.61
West Virginia	All Counties	20.61
Wisconsin	All Counties	15.46
Wyoming	Albany, Campbell, Carbon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublette, Uinta, Washakie.	5.15
	Big Horn, Crook, Park, Teton, Weston.	15.46
All Other Zones		6.57

[FR Doc. 90-26651 Filed 11-9-90; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 35 and 382

[Docket No. RM90-8-000 Order No. 529]

Amendments to FERC Form Nos. 1 and 1-F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses

November 5, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1) and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F). The changes involve elimination and addition of some reporting requirements, revised instructions and modified schedule formats. This final rule makes minor conforming changes to the Commission's annual charges regulations in 18 CFR part 382 and the Commission's fuel cost and purchased economic power

adjustment clause regulations in 18 CFR part 35.

The purpose of the changes is to improve consistent reporting of bulk power transactions so as to provide better support for the Commission's regulatory efforts. The changes are the result of a joint effort by the Commission and the Energy Information Administration to evaluate the consistency of bulk power trade information.

DATES: The final rule is effective December 13, 1990.

FOR FURTHER INFORMATION CONTACT:

William Booth, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208-0849.

Joseph Harkins, Office of the Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 357-0617.

Ann E. Gorton, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2137.

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Amendments to FERC Form Nos. 1 and 1-F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1)[1] and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F).[2] The final rule modifies how a company reports bulk power transactions on the following Form 1 schedules: "Sales for Resale" (Account 447), pages 310-11; "Purchased Power" (Account 555), pages 326-27; "Summary of Interchange According to Companies and Points of Delivery" (Account 555), pages 328-29; "Transmission of Electricity For or By Others" (Accounts 456 and 565), page 332; and the "Electric Energy Account" and "Monthly Peaks and Output," page 401. The final rule also modifies the "Sales of Electricity For Resale" (page 17) and "Purchased Power" (page 18) Form 1-F schedules, and the comparable Form 1 substitute schedules: "Sales for Resale," "Purchased Power" and "Summary of Interchange According to Companies and Points of Interchange" for those filing a Form 1-F. The changes involve elimination and addition of some reporting requirements, revised instructions and modified schedule formats.[3] The final rule also makes minor conforming changes to the Commission's annual charges regulations in part 382 and the Commission's fuel cost and purchased economic power adjustment clauses regulations in part 35.

The purpose of the changes is to improve consistent reporting of bulk power transactions to better support current regulatory responsibilities of the Commission. The changes are an outgrowth of a joint effort by the Commission and the Energy Information Administration to evaluate the consistency of our bulk power trade information.

The Commission received 15 comments[4] in response to the Notice of Proposed Rulemaking (NOPR), issued July 23, 1990, in this docket.[5] Most of the comments came from jurisdictional utilities. The Commission also received comments from the Energy Information Administration (EIA) of the Department of Energy, the Bureau of Economic Analysis (BEA) of the Department of Commerce and the American Public Power Association. Several commenters were unqualified in their support, and no commenter opposed the NOPR in toto. Other commenters supported the NOPR while expressing certain limited concerns which are addressed below. The Commission has considered all of these comments in developing the final rule. The Commission is issuing the final rule herein in substantial conformity with the NOPR. Some minor changes and explanations have been made in order to clarify the proposed regulatory text.

II. Reporting Burden

A. Estimate

The annual public reporting burden for this collection of information is estimated to average 1,215 hours per response for Form 1 and 30 hours per response for Form 1-F. This estimate 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention:

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[1] This form consists of approximately 124 non-consecutively numbered pages and a 5-page index. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.1 of the Commission's regulations. The current version bears the OMB approval No. 1902-0021, expiring September 30, 1991.

The Commission considered renumbering the pages of the Form 1 (and the Form 1-F) schedules to make them consecutive, but decided not to renumber them for two reasons. First, it is useful to have continuity with previous years, and continuing the same numbering system is an aid to the filer as well as to the Commission. Second, this system provides for logical expansion of the forms when such expansion is necessary to carry out the tasks of the Commission.

[2] This form consists of approximately 20 consecutively numbered pages, 1-20, and 30 non-consecutively numbered substitute pages from the Form 1 that may be used in lieu of the comparable pages in the first section. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.2 of the Commission's regulations. The current version bears the OMB approval No. 1902-0029, expiring September 30, 1991.

[3] Appendix A consists of facsimiles of the revised forms, incorporating the final rule's changes. A comparison of these forms with the previous Form 1 schedules may help the reader to comprehend these changes. Appendix A is not being published in the **Federal Register**, but is available appended to copies of the final rule from the Commission's Public Reference Room.

[4] The following entities submitted comments: Wisconsin Electric Power Company, Arizona Public Service Company, Pennsylvania Power & Light Company, Pacific Gas & Electric Company, Southwestern Public Service Company, Public Service Electric & Gas Company, American Public Power Association, Northeast Utilities, U.S. Department of Commerce—Bureau of Economic Analysis, American Electric Power Service Corporation, Duke Power Company, Carolina Power & Light Company, U.S. Department of Energy—Energy Information Administration, Public Service Company of Colorado and Cheyenne Light Fuel & Power Company. The last two entities submitted comments jointly.

[5] 55 FR ¶ 31,073 (July 31, 1990); IV FERC Stats. & Regs. ¶ 32,472 (1990).

Michael Miller, (202) 208–1415). Comments on the requirements of the regulation can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

B. Comments

Pacific Gas & Electric Company (PG&E) stated that requiring the reporting of average monthly coincident peak demand on the Purchased Power schedule for each qualifying facility under PURPA (QF) would needlessly increase the expense of preparing the report. As discussed below in the section on Reporting of Demand, reporting of demand for QFs may not be required. American Electric Power Service Corporation (AEP) stated that reporting of statistical classifications on the Sales for Resale, Purchased Power and Transmission for Others schedules will create duplication of effort and cause unproductive expenditures of manpower. As discussed below in the section on Statistical Classifications, reporting of statistical classifications is better done, in the first instance, by the respondents and also is necessary because existing rate schedules and tariffs contain provisions for many different types of services.

Public Service Electric & Gas Company (PSE&G) stated that the proposed elimination of certain non-essential reporting requirements will reduce the expense of compliance for many companies. PSE&G also stated that it will not have to change any internal procedures to comply with the proposed changes, and that there will be no additional expense incurred during or after the transition. Arizona Public Service Company (APS) stated its support of the Commission's assessment that, on balance, the proposed changes will reduce the overall reporting burden.

C. Conclusion

Given the diversity of respondents, and as the comments received expressly illustrate, the Commission anticipates that the reporting burden will increase for certain respondents-particularly those who engage in a substantial number of transmission transactions for others—but that the burden will decrease for other respondents. The final rule's changes are relatively few, and are discrete. The information being requested is for the most part not new data; it is already collected by the industry in other contexts.

On balance, therefore, the Commission believes the overall burden on the industry will be lessened by the final rule's changes.

III. Background

In an effort to improve consistent reporting on Form 1, the Chief Accountant has provided additional guidelines and examples of properly completed schedules in the transmittal letters included with the 1988 and 1989 mailings of Form 1. However, many respondents still are not reporting the information in a consistent manner as prescribed by the instructions on the schedules and the Chief Accountant's guidelines.

These reporting deficiencies trace to the fact that the format and requirements of these schedules have not kept up with the significant changes that have occurred in bulk power markets. At the time these schedules were created, high voltage transmission interconnections between utilities were limited. [6] Long-term firm sales to distribution utilities within a utility's service area, which have come to be known as "requirements" sales, made up the majority of power transactions between utilities. Transactions between major integrated utilities were relatively insignificant and tended to be for emergency support purposes or exchange of economy energy.

With the growth of extensive high voltage transmission networks and the increased number of interconnections, the number and diversity of bulk power transactions has risen dramatically. It has become a challenge for utilities to report the wider variety of transactions, which have come to be known as "coordination" transactions, on the previous schedules, which were designed when these transactions were comparatively infrequent.

A major source of confusion has been exactly what types of transactions should be reported on the "Summary of Interchange" schedule. The text of Account 555, Purchased Power, in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, [7] the instructions on the Form 1 schedules and the Chief Accountant's additional guidelines have not resulted in uniform reporting of "coordination" transactions. Many utilities report all "coordination" transactions on the "Summary of Interchange" schedule, reserving the "Sales for Resale" and "Purchased Power" schedules for "requirements" sales or purchases. Many other utilities reserve the "Summary of Interchange" schedule for power exchange transactions and report all distinct sales and purchases, whether "requirements" or "coordination," on the "Sales for Resale" and "Purchased Power" schedules, respectively.

The latter interpretation is consistent with the requirements of the Uniform System of Accounts and the Chief Accountant's guidelines. The final rule's changes in the Form 1 schedules are intended to ensure that "coordination" transactions are reported consistently on the "Sales for Resale" or "Purchased Power" schedules, as appropriate.

IV. Discussion

A. Purpose and Objectives

In order to eliminate the reporting of unnecessary data, to improve consistency in the reporting of this information, and to clarify how bulk power transactions are to be reported, the final rule modifies or eliminates five Form 1 schedules, and five comparable Form 1–F schedules. The final rule also makes minor changes in the Commission's regulations for annual charges and for fuel cost and purchased economic power adjustment clauses.[8]

The following Form 1 schedules are hereby modified: "Sales for Resale" (Account 447); "Purchased Power" (Account 555); and "Electric Energy Account" and "Monthly Peaks and Output." [9] The final rule incorporates the reporting requirements of the "Summary of Interchange According to Companies and Point of Delivery" (Account 555) schedule into the modified "Purchased Power" (Account 555) schedule.[10] The final rule replaces the term "interchange power" with the synonym "exchange power," for consistency with the term used in the text of Account 555 in the Uniform System of Accounts.

The "Transmission of Electricity For or By Others" schedule, page 332, is eliminated and replaced by two new schedules: "Transmission of Electricity For Others" (Account 456), pages 238–30, and "Transmission of Electricity By Others" (Account 565), page 332. Separate schedules will allow for more detailed reporting of transmission service provided for others, increasing the accuracy of reporting, and less

[6] The "Sales for Resale," "Purchased Power," "Summary of Interchange," "Electric Energy Account," and "Monthly Peaks and Output" schedules have not been substantially revised since the Form 1 was first instituted in 1937. The "Transmission of Electricity For or By Others" schedule was added in 1961 and has not been substantially revised since then.

[7] *See* 18 CFR part 101 (1990).

[8] Annual Charges, 18 CFR part 381 (1990); Fuel Cost and Purchased Economic Power Adjustment Clauses, 18 CFR 35.14 (1990).

[9] These schedules are on pages 310–11, 326–27 and 401 of Form 1, respectively.

[10] These schedules were previously on pages 326–29. The final rule eliminates pages 328 and 329.

detailed reporting of transmission service provided by others, lessening the reporting burden.

The final rule eliminates three reporting requirements from the Form 1-F schedules for "Sales For Resale," and "Purchased Power." The instructions have been rewritten and expanded and the remaining columns have been reordered. The substitute Form 1 schedules for "Sales for Resale," and "Purchased Power," and "Summary of Interchange According to Companies and Point of Delivery" in the Form 1-F incorporate changes parallel to the charges in the comparable schedules in the Form 1.

Specific changes are discussed below and the modified and new schedules are provided in the Appendix. The changes to the Form 1 schedules are described in IV. C. For each schedule, changes in schedule formats are discussed first. The final rule's new instructions are described in the order the instructions are listed on the modified and new schedules. The changes to the Form 1-F schedules are described in IV. D., in the same way as the changes to the Form 1 schedules. The changes to the Commission's annual charges regulation are described in IV. E. The changes to the Commission's fuel cost and purchased economic power adjustment clauses regulation are described in IV. F.

General comments are addressed in the section immediately following; comments regarding particular reporting requirements are addressed in the sections to which they pertain.

B. General Comments

1. Reporting of Demand

In the case of PG&E, there appeared to be some confusion about the types of transactions for which demand data is required to be reported. The final rule limits the reporting of demand information to only two categories of transactions: Requirements service and other services were part of the monthly (or longer period) payment is based on contract or actural demand. Reporting of demand from QF purchases is not required unless it meets the above definition.

APS requested clarification of the computation of "average" in reference to the reporting of demand. Specifically, APS asked whether, when a short-term transaction occurs only over four months, the average figure should be computed by dividing by four months or by 12 months. Averages should be calculated using the term of the transaction, where the transaction's duration is less than one year.

Public Service Company of Colorado and Cheyenne Light Fuel and Power Company (collectively Colorado) indicated that monthly coincident peak demand is not known at the time of billing, but is known at the end of the month or later. Form 1 is required to be submitted 4 months after the end of the reporting year; therefore, demand data should be available by then. The Commission also requires coincident peak demand information as part of the cost of service analysis that must be submitted in a rate filing. This information is necessary to perform a cost of service analysis.

Southwestern Public Service Company (Southwestern) stated that it bills based on the sum of the peak demands of each of the several delivery points to a customer. Transactions should be reported in the same way as customers are billed. If they are billed for purchases at several delivery points, these sales should be reported separately for each delivery point. If they are billed on "total" demand, as is apparently the case for Southwestern, then one line can be used for reporting sales to the customer.

AEP suggested that dropping any requirement to report demand and demand charges would significantly reduce the reporting burden. These requirements are necessary to perform cost of service analyses which assist the Commission in carrying out its regulatory responsibilities. The Commission believes that limiting the reporting of demand to only those types of transactions for which such information is required in rate filings significantly reduces the reporting burden.

2. Statistical Classifications

EIA suggested that the various statistical classifications which identify different kinds of transactions on the "Purchased Power" schedule be eliminated and replaced by two categories: purchases from utilities and from non-utilities. The Commission requires the classifications for its cost-of-service analyses. Although the summary information would be useful, it would unnecessarily increase the reporting burden, because most of the information requested is already available through two EIA data forms: EIA-861, Annual Summary Report on Sales, Disposition of Energy and Ownership; and EIA-867, Annual Non-Utility Power Producer Report. The non-redundant information that is available from the Form 1 is the cost of non-utility purchases to respondents. EIA is capable of sorting utility from non-utility purchases by using the names of the sellers identified on the Form 1 purchased power schedule.

Pennsylvania Power & Light Company (PP&L) requested clarification on whether the term of commitment referred to in many of the statistical categories was the original term of the contract or the remaining term. It is the original term. PP&L also suggested that the "LU" classification read "* * * from a designated generating unit or units." There are a relatively small number of unit power contracts involving multiple units. These unit power contracts involving multiple units should be reported as "OS" and a footnote should be provided describing the contract terms. Southwestern requested clarification of how to report sales to partial requirements customers. Following the definition provided in the instructions on the schedule pages, firm sales to partial requirements customers should be classified as "RQ" when the supplier plans to provide the service on an ongoing basis (*i.e.*, the supplier includes projected load for this service in its system resource planning). Otherwise, such sales should be classified as "non-RQ."

PP&L requested that the requirement to report separately "out of period adjustments" be deleted as too burdensome or should apply only to large adjustments. The reporting of all out of period adjustments is essential for properly identifying the cost of service. In this regard, the period referred to here is the reporting year.

PP&L stated that the classifications were not clear and could be interpreted diffently by respondents. AEP suggested that the Commission rather than the utility assign a statistical category to each tariff thus ensuring consistency and reducing the burden. The Commission believes that the respondents will be more familiar with the nature of the transactions and will be better situated to decide, in the first instance, the appropriate classification. Moreover, while the Commission endeavors in this final rule to ensure greater consistency and reduce the reporting burden, rate schedules and tariffs on file with the Commission often include several different types of services. Consequently, the respondents will in such cases be particularly well situated to decide, in the first instance, the appropriate classification. In this regard, one of the purposes of this requirement is to assist the Commission in identifying the appropriate section in a rate schedule or tariff that relates to a particular transaction, and having the respondents provide this information will thus assist the Commission.

Carolina Power & Light Company (Carolina) stated that a category should be provided for nonfirm service. The Commission proposed that nonfirm service be reported as "OS," Other Service. However, Carolina pointed out that the "OS" category requires further explanation in a footnote and that most bulk power transactions would be classified as nonfirm. This would mean that many transactions would be reported as "OS" and would require a footnote. This is the Commission's intent and is consistent with the previous reporting requirement. Respondents are required to report on a separate line of the schedules each distinct type of transaction. The footnote is to indicate the type of service, such as economy, emergency, etc.

3. Other Issues

EIA suggested that line 11 on the "Electric Operating Revenues" (Account 400) schedule, pages 300–01, be expanded to include requirements and non-requirements sales for resale, to make the reporting of Electric Operating Revenues consistent with the reporting of the "Electric Energy Account", page 401. This addition is unnecessary because such a breakdown exists in subtotals on the "Sales for Resale" schedule.

One commenter, BEA, submitted no specific comments on the changes proposed to the bulk power schedules, but expressed disappointment that certain other changes related to investments in plant and equipment it had proposed in 1988 were not incorporated into the schedule changes proposed herein. BEA had submitted those changes in response to a notice of proposed rulemaking issued in Docket No. RM88–18–000, which concerned the "Statement of Cash Flows" schedule. BEA's comments are therefore not relevant to the instant proceeding. Furthermore, the Commission declined, in Order No. 505 issued in Docket No. RM88–18–000,[11] to incorporate BEA's proposed changes because those proposed changes were inconsistent with the Commission's regulatory needs.[12]

EIA requested clarification on a number of issues related to proper ways of reporting data on the Form 1 bulk power schedules. EIA notes that many respondents are reporting negative volumes in various columns. There are only two situations in which negative volumes are acceptable. These are for a settlement (column (g) on the "Purchased Power" schedule), or for an out-of-period adjustment. Using negative numbers to represent sales for resale or purchases is not acceptable. EIA requested clarification on the reporting of transmission and voltage conversion charges included in transactions reported on the "Sales For Resale" and "Purchased Power" schedules. If these services are provided as part of a bundled service, they should be reported as "Other Charges." They should only be reported separately when they are provided as a separate unbundled service.

4. Effective Date for Changes

Four commenters (Carolina, AEP, PG&E and Colorado) requested that the implementation of the final rule become effective for the 1991 reporting year instead of for the 1990 reporting year, as proposed in the NOPR. They stated that the 1990 year is more than half over and that they would have to go back and reconstruct 1990 data using the new requirements. They stated that they can better use their resources reprogramming their accounting systems to be ready to implement the changes for the reporting year starting January 1, 1991.

However, one commenter (PSE&G) stated that it will incur no additional expense during or after the transition. Another commenter (APS) stated that it anticipates more time will initially be required for reformatting the information; nevertheless, it does not request delayed implementation. Two utilities (Wisconsin and APS) support the rule because they believe it will lead to a fairer allocation of annual charges.

The main purpose of this rule is to ensure consistent reporting of power exchange transactions. As mentioned earlier, instructions on how to report these transactions were in the Chief Accountant's transmittal letters included with the 1988 and 1989 mailings of the Form 1. Therefore, a delay in implementing this change is not justified.

The commenters that requested delayed implementation identified concerns with the reporting of demand or providing statistical classifications for transactions. As stated above, concerns about the reporting of demand are misplaced because the final rule limits reporting of demand to those types of transactions where demand information is already available for billing purposes or would be required in a rate filing. Assigning the new statistical classifications to transactions that have already been recorded will require some extra work for the 1990 reporting year. The extent of this extra work will depend on the number of transactions that need to be reclassified and this is likely to vary significantly among respondents.

The Commission notes that respondents will have five or six months from the issuance of the final rule until the date for submitting Forms 1 and 1–F, to implement the changes made herein. Respondents may request an extension of time to file the requisite form, if special problems arise. Accordingly, the changes made in this final rule are effective for the 1990 reporting year.

C. Changes to FERC Form No. 1 Schedules

1. Sales for Resale (Account 447) Schedule [13]

a. *Comments.* PP&L requested that some provision be made for reporting non-jurisdictional sales-for-resale. The volume of such transactions does not justify a distinct reporting category. Respondents should provide, however, an appropriate designation for such non-jurisdictional sales in column (c) of the Sales-For-Resale schedule.

b. *Schedule format.* The final rule eliminates five columns, currently designated as (c), (e), (f), (j) and (k). These columns request, respectively, information on: Export across state lines, point of delivery, substation ownership, type of demand reading, and voltage at which delivered. The information requested in these columns is either available from other sources or is no longer useful to the Commission.

The elimination of these columns necessitates changes in the designation letters of the remaining columns. Thus, columns (d), (g), (h), (i), (l), (m), (n), (o) and (p) are redesignated as columns (c), (d), (e), (f), (g), (h), (i), (j) and (k), respectively. Designations for five columns are changed.[14] One of the

[11] Statement of Cash Flows to Replace Statement of Changes in Financial Position in FERC Annual Report Forms, 53 FR ¶40,875 (October 19, 1988), 45 FERC ¶61,056 (1988).

[12] *Id.* at 61,193.

[13] This schedule comprises pages 310 and 311 of Form 1, 1989 edition.

[14] The changes include:

(1) column (a) "Sales to" becomes "name of company or public authority;"

(2) column (b) "Contract demand" becomes (d) "average monthly billing demand;"

(3) column (h) "Average monthly maximum demand" becomes (e) "average monthly NCP demand;"

(4) column (i) "Annual maximum demand" becomes (f) "Average monthly CP demand"; and

(5) column (l) "Megawatt hours" becomes (g) "megawatt hours sold."

Finally, the title currently over columns (g), (h) and (i) is placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)" to "Actual Demand (MW)."

changes in designation which the final rule implements, "annual maximum demand" to "average monthly CP demand," involves a substantive change from the previous schedule.

c. *Instructions.* The final rule eliminates several of the ten previous instructions to the schedule, and rewords or establishes additional requirements in the remaining instructions. Those instructions previously numbered 3, 4, 5, 7 and 8 are deleted. The instruction previously numbered 6 is renumbered as 7. The only substantive change to instruction 1 is a clarification that power exchange transactions must be reported on the "Purchased Power" (Account 555) schedule, pages 326–27. Previous instruction 2 is divided into instructions 2 and 3. The substantive change embodied in the final rule's instruction 2 is a requirement that ownership interest or affiliation between the responding entity and the purchaser be disclosed. The substantive change embodied in the final rule's instruction 3 increases the number of classifications and explains in more detail the coding definitions used to classify the type of sale. There are eight classification codes in the final rule, which replace the previous five codes. The eight codes consist of the following: RQ, for requirements service;[15] LF, for long-term firm service;[16] IF, for intermediate-term firm service;[17] SF, for short-term firm service;[18] LU, for long-term service from a designated generating unit;[19] IU, for intermediate-term service from a designated generating unit;[20] OS, for other service, which must be described in a footnote;[21] and AD, for out-of-period adjustment, which must be described in a footnote.[22] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.

Reporting of these codes must be based on the contractural terms and conditions of the service. These categories are intended for descriptive and statistical purposes only. They do not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with the Commission.

The final rule's instruction 4 requires that sales be grouped either as RQ, *i.e.*, requirements service, or non-RQ sales, and that the respondents provide appropriate subtotals and totals for proposed columns (g) through (k), *i.e.*, megawatt hours sold, total revenue and revenue components. The final rule's instruction 5 explains the designation system for entering the FERC rate schedule or tariff number required for column(c).

New instruction 6 requires the reporting of average monthly billing demand in column (d), average monthly non-coincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) should be reported in megawatts. Reporting of demand is only required for requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis. Definitions of average monthly NCP and CP demands are provided. If respondents are unable to express demand on a megawatt basis they must provide a reason in a footnote. The final rule's instruction 8 clarifies and organizes the requirements of columns (h) to (k), which are revenue items previously classified as (m) through (p). The final rule's instruction 9 requires that the subtotal for RQ sales for resale, in the final rule's column (g) be reported on page 401, line 23 of Form 1, and that the subtotal for non-RQ sales for resale in column (g) be reported on page 401, line 24. The final rule's instruction 10 requires footnotes for all entries that need explanation.

2. Purchased Power (Account 555) Schedule[23]

a. *Comments.* PP&L requested clarification of what should be reported in column (a) of the Purchased Power schedule, since sometimes the respondent is the seller in an exchange. For exchange transactions, the name of the other party to the transaction should be reported in column (a). Instruction 2 on the Purchased Power Schedule is modified to read: "Enter the name of the seller or other party in an exchange transaction in column (a)." PP&L also noted that the title in column (m) of the purchased power schedule showing that it equals columns j+k+l is not appropriate for the reporting of settlement amounts in this column. The title for column (m) is reworded as "Total (j+k+l) or Settlement ($)."

The Commission agrees with Southwestern that the title of column (g) on the Purchased Power schedule should be "Megawatthours Purchased." Several commenters noted that the definitions of the statistical classifications for the Purchased Power schedule were incorrect in the **Federal Register** notice. The definitions are correct in the final rule.

EIA stated that some utilities report, as exchange transactions, those transactions in which power is only received or delivered. Such transactions are unlikely to meet the definition of "exchange" in this rule.

If an exchange transaction is not settled in the reporting year, the settlement, column (m) on the Purchased Power schedule, must be left blank. Estimates of the monetary value of the energy owed are not permitted.

Additionally, some utilities are reporting exchange power received or delivered as a negative number. This is not acceptable. A negative receipt is a delivery and a negative delivery is a receipt. Columns (h) and (i) on the Purchased Power schedule, containing exchange power received and delivered, must always contain positive numbers.

b. *Schedule format.* The final rule makes a number of format changes to the previous reporting schedules which appeared on pages 326–27 [24] and 328–

[15] Requirements service is service which the supplier plans to provide on an ongoing basis (*i.e.*, the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate consumers.

[16] "Long-term" means five years or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (*e.g.*, the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service). This category should not be used for long-term firm service which meets the definition of RQ service. For all transactions identified as LF, the respondent also should provide in a footnote the termination date of the contract defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[17] IF is the same as LF service except that "intermediate-term" means longer than one year but less than five years. This category should not be used for intermediate-term firm service which meets the definition of RQ service.

[18] This category should be used for all firm services where the duration of each period of commitment for service is one year or less. This category should not be used for short-term firm service which meets the definition of RQ service.

[19] *Long-term* means five years or longer. The availability and reliability of service, aside from transmission constraints, must match the availability and reliability of the designated unit.

[20] This category is the same as LU service except that "intermediate-term" would mean longer than one year but less than five years.

[21] This category should be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm service regardless of the length of the contract and service from a designated unit of less than one year. The respondent also should describe the nature of the service in a footnote.

[22] This code should be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. The respondent also should provide an explanation in a footnote for each adjustment.

[23] This schedule comprises pages 326–27 of Form 1.

[24] "Purchased Power" (Account 555).

29 [25] of Form 1. The final rule eliminates the latter schedule, except for two columns of information on power exchanges, which are added to the "Purchased Power" schedule. The final rule does not increase the amount of substantive information required. Five columns are eliminated from the "Purchased Power" schedule previously designated as column (c), (e), (f), (j) and (k).[26] The elimination of these columns necessitates changes in the designation letters of the remaining columns. The two columns which are added to the schedule from the "Summary of Interchange According to Company and Point of Delivery" schedule are columns (f) and (g), megawatt hours received and delivered, respectively; on the "Purchased Power" schedule, they are now designated columns (h) and (i). The final rule also changes the designations for five columns to parallel the changes in the "Sales for Resale" schedule.[27] One of the final rule's changes in designation, *i.e.*, "annual maximum demand" to "average monthly CP demand," involves a substantive change from the previous schedules.

The final rule eliminates several of the ten previous instructions, and rewords or establishes additional requirements in the remaining instructions. Those instructions previously numbered 3, 4, 5, and 7 are deleted. Instruction 1 is rephrased to clarify that power exchange transactions and any settlements for imbalanced exchanges are to be reported here. Previous instruction 2 is now divided into instructions 2 and 3. The substantive change embodied in the final rule's instruction 2 is that disclosure is required of any ownership interest or affiliation between the responding entity and the purchaser. The substantive change embodied in the final rule's instruction 3 increases the number of classifications and explains in more detail the code definitions used to classify the type of sale. There are now nine classification codes rather than the previous five codes. The nine codes consist of the following: RQ, for requirements service; [28] LF, for long-term firm service; [29] IF, for intermediate-term firm service; [30] SF, for short-term firm service; [31] LU, for long-term service from a designated generating unit; [32] IU, for intermediate-term service from a designated generating unit; [33] EX, for exchanges of electricity; [34] OS, for other service, which must be described in a footnote; [35] and AD, for out-of-period adjustment, which must be described in a footnote.[36] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.

Reporting of these codes must be based on the contractual terms and conditions of the service. These sales categories are intended for descriptive and statistical purposes only. They do not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with the Commission. The final rule's instruction 4 explains the designation system for entering the FERC rate schedule or tariff number required for column (c).

As with the "Sales for Resale" schedule, the final rule's instruction 5 requires, for requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis, the reporting of average monthly billing demand in column (d), average monthly non-coincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) must be reported in megawatts. The inability to express any demand on a megawatt basis must be explained in a footnote. The final rule's instruction 6 covers power exchanges received and delivered, as well as megawatt hours purchased. The final rule's instruction 7 clarifies the reporting of revenues by including instructions on how settlements under power exchange agreements should be reported in column (1). The final rule's instruction 8 requires that the total amounts in columns (g), (h) and (i) be reported on page 401, lines 10, 12, and 13. The final rule's instruction 9 requires footnotes for all entries that need explanation.

3. Transmission of Electricity for or by Others (Accounts 456 and 565) Schedule [37]

The final rule eliminates this schedule and replaces it with two new schedules: one for the reporting of "Transmission of Electricity For Others," Account 456, and the other for the reporting of "Transmission of Electricity By Others" Account 565.

4. Transmission of Electricity for Others (Account 456) Schedule

a. *Comments*. Colorado and Southwestern state that they have contracts with either multiple delivery points or pool transactions for which specific delivery points are not identified because they have more than one point of interconnection with certain other utilities' systems. Consequently, Colorado and Southwestern state that they cannot identify receipt and delivery points. Such specific receipt and delivery point information is not required in these cases. Instruction 6 on the "Transmission For Others" schedule states: "Report receipt and delivery locations for all single contract path, 'point-to-point' transmission service." Because transactions of the type identified by Colorado and Southwestern are not single contract path, point to point transaction, it is acceptable to use the term "system" as the point of delivery for such transactions.

Southwestern noted that accounting for inadvertant flows is not addressed in the "Transmission For Others" schedule. This schedule should be used to report contractual transactions subject to Commission jurisdiction. Inadvertent flows which are covered by contracts should be reported on this schedule. Otherwise, inadvertent flows should not be reported.

PP&L noted that the statement "(*e.g.*, the supplier must provide emergency energy to maintain the LF service)" in the definition of long-term, firm transmission service in the instructions on the "Transmission of Electricity For Others" schedule seems inapplicable to transmission service. The final rule deletes this statement.

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[25] "Summary of Interchange According to Company and Point of Delivery".

[26] These columns request information on the comparable items that are being deleted from the "Sales for Resale" schedule, *i.e.*, import across state lines, point of delivery, substation ownership, type of demand reading and voltage at which received.

[27] The changes include:

(1) Column (a) "Sales to" becomes "name of company or public authority;"

(2) Column (b) "Contract demand" becomes (d) "average monthly billing demand;"

(3) Column (h) "Average monthly maximum demand" becomes (e) "average monthly NCP demand;"

(4) Column (i) "Annual maximum demand" becomes (f) "Average monthly CP demand;" and

(5) Column (l) "Megawatthours" becomes (g) "Megawatthours Purchased."

Finally, the title previously over columns (g), (h) and (i) is now placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)" to "Actual Demand (MW)."

[28] *See Supra* note 15.

[29] *See Supra* note 16.

[30] *See Supra* note 17.

[31] *See Supra* note 18.

[32] *See Supra* note 19.

[33] *See Supra* note 20.

[34] *This category should be used for transactions involving a balancing of debits and credits for energy, capacity, etc. and any settlements for imbalanced exchanges.*

[35] *See Supra* note 21.

[36] *See Supra* note 22.

[37] This schedule was previously on page 332 of Form 1, 1989 edition.

b. *Schedule format.* The final rule provides a column format to improve the ease and consistency of reporting. The following 14 columns, which the final rule includes in the new "Transmission of Electricity For Others" (Account 456) schedule, are similar to the column headings for the schedules discussed previously. They include: "Payment By (Company or Public Authority);" "Energy Received From (Company or Public Authority);" "Energy Delivered To (Company or Public Authority);" "Statistical Classification;" "FERC Rate Schedule or Tariff Number;" "Point of Receipt;" "Point of Delivery;" "Billing Demand (MW);" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Revenues."

c. *Instructions.* The final rule's instruction 1 requires reporting of transmission service that the respondent provides to others. The final rule's instruction 2 requires a line of data for each distinct type of transmission service provided. The final rule's instruction 3 requires reporting the identities of the three other potential parties to a transmission transaction: The entity that made payment to the respondent for providing the transmission service; the entity from which the power was received, and the entity to which the power was delivered. The instruction also clarifies how the names of entities are to be reported and requires that a footnote be provided to explain any ownership interest or affiliation the respondent has with the identified or reported entities. The final rule's instruction 4 requires the reporting of statistical classification codes based on the contractual terms and conditions of the service. The transactions must be coded within one of four categories: LF, for long-term firm transmission service; [38] SF, for short-term firm transmission service; [39] OS, for other transmission service; [40] and AD, for out-of-period adjustment.[41] The final rule's instruction 5 requires the reporting of the applicable FERC rate schedule or tariff number under which the transmission service was provided to the companies or public authorities identified in columns (a), (b), or (c). The final rule's instruction 6 requires the reporting by substation or other designation of points of receipt and delivery. The final rule's instruction 7 requires that billing demand under the transmission agreement be reported in megawatts in column (h). The final rule's instruction 8 requires the reporting of megawatthours received and delivered. The final rule's instruction 9 requires the reporting of the components and total of both monetary and nonmonetary settlements recieved for transmission service provided for others. The final rule's instruction 10 requires that the total amounts in columns (i) and (j) be reported as Transmission Received and Delivered on page 401, lines 16 and 17, respectively. The final rule's instruction 11 requires footnotes for all entries that need explanation. For example, some utilities previously reported transmission for others or by others involving no revenue and no other form of settlement. In these situations, the respondents should explain the absence of payment or settlement for the service in a footnote. Additionally, some transmission transactions are reported with zero receipts and a number of megawatthours delivered. This yields a negative number presumably indicating a loss. The total amount of energy recieved as well as the total amount of energy delivered must be reported.

5. Transmission of Electricity by Others (Account 565) Schedule

a. *Schedule format and comments.* The final rule provides a column format to improve the ease and consistency of reporting. The following seven columns are included in the new "Transmission of Electricity By Others" (Account 565) schedule: "Name of Company or Public Authority;" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Cost of Transmission."

Southwestern states that respondents are not likely to know the information requested in columns (b) and (c), "megawatthours received and delivered." On this schedule, respondents are required to provide information on transactions in which they paid for transmission service provided by others. Consequently, respondents should know this information.

Moreover, payment typically includes an amount for transmission losses. Losses can be paid for in two ways: either the utility providing the transmission service makes up transmission losses with its own energy which is paid for directly, or the utility delivers less power than it received in an amount equal to its losses. Columns (b) and (c) are necessary for identifying how such losses are accounted for. It is unlikely that a contract for transmission service would ignore the cost of losses or the amount of power recieved and delivered by the transmitting utility.

In situations where this information is now known, an explanatory footnote should be provided stating why this information is not available, and how losses are handled.

b. *Instructions.* The final rule's instruction 1 requires the reporting of all transmission service provided to the respondent by other electric utilities, cooperatives, municipals and other public authorities during the year. The final rule's instruction 2 requires the name of the transmission provider and an explanation of any ownership interest or affiliation the respondent has with the transmission provider. The final rule's instruction 3 requires that respondents group transmission service purchased from other utilities as either "Delivered Power to Wheeler" or "Received Power from Wheeler." The final rule's instruction 4 requires the reporting of "MWh received" and "MWh delivered" by the provider of the transmission service. The final rule's instruction 5 requires the reporting of the components and total of both monetary and nonmonetary settlements received for transmission service provided by others. The final rule's instruction 6 requires that a total be provided as the last line. The following has been added to instruction 6 to explain how losses associated with Transmission By Others transactions are to be reported on the Electric Energy Account, page 401: "Energy provided by the respondent for the wheeler's transmission losses should be reported on the Electric Energy Account, page 401. If the respondent received power from the wheeler, energy provided to account for losses should be reported on line 19, Transmission By Others Losses, on page 401. Otherwise, losses should be reported on line 27, Total Energy Losses,

[38] *Long-term* means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as LF, the respondent must provide in a footnote the termination date of the contract, defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[39] *Short-term* is to be used for all firm services where the duration of each period of commitment for service is less than one year.

[40] *Other transmission service* is to be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm transmission service, regardless of the length of the contract. Respondent must describe the nature of the service in a footnote.

[41] *Out-of-period adjustment* is to be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. Respondent must provide an explanation in a footnote for each adjustment.

page 401." [42] Instruction 7 requires footnotes for all entries that need explanation.

6. *Electric Energy Account Schedule* [43]

The final rule changes seven item names, and deletes six lines from the "Electric Energy Account" schedule. The final rule requires two additional items of information (lines 19 and 24).

a. *Schedule format.* The final rule renames lines 11, 12, 13, 14, 18 and 23, as follows: "Interchanges" is renamed "Power Exchanges;" "In Gross," is renamed "Received;" "Out Gross" is renamed "Delivered;" "Net Interchanges" is renamed "Net Exchanges;" "Net Transmission" would be renamed "Net Transmission for Others;" and "Sales for Resale" is renamed "Requirements Sales for Resale." The final rule also eliminates the words "or by" in line 15 (because transmission service provided to the respondent by others should not be reported on this schedule). The final rule also adds a new line 24, "Non-requirements Sales for Resale," to conform with the new "Sales for Resale" schedule.

Duke questioned the Commission's determination that "Transmission of Electricity By Others" should not be reflected on "Electric Energy Account" page 401. Duke states that any energy losses that may result from wheeling by others should affect total energy available for sale reflected on line 20 of page 401. The Commission agrees. A new line 19 is added to the Electric Energy Account, entitled "Transmission By Others Losses," for reporting situations where purchasers of power provide for losses from transmission by others by receiving less energy than is purchased. The final rule eliminates the details on energy losses previously collected in lines 26–29 and 31.

7. Monthly Peaks and Output Schedule [44]

a. *Comments.* As described below, the final rule deletes two columns from the "Monthly Peaks and Output" schedule because the information is no longer needed, and the final rule adds a column entitled "Monthly Non-Requirements Sales for Resale & Associated Losses." Southwestern and PP&L questioned the definition of "system peak" used on the "Monthly Peaks and Output" schedule. Southwestern stated that this definition may be inconsistent with the company's definition of peak. However, the definition of system peak on page 401 is required for preparing the cost of service analyses employed by the Commission to meet its regulatory responsibilities. Moreover, column (c), "Monthly Non-Requirements Sales for Resale & Associated Losses" was added to make the definition of system peak explicit: System peak only includes the firm demand of the utility's ultimate requirements and wholesale requirements customers. It does not include demand related to non-requirements transactions or losses associated with them. This is information the respondent is likely to have.

Additionally, Southwestern requested that the instructions clarify which line of the "Electric Energy Account" schedule should be equal to the "Total Monthly Energy" column. Instruction 2 states: "Report in column (b) the system's energy output for each month such that the total on line 41 matches the total on line 20."

Some commenters also stated that the losses associated with non-requirements sales for resale are not known. As noted above, the respondents are likely to know these losses.

b. *Schedule format.* The final rule eliminates columns (c) and (f) and renames previous column (g), "Monthly Output (MWh)," as "Total Monthly Energy." The final rule also adds a new column, entitled "Monthly Non-Requirements Sales for Resale & Associated Losses" for reporting monthly nonrequirements sales for resale and associated losses. Finally, the final rule defines the system's monthly maximum megawatt load, reported in the column entitled "Megawatts (see instruction 4)," as "that load associated with the net energy for the system defined as the difference between columns (b) and (c)." Column letter designations are changed accordingly.

c. *Instructions.* The final rule replaces all the previous instructions with new instructions as follows: Instruction 1 requires the separate reporting of the required information for the respondent's non-integrated power systems; Instruction 2 requires the reporting of system energy output by month; Instruction 3 requires the reporting of nonrequirements sales for resale and associated losses; Instruction 4 requires the reporting of the system's monthly maximum megawatt load as that load associated with the net energy for the system defined as the difference between columns (b) and (c); and Instruction 5 requires the reporting of day of the month and hour of the monthly peak.

D. Changes to FERC Form No. 1–F Schedules

The final rule changes several titles and deletes three columns from the "Sales of Electricity for Resale" schedule in order to parallel the changes on the Form 1 "Sales for Resale" schedule, pages 310–11, discussed above.

1. Part XV: Sales of Electricity for Resale Schedule [45]

a. *Comments.* EIA requested that the Part XV: Sales for Resale and Part XVI: Purchased Power schedules include revenue and cost breakdowns similar to those required on the Form 1 schedules. EIA also requested that power exchange transactions be reported on the Part XVI: Purchased Power schedule as is proposed on the Form 1 Purchased Power Schedule. As part of the changes to the bulk power schedules proposed herein, the Commission proposed identical changes to the substitute sales for resale and purchased power schedules for Form 1–F. Presently, most Nonmajor electric utilities elect to file a Form 1 in lieu of the required Form 1–F; therefore, only a few Nonmajor electric utilities file a Form 1–F. The intent of the reduced information in the Form 1–F schedules has always been to lessen the reporting burden on smaller entities. We therefore do not accept EIA's proposal since it is inconsistent with this regulatory objective.

b. *Schedule format.* The final rule eliminates three columns, previously designated as (c), (d) and (h). The information which was requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of those columns necessitates changes in the designation letters of the remaining columns. The final rule retitles the following items: the schedules title of Part XV "Sales of Electricity for Resale" is now "Sales for Resale;" previous column (a), "Sales To," is now "Name of Company or Public Authority;" and previous column (e), "Kilowatthours," is now "Megawatthours Sold (MWh)."

c. *Instructions.* The final rule rewords instruction 1 consistent with the changes to the "Sales For Resale" (Account 447)

[42] This addition is in response to a comment by Duke Power Company (Duke) on the "Electric Energy Account" which is discussed in the next section.

[43] This schedule was previously on page 401 of Form 1, 1989 edition. There is no account number for this schedule.

[44] This schedule was previously on page 401 of Form 1, 1989 edition. There is no account number for this schedule.

[45] This schedule was previously on page 17 of FERC Form 1–F, 1989 edition. There are no account numbers for any Form 1–F schedules proper (although when Form 1 schedules are used in lieu of Form 1–F schedules there are account numbers).

schedule instructions in the Form 1. The final rule replaces the remaining previous instructions as follows: Instruction 2 requires reporting the name of the purchaser and providing a footnote to explain any ownership interest or affiliation the respondent has with the purchaser; Instruction 3 requires reporting the FERC rate schedule or tariff number; Instruction 4 requires reporting the annual maximum damand in megawatts and providing an explanatory footnote if demand is reported on a different basis; Instruction 6 requires reporting the total sales for resale charges on bills rendered to each purchaser; and Instruction 7 requires footnotes for all entries that need explanation.

2. Part XVI: Purchased Power Schedule [46]

The final rule changes several titles and deletes three columns from the "Purchased Power" schedule to parallel changes on the Form 1 "Purchased Power" (pages 326–27) schedule.

a. *Schedule format.* The final rule eliminates three columns previously designated as (c), (d) and (h). The information which was requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of these columns necessitates changes in the designation letters of the remaining columns. The final rule retitles the following items: previous column (a), "Sales To," is now "Name of Company or Public Authority" and previous column (e), "Kilowatthours," is now "Megawatthours Purchased (MWh)."

b. *Instructions.* The final rule rewords Instruction 1 consistent with the changes to the "Purchased Power" (Account 555) schedule instructions in Form 1, and incorporates previous Instruction 3. The final rule replaced all the remaining previous instructions with new instructions as follows: Instruction 2 requires reporting the name of the seller and providing a footnote to explain any ownership interest or affiliation the respondent may have with the seller; Instruction 3 requires reporting the FERC rate schedule or tariff number or, for non-jurisdictional sellers, an appropriate and precise designation for the contract; Instruction 4 requires reporting the annual maximum demand in megawatts and providing an explanatory footnote if demand is reported on a different basis; Instruction 6 requires reporting the total purchased power charges on bills rendered by each seller to the respondent; and Instruction 7 requires footnotes for all entries that need explanation.

E. Requirements Related to Annual Charges [47]

a. *Comments.* APS and Wisconsin Electric Power Company (WEPCO) supported the proposed clarification of how power exchange transactions should be reported because they are already reporting it according to the Chief Accountant's instructions. Each asserts that its annual charges have been particularly high and each believes that if other utilities were to report power exchange transactions properly, its own annual charges would decrease. WEPCO requested that the commission rectify any past incorrect assessments of annual charges. The Commission cannot recalculate annual charges for past years because it lacks the necessary data and obtaining such data would not be cost-effective; the administrative burden associated with an attempted recalculation would far outweigh the benefits. However, obtaining consistent and appropriate data for the future is one of the main purposes of this final rule, and the Commission expects that these concerns will be allayed in the future.

PP&L suggested that megawatthours be used for reporting Annual Charges. The Commission adopts this suggestion. All instances where kilowatt-hours are used in section 382.201 are changed to megawatt-hours in the final rule. PP&L also suggested that the Annual Charges worksheet be required to be filed. The Commission adopts this suggestion also. A sentence is added to the end of § 382.201(b)(4)(B)(ii) to read: "A copy of the completed worksheet must be submitted as part of the Commission's annual charge reporting requirement (FERC Reporting Requirement No. 582)." PP&L suggested that a line be added for deducting non-jurisdictional sales for resale. The volume of non-jurisdictional sales for resale does not justify imposing a distinct reporting category.

b. *Changes in the final rule.* The final rule makes several changes to the Commission's Annual Charges regulations to conform to changes on the Form 1 "Purchased Power" schedule. Only changes to the Form 1 "Purchased Power" schedule need to be reflected in the Annual Charges regulations.

The final rule does not propose to change the definitions or reporting requirements in the Annual Charges regulations; however, the final rule replaces the term "interchange out" in § 382.102, paragraphs (k) and (n)(2), with "exchange delivered" to conform to the renaming of this term in the Purchased Power schedule of the FERC Form No. 1.[48] These paragraphs read as follows:

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" category.

(n) *Adjusted coordination sales megawatt-hours* means the number of megawatt-hours of electrical energy that are (1) Not adjusted sales for resale megawatt-hours, (2) reported as adjusted exchange delivered or adjusted transmission delivered under section 382.201(b)(4) of this part, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

In addition, the final rule replaces the term "interchange out" with "exchange delivered" in: The heading for column 3, the title for row (B) and footnote 2 of the worksheet referred to in § 382.201(b)(4)(B)(ii). The final rule also changes, in the worksheet referred to in § 382.201(b)(4)(B)(ii), the page number references in footnote 2 from 328 to 326–27 and in footnote 3 from 332 to 328–30 to conform to the page renumbering of the bulk power schedules of the Form 1 The Annual Charges Worksheet is attached as appendix B.

F. Requirements Related to Fuel Cost and Purchased Economic Power Adjustment Clauses

1. *Comments.* To conform to changes on the Form 1 "Purchased Power" schedule, the final rule makes a consistent change in the fuel cost and purchased power adjustment clauses regulations. The term "interchange-in" is replaced with "exchange received" in § 35.14(a)(3).[49] This paragraph now reads as follows:

(3) Sales (S) shall be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) above, less (vi) total system losses.

APS, Northeast Utilities (Northeast), and Southwestern expressed concern about the impact of the replacement of the term "interchange-in" with "exchange received" in the Commission's Economic Power Adjustment Clause regulations. This change does not substantively change this regulation. It is made so that the terminology used in the regulation

[46] This schedule comprised page 18 of FERC Form 1–F, 1989 edition.

[47] The Commission established annual charges in Order No. 472, 52 F.R. 21.263 (1987), III FERC Stats. & Regs. ¶ 30.746 (1987).

[48] 18 CFR part 382 (1990).

[49] 18 CFR 35.14 (1990).

conforms with the terminology used in Form 1.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA),[50] generally requires a description and analysis of proposed rules that will have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission does not believe that this rule will have such an impact on small entities. Most electric utilities do not fall within the RFA's definition of small entities.[51] The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the commission certifies that issuance of this final rule will not have a "significant economic impact on a substantial number of small entities."

VI. Environmental Statement

The Commission concludes that issuance of his rule will not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[52] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[53]

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and recordkeeping requirements imposed by an agency.[54]

The Sales for Resale (Account 447), Purchased Power (Account 555), Transmission of Electricity For Others (Account 456), Transmission of Electricity By Others (Account 565), Electric Energy Account and Monthly Peaks and Output schedules in the Form 1; Sales For Resale and Purchased Power schedules in the Form 1-F; and conforming changes to the Annual Charges regulation and Fuel Cost and Purchased Economic Power Adjustment Clauses regulation are being submitted to OMB for its review.

The information collection forms affected by the final rule are FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees. These information collections are required in order for the Commission to carry out its legislative mandate under the Federal Power Act. The information required by this final rule, as previoulsy discussed herein, will assist the Commission in fulfilling its current regulatory responsibilities by improving the consistency of reporting of bulk power transactions.

An estimated 204 respondents will be affected by the final rule. The respondents will consist mostly of large public utilities, with a few medium to large public utilities. The annual public reporting burden for collection of information, including the few schedules revised herein, is estimated to be 218,700 hours for the Form 1 and 720 hours for the Form 1-F for all electric utilities filing these forms. The industry burden is based on an estimate of 1,215 average hours for the 180 utilities which complete a Form 1-F, both on an annual basis. THese estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

VIII. Effective Date

This rule is effective December 13, 1990.

List of Subjects

18 CFR Part 35

Electric power rates,

Electric utilities,

Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends parts 35, and 382 in chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 35—FILING OF RATE SCHEDULES

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

Authority: 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; 31 U.S.C. 9701; 16 U.S.C. 791a-825r; 16 U.S.C. 2601-2645.

2. In § 35.14, paragraph (a)(3) is revised to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(3) Sales (S) must be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of: (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) of this section, less (vi) total system losses.

* * * * *

PART 382—ANNUAL CHARGES

3. The authority citation for Part 382 is revised to read as follows:

Authority: Public Law 99-509, title III, subtitle E, sec. 3401 (Oct. 21, 1986); 42 U.S.C. 7101-7352 (1988); E.O. 12009, 3 CFR 1978 Comp., p. 142; 5 U.S.C. 551-557; 15 U.S.C. 717-717w; 16 U.S.C. 791a-828c; 15 U.S.C. 3301-3432; 16 U.S.C. 2601-2645; 49 U.S.C. 1-27.

4. In § 382.102, paragraphs (k) and (n) are revised to read as follows:

§ 382.102 Definitions

* * * * *

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" category.

* * * * *

(n) *Adjusted coordination sales megawatt-hours* means the number of megawatt-hours of electrical energy that are: (1) Not adjusted sales for resale megawatt-hours; (2) reported as adjusted exchange delivered or adjusted transmission delivered under § 382.201(b)(4); and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

* * * * *

5. In § 382.201, paragraphs (b)(1), (b)(2), (b)(4)(i)(A), (b)(4)(i)(B), and (b)(4)(ii) are revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

* * * * *

(b) *Determination of annual charges to be assessed against public utilities.*

(1) The adjusted sales for resale costs determined under paragraph (a) of this section will be assessed against each

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[50] 5 U.S.C. 601-612 (1988).

[51] 5 U.S.C. 601(3) (1988) (citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1988); section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation).

[52] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs ¶30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[53] *See* CFR 380 4(a)(1) (1990).

[54] 5 CFR 1320.13 (1990).

public utility based on the proportion of the adjusted sales for resale megawatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted sales for resale megawatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

(2) The adjusted coordination sales costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the adjusted coordination sales megawatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted ccordination sales megawatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

* * * * *

(4) *Reporting requirement.*

* * * * *

(i) * * *

(A) The total annual adjusted sales for resale megawatt-hours, as defined in § 382.102(m); and

(B) The total annual adjusted coordination sales megawatt-hours, as defined in § 382.102(n).

(ii) The data required in paragraphs (b)(4)(i) (A) and (B) of this section will be derived from information reported to the Commission annually in the FERC Form Nos. 1 and 1-F. For purposes of computing annual charges, the definitions in § 382.102(i)-(1) will be used in conjunction with the following worksheet to determine data reported in paragraphs (b)(4)(i) (A) and (B) of this section. A copy of the completed worksheet must be submitted as part of the Commission's Annual Charges reporting requirement (FERC Reporting Requirement No. 582).

* * * * *

[FR Doc. 90-26655 Filed 11-9-90; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F-0122]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediol as a component of the gelling agent dialkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants. This action is in response to a petition filed by Rheox, Inc.

DATES: Effective November 13, 1990; written objections and requests for a hearing by December 13, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1990 (55 FR 17671), FDA announced that a food additive petition (FAP 9B4174) had been filed by Rheox, Inc., Wyckoffs Mill Rd., Hightstown, NJ 08520, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of 1,6 hexanediol as a component of the gelling agent dialkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants, from 7 percent maximum to 15 percent maximum.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use in mineral oil lubricants is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 13, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3570 is amended by revising the table in paragraph (a)(3) for the entry "Dialkyldimethylammonium aluminum silicate * * *" under the "Substances" and "Limitations" columns to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * *
Dialkyldimethylammonium aluminum silicate (CAS Reg. No. 68953-58-2), which may contain up to 7 percent by weight 1,6-hexanediol (CAS Reg. No. 629-11-8), where the alkyl groups are derived from hydrogenated tallow fatty acids (C_{14}-C_{18}) and where the aluminum silicate is derived from bentonite.	For use only as a gelling agent in mineral oil lubricants at a level not to exceed 15 percent by weight of the mineral oil.
* * *	* * *

* * * * *

Dated: November 1, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26609 Filed 11-9-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 71

[T.D. ATF-302; Ref: Notice Nos. 661 and 670]

Requests or Demands for Disclosure of Information in Testimony and in Related Matters

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule amends regulations in 27 CFR part 71 applicable to requests and demands for the disclosure of information in court testimony and related matters. The amendment requires an affidavit or, if that is not feasible, a statement to be filed whenever the testimony of an ATF employee or officer is sought, in any case in which the Federal Government is not a party. In addition, the amendment requires that any request or demand for testimony or production of records be served at least 5 working days before the scheduled date of disclosure to ensure that there will be enough time to properly consider whether the request or demand should be granted. Finally, the amendment specifies some of the criteria to be used in determining whether to grant the request or demand for testimony or records. These changes are intended to improve the procedures for dealing with requests and demands for testimony.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, room 6230, Ariel Rios Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION:.

Background

Among the responsibilities of the ATF Director is to exercise appropriate control over Bureau officers and employees in the performance of their official duties. This responsibility includes determining whether to grant permission to such officers and employees to testify, as representatives of the Bureau, in response to requests or demands from courts or similar forums.

Currently, ATF regulations provide that ATF officers and employees shall not testify or disclose official records in criminal or civil court cases without prior authorization from the Direstor or his delegate (27 CFR 71.27). These regulations are now being amended to provide additional guidelines regarding the necessary prior authorization. The amendment sets forth uniform and expeditious procedures for obtaining the prescribed authorization.

The Director is often requested to authorize a court appearance or deposition of an ATF official without an adequate explanation of the nature of the testimony being sought and without adequate time to determine the ramifications of the testimony from the Government's standpoint. It is important for the Director to have sufficient time and date to ascertain whether the requested testimony would disclose the identity of confidential informers, jeopardize a pending criminal case or investigation by prematurely revealing information about it, or disclose information prohibited by law from disclosure.

Summary of Changes

The provisions of this final rule will add three new subparagraphs under paragraph (e) of 27 CFR 71.27. Paragraph (e), titled "Procedure in the event of a request or demand for ATF records or information," currently sets forth procedures for processing and responding to such requests or demands, but not for submitting them. Nor does the current regulation describe the criteria for determining whether a request or demand would be granted. New subparagraphs (3), (4), and (5) of paragraph (e) provide such procedures and criteria.

New paragraph (e)(3) requires an affidavit or statement to be prepared by the party (or party's attorney) who makes a request or demand (including a subpoena *duces tecum*) for the testimony of an ATF officer or employee. This requirement will not apply to a request or demand from a State, because § 71.27(e) generally does not apply to such requests or demands. In addition, this requirement will not apply in any case in which the United States is a party. The affidavit or statement must specify the information about which the testimony is desired. The affidavit will enable the Director or his delegate to make an informed decision whether to authorize the officer or employee to testify. No affidavit or statement is necessary in the case of a request or demand for ATF records only (as opposed to testimony), since the request or demand itself would specify the matters sought to be disclosed.

New paragraph (e)(4) prescribes a time limit within which any request or demand for testimony or disclosure of records must be served. Service will be required at least 5 working days before the date scheduled for the disclosure of information. This will give ATF time in which to evaluate the request or demand and to decide whether it will be granted. This time requirement, as well as the affidavit requirement of paragraph (e)(3) may be waived upon a demonstration that emergency circumstances, or other good cause reasons, make compliance infeasible or impractical.

New paragraph (e)(5) contains a brief discussion of the factors to be considered in determining whether to grant requests or demands under § 71.27. New subparagraph (5) applies both to testimony and to the disclosure of records in testimony-related matters. No

attempt is made to present an exhaustive catalog of all the determining factors, in view of the variety of circumstances from case to case. Rather, the subparagraph presents the general principles to be followed and lists the most common reasons for denial of requests or demands for disclosure under § 71.27.

Finally, because some of the authorities of the Director under part 71, including the authorities under § 71.27, have been redelegated to subordinate officials, the definition of "Director" in § 71.11 is amended by adding the words "or his delegate."

Notice of Proposed Rulemaking

On July 11, 1988, ATF published a notice of proposed rulemaking, Notice No. 661 (53 FR 26088), with a 60-day comment period. In response to several requests for an extension of the comment period, the original 60-day period was extended for an additional 60 days by Notice No. 670 (53 FR 35093).

Comments Received

During the comment period, 13 comments were received. Among the commenters were nine alcoholic beverage industry members, three trade associations, and another interested party. All of the comments were critical of the proposal, and most of them called for its withdrawal, for various reasons. ATF has given these comments serious consideration, and certain changes have, in consequence, been made in this final rule. Those changes are discussed below.

Several of the commenters requested an opportunity to elaborate their arguments verbally at a public hearing. However, the Director has determined that a public hearing would not be beneficial in this case. ATF has afforded an opportunity for the public to submit written comments on the proposal and, as mentioned, such comments have been helpful in preparing this final rule. But we do not feel that an oral public hearing would be likely to provide any additional information or serve the public good, as provided in 27 CFR 71.41.

For most commenters, the principal objection to the proposed amendment was that it would limit their access to testimony or information, which they might need in order to prosecute or defend a case in court. This objection misunderstands the nature of the amendment. Access to testimony or information would only be limited if the Director refused to allow an ATF officer or employee to testify. However, the Director already has full authority, under § 71.27(d), to forbid employee testimony. Consequently, the amendment made by this final rule does not expand the Director's authority but merely provides an orderly procedure for its exercise. Additionally, the final rule, in § 71.27(e)(3), excludes from the affidavit requirement all cases in which the United States is a party. This should alleviate the concerns of several commenters about the fairness of this requirement in litigation involving ATF.

Some commenters suggested that ATF was without legal authority to promulgate these regulations. The authority to issue the regulations is contained in 5 U.S.C. 301, which provides in part:

> The head of an Executive Department * * * may prescribe regulations for the government of his department, the conduct of its employees, * * * and the custody, use, and preservation of its records, papers, and property * * *. This section does not authorize withholding information from the public or limiting the availability of records to the public.

Section 301 and its predecessor (5 U.S.C. 22) have been recognized as "housekeeping" statutes, the purpose of which is to centralize decision making to ensure consistent rulings. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462, 468 (1050); *Cates* v. *L.T.V. Aerospace Corp.*, 480 F.2d 620, 623 (5th Cir. 1973). Under section 301, courts have consistently recognized that an agency head may reserve the authority to determine when agency documents and information should, within the ambit of the law, be disclosed. *Id.*; *Boske* v. *Comingore*, 177 U.S. 459, 470 (1900); *Saunders* v. *Great Western Sugar Co.*, 396 F.2d 794 (10th Cir. 1968). Therefore, there is ample legal authority to promulgate these regulations.

Some commenters suggested that the proposed regulations usurped the authority of the courts and administrative law judges in determining the applicability of any asserted privilege. They also stated that the proposed regulations would result in a denial of due process by impairing an industry member's ability to defend itself in a judicial or administrative proceeding. The regulations prescribed by this final rule do not give the Director any undue authority to arbitrarily refuse to comply with a request or demand for testimony. There is a clear distinction between the agency's authority to decide "who" may disclose official information from the ultimate judicial authority to decide "what" must be disclosed. It is clear that until a request or demand for the materials is made upon the proper person, and pursuant to lawfully issued regulations, the issue of whether the agency head has a privilege to refuse the production of testimony or records need not be reached. In this regard, 5 U.S.C. 301 and these regulations do not create any new privilege of nondisclosure. Rather, this final rule merely establishes procedures for obtaining testimony and restates existing privileges which are available to the Government. Further, it gives the public notice of these privileges. The ultimate authority to decide whether a claim of privilege has been correctly asserted remains with the appropriate judicial or administrative authority. Hence, section 301 is appropriate authority for ATF to issue procedural regulations governing the conduct of its employees. This is consistent with the provision that section 301 does not, in itself, authorize the withholding of records from the public.

Several commenters argued that the proposed regulations were unnecessary, that existing procedures (such as the Federal Rules of Civil Procedure) are adequate to protect ATF against unreasonable demands for information, and that there is no reason why the Bureau should be treated any differently from other parties or non-parties in litigation. However, as an agency of the U.S. Government, ATF has a right to provide procedures for the consideration of requests for testimony of its personnel under 5 U.S.C. 301. This final rule does not provide ATF with rights not afforded other Federal agencies under the law.

One commenter suggested that a portion of proposed paragraph (e)(5)(v) is violative of the rule in *Brady* v. *Maryland*, 373 U.S. 83 (1963). Specifically, as proposed, paragraph (e)(5)(v) provided that a request or demand would be denied if disclosure might "jeopardize or conflict with any * * * pending criminal case." In *Brady*, the Supreme Court held that, irrespective of good or bad faith, suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where such evidence is material to either guilt or punishment.

The amendment made by this Treasury decision is not intended to avoid the Government's obligation under *Brady*, nor to preclude appropriate discovery in any case. To clarify this point, paragraph (e)(5)(iv) of the final rule provides for disclosure of information in the interest of justice notwithstanding that disclosure might otherwise be denied because such disclosure would interfere with enforcement proceedings. This provision is consistent with the Department of Justice's regulations at 28 CFR 16.26(b)(5) and (c).

One commenter proposed an additional criterion to be considered for denying testimony or production of documents where ATF has had no involvement in the matters which are the subject of the case. This commenter's point is well taken, and paragraph (e)(5)(vi) has been revised to preclude permission for testimony when ATF has not participated in an investigation and has no other record, official information or interest concerning the case in which the testimony is sought. For example, where an employee's testimony is sought for the sole purpose of interpreting Federal law or regulations rather than producing agency records or other official information, the testimony would not be authorized (unless ATF had some official interest in the case). The purpose of this criterion is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of ATF among litigants, to ensure that public funds are not used for private purposes, and to establish procedures for approving testimony or production of documents when clearly in the best interests of the United States.

Additional Changes

ATF has considered the possibility that, in some cases, obtaining a sworn affidavit might be unreasonably burdensome, while a plain statement could be submitted without undue difficulty. In consideration of this possibility, the proposal is revised in the final rule to provide that if oral testimony is sought by a request or demand in any case in which the United States is not a party, an affidavit or, if that is not feasible, a statement by the party (or party's attorney) seeking the testimony, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished. The final rule is thus consistent with the Department of Justice's regulation at 28 CFR 16.22(c).

Finally, proposed paragraph (e)(5)(v) has been deleted, because the provision is covered by paragraph (e)(5)(iv) as revised in the final rule.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, ATF has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this final rule, because no requirement to collect information is imposed. An affidavit is excluded from the definition of "information" under regulations of the office of Management and Budget, 5 CFR 1320.7(j)(1) (revised May 10, 1988).

Drafting Information

The authors of this document are Steve Simon, Distilled Spirits and Tobacco Branch, and Richard Isen, office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 71

Administrative practice and procedure, Authority delegations, Courts, Freedom of information, Privacy.

Issuance

Accordingly, part 71 of title 27 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301, 552.

Par. 2. The definition of "Director" in 71.11 is revised to read as follows:

§ 71.11 Meaning of terms.

* * * * *

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226, or his delegate.

* * * * *

Par. 3. Section 71.27 is amended by adding new paragraphs (e)(3), (4), and (5) to read as follows:

§ 71.27 Requests or demands for disclosure in testimony and in related matters.

* * * * *

(e) * * *

* * * * *

(3) *Affidavit required for testimony.* If testimony of an ATF officer or employee is sought by a request or demand on behalf of a party other than a State in any case or matter in which the United States is not a party, an affidavit, or if that is not feasible, a statement shall be submitted. The affidavit or statement shall be prepared by the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the ATF officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings

would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the Director determines that the administration of justice requires disclosure;

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which ATF has no interest, records or other official information.

Dated: September 6, 1990.

Daniel R. Black,

Acting Director.

Dated: September 27, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-23880 Filed 11-9-90; 8:45 am]

[BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-183]

Special Local Regulations; President's Cup Regatta, Poughkeepsie, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the President's Cup Regatta, a rowing regatta to be held in the Hudson River at Poughkeepsie, New York. This event will be held from 6 a.m. to 5 p.m. on November 17, 1990. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation becomes effective on November 17, 1990 from 6 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, U.S. Coast Guard, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until September 10, 1990 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Ensign L. J. Penney, U.S. Coast Guard, Project Officer, Boating Safety Office and Lieutenant R.E. Korroch, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The President's Cup Regatta is a rowing regatta which will be held in the Hudson River at Poughkeepsie, NY. The regulated area will be the race course. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary and sponsor provided patrols.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation in the regulated area will be reduced. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35-01-05T is added to read as follows:

§ 100.35-01-05T President's Cup Regatta, Poughkeepsie, NY

(a) *Regulated area.* The race course is in the Hudson River at Poughkeepsie, NY in the area bounded within a rectangular area described by the following points:

Commencing at Mid Hudson Bridge North to Latitude 41 44.2 North, Longitude 073 56.3 West then West to Latitude 41 44.2 North, Longitude 073 56.6 West then South to Mid Hudson Bridge.

(b) *Special local regulations.* The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless authorized by the Coast Guard Patrol Commander.

(2) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (4) below.

(3) Unless otherwise directed by the Coast Guard Patrol Commander transiting vessels shall: Remain clear of the race course area as marked by the sponsor provided buoys; not interfere with races; remain outside of the designated regulated area.

(4) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor or Coast Guard patrol personnel.

(5) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event or authorized to be there by the sponsor or Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(c) *Effective date:* This regulation will be effective from 6 a.m. to 5 p.m. on November 17, 1990.

Dated: October 31, 1990.

R.I. Rybacki,

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

[FR Doc. 90-26720 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Honolulu Regulation 90-03]

Safety Zone Regulations; Pearl Harbor, Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on specific water areas within Pearl Harbor. This zone is needed to protect vessels and operators, participating as racers or spectators, from damage and injury resulting from improper vessel traffic situations, presence of unauthorized vessels in restricted race areas, and unsafe boating practices during "HYDROFEST". The "HYDROFEST" is a four-day event featuring high speed hydrofoil races. Entry into this zone is controlled by the Captain of the Port or his designated representatives.

EFFECTIVE DATES: This regulation is effective on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m., unless terminated sooner by the Captain of the Port, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Emily F. Costa, Project Officer, Port Operations Department, (808) 541-2068, FTS 551-2068, U.S. Coast Guard Marine Safety Office, Honolulu, Hawaii.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to vessel operators in the vicinity of the "HYDROFEST" until the hydrofoil races are completed.

Drafting Information

The drafter of this regulation is LTJG E. F. Costa, Project Officer for the Captain of the Port, Honolulu.

Discussion of the Regulation

The event requiring this regulation is "HYDROFEST 90", a four-day event featuring high speed unlimited hydrofoil races. Although Pearl Harbor is normally closed to civilian and most commercial traffic, the specified water areas of the zone will be open to a limited number of authorized, recreational boaters for the purpose of viewing the hydrofoil races. The entire zone will be the water area enclosed by lines drawn from the southern most point of pier V2, Pearl City Peninsula (21°-22'10" N, 157°-58'12" W) extending eastward through Ford Island and the Arizona Memorial, to the foot of Hotel Pier, Pearl Harbor Naval Base (21°-21'52" N, 157°-56'39" W), then extending northward to (21°-23'08" N, 157°-56'00" W), then extending westward to (21°-23'20" N, 157°-58'12" W), and finally extending southward to the first point. The speed limit within the zone will be "NO WAKE" for all recreational/spectator vessels.

Whenever a hydroplane is in the water there will be "NO MOVEMENT" for ALL vessels within the zone. Furthermore, a restricted area inside the zone will be designated as the hydrofoil race course. The restricted area (Race Course) is the water area enclosed by lines drawn from (21°-22'25" N, 157°-58'00" W) extending eastward to (21°-22'08" N, 157°-56'52" W), then extending northward to (21°-22'30" N, 157°-56'43" W), then extending westward to (21°-22'56" N, 157°-58'00" W), and finally extending southward to the first point. All spectator vessels are prohibited from entering the restricted area (Race Course) at any time during the effective date of this regulation. The safety zone will be in effect on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m. unless terminated sooner by the Captain of the Port, Honolulu, HI. Coast Guard and Coast Guard Auxiliary vessels, with Coast Guard boarding officers onboard will be on scene to enforce the safety zone. The intent of this regulation is to minimize the risk to vessel operators, race contestants and spectators from the hazards involved with high speed boat races. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. In Part 165, a new § 165.T1403 is added as follows:

§ 165.T1403 Safety Zones: Top Gun Hydrofest at Pearl Harbor, Oahu, Hawaii.

(a) *Location.* The following area is a safety zone: The waters enclosed by lines drawn from (21°-22'10" N, 157°-58'12" W) extending eastward to (21°-21'52" N, 157°-56'39" W), then extending northward to (21°-23'08" N, 157°-56'00" W), then extending westward to (21°-23'20" N, 157°-58'12" W), and finally extending southward to the first point.

(b) *Effective date.* This regulation is effective on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m., unless terminated sooner by the Captain of the Port, Honolulu, HI.

(c) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Honolulu, Hawaii to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officers for the Marine Safety Office, Honolulu, HI.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless meeting the restrictions outlined in paragraph 2(d)(2) below or as authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the safety zone shall:

(i) Proceed at a NO WAKE speed while in the zone, comply with the NO MOVEMENT requirement while any hydrofoils are in the water, and stay out of the marked restricted area (race course). The restricted area is enclosed

by lines drawn from (21°—22'25" N, 157°—58'00" W) extending eastward to (21°—22'08" N, 157°—56'52" W), then extending northward to (21°—22'30" N, 157°-56°43" W), then extending westward to (21°—22'56" N, 157°—58'00" W), and finally extending southward to the first point.

(ii) Stop the vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(iii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: October 24, 1990.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 90-26719 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3859-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for a specific waste generated by Kawneer Company, Incorporated, Springdale, Arkansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-KWEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Kawneer Company, Incorporated (Kawneer) petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge. After evaluating the petition, EPA proposed, on August 6, 1990, to exclude Kawneer's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 55 FR 31849).

This rulemaking finalizes the proposed decision to grant Kawneer's petition.

II. Disposition of Delisting Petition

A. Kawneer Company, Incorporated, Springdale, Arkansas

1. Proposed Exclusion

Kawneer Company, Incorporated (Kawneer), located in Springdale, Arkansas, petitioned the Agency to exclude its wastewater treatment sludge, listed as Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum". The listed constituents for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see 40 CFR part 261, appendix VII).

In support of its petition, Kawneer submitted: (1) Detailed descriptions of its manufacturing and wastewater treatment processes; (2) a list of all raw materials used in both the manufacturing and treatment processes; (3) total constituent and EP toxicity analysis data for the EP toxic metals, nickel, and cyanide for representative samples of the petitioned waste; (4) total constituent analysis data for total sulfide for representative samples of the petitioned waste; (5) total oil and grease analysis data for representative samples of the petitioned waste; (6) total constituent analysis data for hazardous organic compounds (*i.e.*, those listed in 40 CFR 261, appendix VIII) potentially present in the petitioned waste; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Kawneer in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and organic leachate model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency tentatively determined that Kawneer's petitioned waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 55 FR 31849, August 6, 1990, for a more detailed explanation of why EPA proposed to grant Kawneer's petition.

2. Agency Response to Public Comment

The Agency did not receive any public comments regarding its proposal to grant Kawneer's petition for its wastewater treatment sludge.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Kawneer's petitioned wastewater treatment sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Kawneer Company, Incorporated, located in Springdale, Arkansas, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F019.

The exclusion only applies to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that a change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective November 13, 1990. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is a "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling and reporting and recordkeeping requirements.

Dated: October 23, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 1 of appendix IX to part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Kawneer Company, Incorporated	Springdale, Arkansas	Wastewater treatment filter press sludge (EPA Hazardous Waste No. F019) generated (at a maximum annual rate of 26 cubic yards) from the chemical conversion coating of aluminum. This exclusion was published on November 13, 1990.
* * *	* * *	* * *

[FR Doc. 90–26700 Filed 11–9–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3859-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by Perox, Incorporated (Perox), Sharon, Pennsylvania. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-PXEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Bob Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of This Rulemaking

Perox, Incorporated (Perox), located in Sharon, Pennsylvania petitioned the Agency to exclude its iron oxide waste from hazardous regulation. After evaluating the petition, EPA proposed, on January 12, 1989, to exclude Perox's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 1189).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Perox's petition.

II. Disposition of Delisting Petition

A. Perox, Incorporated, Sharon, Pennsylvania

I. Proposed Exclusion

Perox petitioned the Agency for an exclusion of its iron oxide waste, produced as a by-product from the regeneration of spent pickle liquor, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. EPA Hazardous Waste No. K062 is also classified as a corrosive waste under 40 CFR 261.30. Perox based its petition on the claim that the constituents of concern, although present in the waste, are in an essentially immobile form.

To support its claim that both the non-listed and listed constituents of concern are not present in the iron oxide above health-based levels of concern, Perox submitted: (1) A detailed description of its hydrochloric acid regeneration process, including schematic diagrams; (2) total constituent and EP toxicity results of the iron oxide for the EP toxic metals and nickel; (3) analytical results for total cyanide; (4) iron oxide analysis data (*e.g.*, inorganic compounds, density and particle size measurements) for a six-month period; and (5) results from characteristics testing for ignitability, corrosivity, and reactivity. Additionally, the Agency conducted a spot-check sampling visit to Perox and collected and analyzed samples of the petitioned waste.

The Agency evaluated the information and analytical data provided by Perox in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Perox's waste would not leach and migrate at concentrations above the health-based levels used in delisting decisionmaking. See 54 FR 1189, January 12, 1989, for a more detailed explanation of why EPA proposed to grant Perox's petition for its iron oxide waste.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from one interested party. This commenter disagreed with the Agency's proposed decision to exclude Perox's iron oxide waste. The comments submitted related to the following areas: (1) The Agency's failure to evaluate total constituent levels of metals in the waste, (2) the Agency's failure to consider alternative disposal scenarios, (3) the Agency's use of the VHS model in evaluating the petition, and (4) inconsistency between the Delisting and Land Disposal Restrictions Programs. The specific comments made by the interested party regarding the Agency's proposed decision to grant the petition, and the Agency's responses to them, are discussed below.

Evaluation of total constituent levels. The commenter claimed that Perox has failed to demonstrate that its K062 waste is not capable of posing a hazard to human health or the environment. The commenter emphasized that the maximum total constituent concentration of chromium in Perox's iron oxide is 1,550 ppm, which is greater than the "significant concentration" of 1,380 ppm referred to by the Agency in its background support for the listing of K061 waste (emission control dust from the electric furnace production of steel). The commenter also believed that, based on the acknowledged toxicity of hexavalent chromium, the total constituent levels of chromium in the petitioner's waste must be considered by the Agency in its petition evaluation.

The Agency agrees that the presence of significant concentrations of chromium and lead in K062 wastes was one of the reasons for listing K062 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and the "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous

Waste," 1980. The Agency, however, believes that the data presented in the Background Documents broadly characterize the physical/chemical nature of K061 and K062 wastes and that these data are not representative of the physical/chemical nature of Perox's iron oxide waste. K061 wastes, as described in the K061 Background Document, are generated when particulate matters in carbon monoxide and carbon dioxide gases given off by an electric arc furnace are removed using air pollution control equipment (*e.g.*, baghouse filters). K061 wastes may be dusts or sludges depending on whether the air pollution control equipment relies on a dry or wet collection method. The K062 Background Document describes wastes listed as EPA Hazardous Waste No. K062 (spent pickle liquor generated by steel finishing operations) as strongly acidic solutions containing very high concentrations of dissolved iron and significant levels of other metals (*e.g.*, chromium). Pickle liquors are used to remove surface oxidation (*e.g.*, ferrous oxide) or to impart specific surface characteristics.

Unlike these wastes, Perox's iron oxide waste is a solid residue generated during the treatment of spent hydrochloric acid pickle liquor. The iron oxide waste has a total solids content of 99 percent. As described above, the K061 and K062 wastes characterized in the Background Documents are dusts or sludges (K061 wastes) or acidic solutions (K062 wastes). In addition, Perox's waste is primarily composed of ferric oxide (data submitted in the petition indicate that levels of ferric oxide in the petitioned waste range between 97 and 99 percent by weight). Calcium oxide levels in the petitioned waste range between 0.01 and 0.1 percent. By comparison, data for a typical K061 dust (as cited in the K061 Background Document) indicate iron and calcium oxide concentrations of approximately 35 and 12 percent, respectively. Furthermore, because of the acidity of spent pickle liquor solutions, toxic metals are readily available to migrate into the environment; toxic metals in Perox's petitioned waste, on the other hand, would not be expected to mobilize as readily. For these reasons, the Agency believes that Perox's iron oxide waste is different physically and chemically than the wastes characterized by the K061 and K062 listings.

EPA also believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals, as did those considered in the Background Document, are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. Here, however, unlike the spent pickle liquor solutions considered in the Background Document for K062 wastes, the metals in Perox's iron oxide waste are tightly bound within the waste matrix. Thus, the Agency believes that the levels of the metals present in Perox's iron oxide waste should not pose a threat to either human health or the environment. The Agency's conclusion that the listed and non-listed inorganic constituents of concern are bound in the waste matrix and are, therefore, unavailable for leaching is supported by the results of the EP leachate analyses of Perox's petitioned waste (see 54 FR 1189, January 12, 1989).

EPA evaluated the potential mobility of Perox's iron oxide waste using the maximum EP leachate concentrations and the VHS model. The VHS model predicts a dilution factor of approximately 6.4 for the estimated volume of waste generated by Perox (4,800 cubic yards per year). The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 1189, January 12, 1989, for a description of the modeling analysis of Perox's iron oxide waste.

Furthermore, in delisting evaluations, EPA considers all factors that could cause a waste to be hazardous. The Agency considers both factors for which the waste was listed and factors, other than those for which the waste was originally listed, that could cause the waste to be hazardous (see 42 U.S.C. 6921(f)). For Perox's petitioned waste, based on the discussions presented above and in the proposal, EPA does not believe that any other factors, including total concentrations of the listed and non-listed inorganic constituents of concern, could cause this waste to present a hazard to human health and the environment.

With regard to the commenter's concern about the toxicity of hexavalent chromium, the Agency notes that its application of the VHS model for possible ground-water ingestion considers concentrations of total chromium, not only the hexavalent species. Specifically, the delisting health-based level for ground-water is based on the assumption that all the chromium is in the hexavalent state. See the basis for the maximum contaminant level (MCL) for chromium in drinking water given in 45 FR 57332, August 27, 1980. While the hexavalent form of chromium is more toxic than the trivalent form, the Agency believes it is more appropriate to set an acceptable level for total chromium due to the potential for interconversion between the two species in water. See also 54 FR 22062, May 22, 1989. Thus, the delisting modeling evaluation assumes the worst-case (*i.e.*, the chromium present in a waste is the hexavalent species of chromium).

Consideration of alternative disposal scenarios. The commenter also stated that the Agency, in its reliance on the VHS model, has focused solely on the leaching potential of hazardous constituents in a landfill setting and has not evaluated other relevant and plausible mismanagement scenarios. The commenter believed that, if the waste were delisted, the waste could be improperly managed during transport off site, or inadequately controlled at the landfill. As such, there could be opportunity for airborne or waterborne dispersal resulting in human or environmental exposure. The commenter claimed that the absence of an evaluation of such other factors has resulted in a serious underestimation of the risks posed by Perox's waste.

The Agency disagrees with the commenter that use of the VHS model, in this case, has underestimated the potential hazard posed to human health and the environment by Perox's waste. The Agency believes, for the reasons stated below, that there is no substantial present or potential hazard to human health or the environment from airborne exposure to contaminants from Perox's iron oxide waste.

Although EPA does not believe that exposure to hazardous airborne contaminants from Perox's iron oxide waste is likely to present a hazard to human health or the environment, the Agency, in order to fully respond to the specific comment, evaluated the hazards resulting from such an exposure to Perox's iron oxide waste. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions From Surface Contamination Sites," U.S. Environmental Protection Agency,

Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was used as an input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model, to predict the concentrations of the inorganic constituents 1,000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence potential soil erosion, including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment is likely from airborne exposure to both the listed and non-listed inorganic constituents from Perox's iron oxide waste. (A complete description of the Agency's modeling and analysis of air emissions from Perox's iron oxide waste is presented in "Docket Report on Evaluation of Air Emissions Resulting From Perox's Iron Oxide Waste," September 26, 1990, which is available in the docket for today's final rule.)

The Agency acknowledges that it may be possible for runoff (*i.e.*, rainwater, leachate, or other liquid) to transport contaminants from a waste disposal area to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would indicate a different result for this petition. While contamination of surface water might occur through runoff from the waste disposal area (including both contaminants leached from the waste, as well as suspended particulate matter), EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels indicated by the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency notes that, if delisted, the petitioned waste remains a solid waste (as defined under 40 CFR 261.2) and, thus, is subject to regulation under the State solid waste management program. Perox must dispose of the delisted waste on site, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, Perox may continue to recycle its iron oxide waste by processing and marketing it as a raw material, as it has done in the past (*i.e.*, when the waste was hazardous) (see 54 FR 1189, January 12, 1989).

Use of the VHS model to evaluate the petitioned waste. The commenter noted that a detection limit of 0.20 ppm used by EPA for determining the amount of chromium in the spot-check sampling EP leachate exceeded the drinking water standard for chromium of 0.05 ppm. The commenter claimed that there was no apparent justification for employing such a high limit of detection.

The Agency agrees that the detection limit of 0.20 ppm for chromium in its spot-check sampling EP leachate appears somewhat higher than the limit thought to be achievable. In this case, however, EPA believes that the detection limit for chromium it used is acceptable. Specifically, using Perox's estimated volume of waste (4,800 cubic yards per year), the VHS model analysis indicates that Perox's waste could exhibit a maximum leachable chromium concentration of 0.32 ppm and still be considered non-hazardous (*i.e.*, only a value exceeding 0.32 ppm would yield a compliance-point concentration in excess of the drinking water standard). As result, the Agency believes that the spot-check detection limit is sufficiently low to provide an adequate margin of safety. Furthermore, data submitted to the Agency by Perox, presented in the proposed rule (54 FR 1189, January 12, 1989) and noted by the commenter, indicate that the extractable level of chromium in the waste is 0.16 ppm.

The commenter stated that the VHS model does not adequately evaluate the impact of large volumes of waste. The commenter asserted that above approximately 2,000 cubic yards, the VHS model predicts virtually no further reduction in the expected dilution. The commenter noted that EPA has previously stated: "Since the quantity of leachate from a larger quantity of waste will be greater, the model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer" and "waste in excess of 2,000 cubic yards probably would have a greater than predicted impact at the compliance point" (see 50 FR 48886 and 48899, November 27, 1985). Thus, the commenter believed that the Agency's use of Perox's annual estimated production of 4,800 cubic yards, without modification of dilution factors, is inadequate.

The initial version of the VHS model, presented on February 26, 1985, calculated dilution factors ranging from 10 to 50, with the minimum dilution factor (*i.e.*, 10) resulting at a waste volume of approximately 2,000 cubic yards (see 50 FR 7896). On November 27, 1985, the Agency modified the values used for several of the VHS model variables and responded to public comments regarding the February 26, 1985 model (see 50 FR 48896). The November 27, 1985 version of the VHS model, which was used to evaluate Perox's petitioned waste, calculates dilution factors ranging from 6.3 to 32.3. In this version, the calculated dilution factor steadily falls as the waste volume increases from 475 cubic yards with the minimum dilution factor resulting at waste volumes equal to or exceeding 8,000 cubic yards.

Unfortunately, the Agency's November 27, 1985 notice (cited by the commenter) failed to consistently reflect both the technical modifications made to the VHS model and the resulting change in the range of calculated dilution factors. Due to the technical modifications incorporated into the current version of the model, the statement that the VHS model predicts virtually no further dilution above a waste volume of 2,000 cubic yards, was an inadvertent error in the text and is not accurate. Specifically, the current version of the model predicts a dilution factor of 6.4 for Perox's waste volume (4,800 cubic yards). The Agency continues to believe that the VHS model performs a reasonable, worst-case analysis and provides dilution factors that fully protect human health and the environment.

The commenter further stated that the VHS model, as applied, considered the impact of only one year of waste disposal at an off-site landfill. The commenter stated that accumulation of this waste year after year, for a decade, would eventually exceed the model's upper volume limit by almost 25 times. In addition, the commenter stated that EPA's consideration of an annual, rather than cumulative, waste quantity in its calculation is unjustified and may seriously underestimate compliance-point concentrations for constituents of concern.

The Agency believes that the commenter is incorrect to conclude that

a decade of waste generation would yield a waste volume that exceeds the VHS model upper limit by 25-fold. The VHS model does not have an "upper limit", but rather incorporates a sliding-scale which allows the Agency to consider the different impacts that various waste volumes would have on ground-water quality. As stated above, the VHS model calculates the maximum and minimum dilution factors at waste volumes of less than or equal to 475 cubic yards and equal to or greater than 8,000 cubic yards, respectively. Thus, as the waste volume increases above 8,000 cubic yards or even 48,000 cubic yards (10 years × 4,800 cubic yards/year), the dilution factor calculated by the VHS model would be 6.3. The reason that the dilution factor remains constant after the waste volume exceeds 8,000 cubic yards is a function of the assumptions made in the disposal unit dimensions for the VHS model (see 50 FR 48900, November 27, 1985).

The Agency considers the use of an annual waste volume to evaluate Perox's waste to be sufficiently conservative since it is a reasonable worst-case for a facility to dispose of one year's accumulated volume of waste in a single landfill cell at one time. The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, one or ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (*e.g.*, native soils) at the Subtitle D landfill. Subsequently, due to this mixing, the Agency believes that the concentrations of hazardous constituents at the receptor well would be less than if the petitioned waste were disposed of at one time (*i.e.*, the waste's impact on the underlying aquifer would be reduced).

Furthermore, based on routine landfill management practice, EPA believes that it is unreasonable to assume, even in a worst-case scenario, that waste continuously generated over ten years would be disposed into the same landfill cell on a one-time basis. Generally, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated waste (if disposed of at the same landfill) are periodically disposed of and, as such, are distributed throughout the entire landfill, as the landfill is filled. In addition, the Agency notes that it may be very impractical for Perox to store one or ten year's accumulated volume of waste (4,800 or 48,000 cubic yards, respectively) at its facility.

The Agency, therefore, believes its assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. The Agency notes, however, that it will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste that is no longer generated.

The Agency is also taking this opportunity to specify the maximum annual volume of iron oxide that will be generated by Perox under the final exclusion. As noted in the proposed rule, Perox submitted a signed certification stating that the maximum annual generation rate of iron oxide is 4800 tons (approximately 4800 cubic yards). The proposal also noted that this exclusion applies only to the process covered by the original demonstration in the petition. The Agency believes including the certified maximum volume limitation in the final rule does not present any added burden on Perox, but merely serves to clarify this limitation in the exclusion. Therefore, the Agency has inserted the maximum annual generation rate of 4800 cubic yards into the final rule.

The commenter criticized the VHS model for ignoring the possibility of contaminant sources other than the waste being evaluated. The commenter stated that the VHS model evaluation calculates compliance-point concentrations of toxic constituents only from the petitioned waste and compares them to the corresponding levels of regulatory concern. Such a limited approach does not consider the cumulative effect of the petitioner's wastes with others that may be disposed of in the same landfill. Therefore, the commenter believed that the Agency underpredicted the potential hazard associated with the unregulated disposal of Perox's waste.

The Agency acknowledges that the VHS model evaluation does not consider other potential contaminant sources at the disposal site (see 50 FR 7900, February 26, 1985 and 51 FR 41085, November 13, 1986 for additional discussion of the co-disposal of wastes). However, without specifying management conditions or considering site-specific characteristics, the Agency does not believe that it is appropriate to modify the VHS model to assess the effects of co-disposal of multiple wastes on the underlying aquifer. The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations are significantly less (e.g., 50 percent, 75 percent, 95 percent) than their respective delisting health-based levels. The Agency does not have any technical basis to determine an appropriate percentage reduction and believes that, without a technical basis, any resulting percentage reduction would be arbitrary. Therefore, in light of the conservative nature of the VHS model, EPA believes that it is appropriate to continue allowing wastes to exhibit compliance-point concentrations up to 100 percent of the delisting health-based levels.

Inconsistency between the delisting program and the land disposal restrictions program. The commenter claimed that the granting of Perox's petition would be inconsistent with the Land Disposal Restrictions Program's recently promulgated best demonstrated available technology (BDAT) treatment levels for K061 wastes. As such, the granting of this exclusion would be unreasonable and contrary to the intent of this program.

The Agency disagrees with the commenter that granting this exclusion will be inconsistent with the Land Disposal Restrictions (LDR) Program. Although the recently promulgated BDAT treatment standards for K061 (electric furnace emission control dust) do specify chromium levels, they are set for a different category of waste and thus are not automatically relevant to Perox's K062-classified waste. In addition, the Agency believes that, even if BDAT treatment levels were applied to delisted wastes, it would neither be accurate nor fair to compare BDAT treatment levels for one specific type of waste to a different waste.

Furthermore, there are differences in approaches used in individual delisting decisions and those used in the LDR Program. These differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDR Program are fundamentally different in that the Delisting Program's standards are health-based and the LDR Program's treatment standards are currently technology-based (see RCRA Section 3001 (42 U.S.C. 6921) and RCRA Section 3004 (42 U.S.C. 6924(m)), respectively). It is the Agency's view that Congress expected the Agency to adopt a different approach to establishing the LDR program's treatment standards than the approach used heretofore by the

Agency in establishing subtitle C regulatory standards.

For the LDR program's treatment standards the Agency is to set standards that diminish waste toxicity or mobility in order that "short-term and long-term threats to human health and the environment be minimized." This may result in a standard different from one set according to the usual subtitle C regulatory command that the standards be necessary to protect human health and the environment. (The Agency notes that the treatment technology and treatment standards for K061 wastes to which the commenter referred were only proposed at the time the comment was made. Subsequent to that proposal, the Agency revised and finalized the BDAT standards for K061 wastes based on an alternative treatment technology.)

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Perox's iron oxide waste, produced as a by-product from the regeneration of its spent pickle liquor, should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Perox, Incorporated, located in Sharon, Pennsylvania, for its iron oxide waste described in its petition as EPA Hazardous Waste No. K062. The exclusion only applies to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or regeneration processes are significantly altered such that a change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective November 13, 1990. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six-months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes. This enables the facility to treat its waste as non-hazardous. Therefore, there is no additional economic impact due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since it is limited to one facility and will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: October 23, 1990.

Jeffery D. Denit,
Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. In Table 2 of appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Perox, Incorporated.	Sharon, Pennsylvania.	Iron oxide (EPA Hazardous Waste No. K062) generated (at a maximum annual rate of 4800 cubic yards) from a spent hydrochloric acid pickle liquor regeneration plant for spent pickle liquor generated from steel finishing operations. This exclusion was published on, November 13, 1990.
*	*	*

[FR Doc. 90-26701 Filed 11-9-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Common Carrier Docket No. 87-120, FCC 90-338]

Flexible Allocation of Frequencies for Paging and Other Services (Domestic Public Land Mobile Service)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action establishes procedural rules for licensing multi-point control channels on common carrier frequencies 470–512 MHz in thirteen of the largest cities in the U.S.: Boston, Chicago, Cleveland, New York-Northeastern N.J., Dallas-Ft. Worth, Detroit, Houston, Los Angeles, Miami, Philadelphia, Pittsburgh, San Francisco, and Washington, DC. Of these cities, New York-Northeastern N.J. requires a further order on reconsideration before the total number of available control channels is known. The rules respond to a Petition for Clarification filed in the captioned proceeding. The rules are intended to allow licensees of wide-area paging and two-way mobile systems in the named cities to acquire one or more new control channels.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: CFR part amended: 47 CFR Part 22, "Public Mobile Service."

This is a summary of the Commission's order on reconsideration of second report and order (part I), CC Docket No. 87-120, Adopted October 5, 1990, and Released October 23, 1990.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (Room 230), 1919 M Street, Northwest, Washington DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of Order on Reconsideration of Second Report and Order (Part I)

In the Second Report and Order (Flexible Paging II), 4 FCC Rcd. 6415 (1989), 54 FR 39529 (September 27, 1989), the Commission unpaired and reallocated the 470–512 MHz band frequencies not needed for existing two-way service to one-way control use by control stations serving four or more base stations, amending §§ 22.501 (j), (k), and (l) of the Rules. Telocator filed a Petition for Clarification of this order, in which it proposes modified procedures for licensing control channels in the 470–512 MHz band. PacTel filed comments in support, in which it proposes a two-phase filing process. Both petitioners recommended that applicants should state which UHF-TV channel they prefer to use for control purposes, but that the Commission should choose the specific frequency.

The Commission decided to implement a two-step filing procedure. First, a public notice released simultaneously with the order specified a filing window of January 23, 1990 through February 8, 1991, inclusive. During that time, applications for one UHF-TV control channel will be accepted from licensees holding four or more transmitter sites on a wide-area system. Second, if any frequencies remain after all applications filed during the window have been granted, the Commission will license the remaining frequencies according to a "rolling 60-day" procedure. Finally, the Commission agreed that applicants should not specify any particular frequency in their applications, but that the Commission would choose a frequency from the UHF-TV channel specified by the applicant.

Ordering Paragraphs

Wherefore, for the foregoing reasons, part 22 of the Commission's Rules *is hereby amended* as discussed herein and as shown below.

It is further ordered that the rule changes made herein *will become effective* 30 days after publication in the **Federal Register.**

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Part 22 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501 is amended by adding paragraph (k)(6) to read as follows:

§ 22.501 Frequencies.

* * * * *

(k) * * *

(6) An applicant for a control channel from among the frequencies listed in paragraph (k)(4) of this section shall not specify a frequency in its application. It may specify its frequency preference, but the Commission is not bound by such requests. Applicants may only apply for one frequency at a time. An applicant must specify from which television channel it wishes its control channel to come in areas with more than one television channel available.

* * * * *

3. Section 22.31 is amended by adding paragraph (i) to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(i)(1) Notwithstanding other provisions of this section, all applications for control channels in the 470–512 MHz band filed pursuant to § 22.501(k)(6) of this part specifying the same television channel, will be deemed mutually exclusive and entitled to comparative consideration if there are more applications filed than there are available frequencies. Initially, applications will be accepted within a two-week period specified by public notice. If there are more applicants than

frequencies available, the applications will be deemed mutually exclusive and subject to a random selection procedure.

(2) Any control channels remaining after the initial applications are granted will be assigned pursuant to a "rolling sixty-day" licensing procedure: All applicants filing after the close of the initial filing window will be considered in the order in which they have filed. The public notice of the first applicant to file after close of the filing window will begin a 60-day filing period. If there are more applications filed than frequencies available, the applications will be deemed mutually exclusive and subject to random selection procedures. If all applicants filing within that 60-day period can be granted a frequency without the use of random selection procedures, then the first application will be granted. Then the second applicant to file will be considered. If all applicants filing within sixty days of the second application's public notice date can be granted a frequency without resort to random selection procedures, then the second application will be granted, and so on. Whenever an application is reached which, together with applications filed within sixty days of its public notice date, cannot be granted because there is an insufficient number of frequencies remaining, that group of applications will be deemed mutually exclusive and will be subject to a random selection procedure.

[FR Doc. 90-26724 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-181; RM-6938]

Radio Broadcasting Services; Pierre, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sorenson Broadcasting Corporation, substitutes Channel 237C2 for Channel 237A at Pierre, South Dakota, and modifies its license for Station KLXS to specify operation on the higher powered channel. *See* 54 FR 26220, June 22, 1989. Channel 237C2 can be allotted to Pierre in compliance with the Commission's minimum distance separation requirements and can be used at Station KLXS's licensed transmitter site. The coordinates for Channel 237C2 at Pierre are North Latitude 44-22-15 and West Longitude 100-24-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 24, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-181, adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 237A and adding Channel 237C2 at Pierre.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26725 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1118, 1132 and 1162

[Ex Parte No. 55 (Sub. 80)]

Technical Revisions—Suspension/Special Permission Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is revising its regulations to reflect the merger of two employee boards within the Commission's Bureau of Traffic. Also, the Commission is updating its regulations dealing with temporary and emergency temporary authorities. Since these revisions deal merely with agency organization and procedure, public comment is not being sought.

EFFECTIVE DATE: The revisions will become effective November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7358, or David R. Manning, (202) 275-7395, (TDD for hearing impaired, (202) 275-1721).

SUPPLEMENTARY INFORMATION: In formulating its Fiscal Year 1986 budget, the Commission decided to combine two employee boards within the Commission's Bureau of Traffic into one board to be called the Suspension/Special Permission Board. Prior to the merger, a separate Suspension Board consisting of three Bureau of Traffic employees was delegated by the Commission with the responsibility of (1) acting upon protests against proposed tariff provisions, (2) acting upon requests for relief from the requirements of 49 U.S.C. 10726, and (3) handling certain matters relating to railroad transportation contracts and contract summaries. The Special Permission Board consisted of three other employees of the Bureau of Traffic who were delegated with the responsibility of handling requests for departure from the Commission's tariff publishing regulations.

With an expected decline in the number of cases to be reviewed and handled by the two separate employee boards, the Commission decided during its Fiscal Year 1986 budget deliberations to combine the two boards into one. Currently, the board consists of three Bureau of Traffic employees who have been delegated the responsibility of handling all the matters discussed above. The purpose of this notice is to revise and update our regulations where necessary to reflect the merger. No substantive changes are being made.

The provisions of 49 CFR 1312.39(h)(1) currently indicate that each independently established new rate shall be filed with the Commission at least one day before the date upon which it is to become effective. This was a reduction in the statutory 30-day notice period. In view of this, the provisions of Special Tariff Authority No. 78-1000-TA, which authorized the filing of temporary authority (TA) tariffs on one day's notice, are no longer necessary. We are revising our regulations at 49 CFR 1162.5 to provide reference to 49 CFR 1312.39(h)(1) and we are deleting reference to Special Tariff Authority No. 78-1000-TA. This revision will bring the TA regulations up to date with other provisions of the CFR.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations

(Government agencies), Organization and functions (Government agencies).

49 CFR Part 1118

Administrative practice and procedure.

49 CFR Part 1132

Administrative practice and procedure.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant impact on a substantial number of small entities.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

It is ordered:

1. The revisions, as shown below, are adopted.

2. This decision is effective November 13, 1990.

Decided: November 5, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1118, 1132 and 1162 of the Code of Federal Regulations are amended as set forth below:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, and 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. In § 1011.6, introductory text, the reference "paragraph (g)" is revised to read "paragraph (f)". In § 1011.6, paragraph (a) is revised to read as follows, paragraph (c) is removed and paragraphs (d), (e), (f), (g), (h), and (i) are redesignated as paragraphs (c), (d), (e), (f), (g), and (h).

§ 1011.6 Employee Boards.

* * * * *

(a) *Suspension/Special Permission Board.* This board has authority to act initially upon matters involving tariff provisions and railroad contracts arising from certain sections of the Act as follows:

(1) In matters arising from Sections 10707 and 10708 relating to suspension and/or investigation of tariff matter, the board is authorized:

(i) To not suspend a rate or a classification, rule, or practice related to a rate, or to suspend such rate, classification, rule, or practice and order an investigation;

(ii) To institute investigations into rates, fares, charges, and practices of regulated carriers; and

(iii) Prior to the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled.

The board is not authorized to act on petitions or requests relating to rates, classifications, rules, or practices filed in purported compliance with decisions of the Commission or a division, or to act in connection with suspensions to be taken during or after formal hearings and investigations.

(2) In matters arising from section 10726, the Board is authorized to grant or withhold relief from the long and short haul transportation requirements of this section, except for proceedings made the subject of formal hearings, matters prompted by an order or requirement of the Commission or division, or matters arising from general increase proceedings.

(3) In matters arising from sections 10701, 10702, 10761, and 10762, the board is authorized to grant or withhold special tariff authority or other permissible waivers of rules regarding tariffs or schedules, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) In matters arising from section 10713 the board is authorized:

(i) To grant or withhold discovery of railroad transportation contracts;

(ii) To institute investigations of railroad transportation contracts; and

(iii) To grant or withhold relief from the rules in 49 CFR 1313.7 (a), (b), and (c) governing the construction and filing of railroad transportation contracts and contract summaries.

* * * * *

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE CERTAIN EMPLOYEE BOARDS

3. The authority citation for part 1118 continues to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.1 [Amended]

4. In § 1118.1, remove the words "Special Permission Board" and add, in their place, the words "special tariff authority activities of the Suspension/Special Permission Board."

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

5. The authority citation for part 1132 continues to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10708 and 10726; 5 U.S.C. 553 and 559.

§§ 1132.1 and 1132.2 [Amended]

6. In §§ 1132.1 and 1132.2, remove the words "Suspension Board" everywhere they are shown and add, in their place, the words "Suspension/Special Permission Board".

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

7. The authority citation for part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

§ 1162.5 [Amended]

8. In § 1162.5(a) remove the words "Special Tariff Authority No. 78–1000 TA" and add in their place "49 CFR 1312.39(h)(1)". In § 1162.5 (b)(3) remove the words "as set forth in paragraph (c) of this section," and remove paragraph (c) of § 1162.5.

[FR Doc. 90–26688 Filed 11–9–90; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Parts 1043, 1044, 1145, 1167, and 1171

Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; technical amendments.

SUMMARY: In order to correctly state the Interstate Commerce Commission's regulations, as set forth in title 49, chapter X, of the Code of Federal Regulations, several technical amendments are necessary to correct errors to several parts that were previously published in the **Federal Register**. These technical amendments are set forth below.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass, (202) 275–6796.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1044

Brokers, Motor carriers.

49 CFR Part 1145

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1167

Motor carriers.

49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043, 1044, 1145, 1167, and 1171 of the Code of Federal Regulations are amended as set forth below:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.2 [Amended]

2. In § 1043.2 paragraphs (b)(4) (1), (2), and (3) are redesignated as (b)(4)(i), (b)(4)(ii), and (b)(4)(iii).

PART 1044—DESIGNATION OF PROCESS AGENT

3. The authority citation for part 1044 continues to read as follows:

Authority: 49 U.S.C. 10329, 10330 and 11705.

§ 1044.4 [Amended]

4. In § 1044.4, paragraph (a) is amended in the beginning of the first sentence by revising the words "Every motor carrier or property" to read "Every motor carrier of property".

PART 1145—[AMENDED]

5. Part 1145 is amended by revising the authority citation to read as follows:

Authority: 49 U.S.C. 10321, 10731, and 1707a; 5 U.S.C. 553

PART 1167—COMPENSATED INTERCORPORATE HAULING

6. The authority citation for part 1167 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.2 [Amended]

7. Section 1167.2, paragraph (c) is amended by removing the third sentence beginning with the words "CIH operations" and ending with the words "required date.".

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

8. The authority citation for part 1171 continues to read as follows:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

§ 1171.6 [Amended]

9. Section 1171.6 is amended by revising the last sentence in paragraph (b)(2) to read as follows: "No certificate of registration shall be issued prior to compliance."

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26687 Filed 11-9-90; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-29]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 12, 1991.

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

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9688.

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

Issued in Washington, DC, on November 6, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26345.
Petitioner: Regional Airline Pilot Association.
Regulations Affected: 14 CFR 135.265.
Description of Petition: To amend part 135 pilot flight time limitations to:

1. Delete the reduced rest provisions of § 135.265(c).
2. Increase the minimum rest period for flight crewmembers who are scheduled to fly in pressurized aircraft to 10 hours within a 24-hour period with 9 hours in a rest facility.
3. Increase the rest for flight crewmembers who fly in unpresurized aircraft and who make more than seven landings in a 24-hour period to 12 hours with at least 10 hours in a rest facility.
4. Limit flight duty to no more than 12 hours in any consecutive 24 hours.
5. Require that flight crewmembers be given two calendar days that are free from duty.
6. Prohibit air carriers from interrupting any flight crewmember if that crewmember is in any required rest period.
7. Prohibit the scheduling of any flight crewmember if that crewmember's total time will exceed:
   (a) 1,000 hours in any calendar year,
   (b) 100 hours in any calendar month,
   (c) 34 hours in any 5 consecutive days,
   (d) 7 hours during any consecutive 24 hours for a flightcrew of one pilot in unpressurized aircraft, or
   (e) 6 hours during any 24 consecutive hours for a flightcrew of one pilot in unpressurized aircraft, or
   (f) 6 hour of duty between the requied rest period for a flightcrew of two pilots in unpressurized aircraft.

Petitioner's Reason for the Request: The petitioner believes that evidence regarding multiple short segments and unpressurized operations mandate substantially greater revisions in part 135 than the Air Line Pilots Association proposes.

Docket No.: 25003.
Petitioner: Air Transport Association and Aerospace Industries Association.
Regulations Affected: 14 CFR 25.853 and 121.312.
Description of Petition: To require different flammability test procedures and acceptance criteria for the materials used in the cabins of transport category airplanes. The amendments proposed by the petitioners were to supplement and supersede any flammability standards which might be adopted based on Notice of Proposed Rulemaking (NPRM) 85-10 (50 FR 15038; April 16, 1985). Such standards were, in fact, subsequently adopted as Amendments 25-61 and 121-189 (51 FR 26206; July 21, 1986).
Disposition: Denied, March 1, 1990.

[FR Doc. 90-26675 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-25]

Airworthiness Directives; General Electric Company (GE) CF6-50 and CF6-45 Series Turbofan 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 CF6-50 and CF6-45 series engines, which would require a repetitive inspection program for high pressure compressor (HPC) rear shafts, and also would require installation of a certain rear shaft flange bolt configuration. This proposal is prompted by the report of 35 HPC rear shafts found cracked in the bolt hole area. This condition, if not corrected, could result in HPC rear shaft fracture, inflight shutdown, and uncontained failure.

DATES: Comments must be received no later than December 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90–ANE–25, 12 New England Executive Park, Burlington, Massachusetts 01803.

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 information may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information 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: Marc J. Bouthillier, 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) 273–7085.

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 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 Number 90–ANE–25." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that 35 CF6–50 and –45 HPC rear shafts have been found to contain cracks in the forward flange bolt hole region. The crack origins are located at the bolt hole aft corner at the six o'clock position. Laboratory investigation has revealed high stress low cycle fatigue (LCF) crack initiation, and LCF crack propagation. This condition, if not corrected, could result in HPC rear shaft fracture, inflight shutdown, and uncontained failure.

The FAA has reviewed and approved General Electric Service Bulletin 72–958, dated August 15, 1990, which describes procedures for inspection of HPC rear shafts.

Since this condition is likely to exist or develop in other engines of the same type design, an AD is proposed which would require flourescent penetrant repetitive inspections to identify cracks in the HPC rear shaft bolt hole region of parts installed in CF6–50, –45 series engines. Also the AD would require installation of a certain rear shaft flange tapered turn-around bolt at the next required inspection.

There are approximately 2,158 CF6–50/–45 series engines of the affected design in the worldwide fleet. It is estimated that 517 engines would be affected by this AD, that it would take approximately 2 manhours per engine per inspection to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that 625 required inspections will occur annually. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $50,000 annually.

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) 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:

General Electric Company: Applies to General Electric Company (GE) CF6–50, –45 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC–10, Boeing 747, and Airbus A300 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent high pressure compressor (HPC) rear shaft failure, inflight shutdown, and uncontained failure, accomplish the following:

(a) Flourescent penetrant inspect HPC rear shafts, Part Numbers (P/N) 9127M58P03, and 9079M63P12, 9079M63P15, 9079M63P16, 9079M63P17, 9079M63P18, and 9079M63P19, in accordance with GE Service Bulletin (SB) 72–958, dated August 15, 1990, as follows:

(1) For HPC rear shafts installed with hook bolts, P/N 9012M99G10, 9214M95G07, and 9214M95G10, inspect in accordance with the following schedule:

(i) Inspect shafts which have not been previously inspected and have 10,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) Inspect shafts which have not been previously inspected and have less than 10,000 CSN on the effective date of this AD, within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,5000 CSN prior to inspections.

(iii) Thereafter, for shafts that have been previously inspected and have greater than 7,500 CSN, reinspect at intervals not to exceed 4,500 cycles since last inspection (CSLI), except as noted in paragraph (a)(1)(iv) below.

(iv) For shafts that have been previously inspected and have greater than 7,500 CSN and greater than 3,000 CSLI on the effective date of this AD, reinspect within the next 1,500 CIS from the effective date of this AD.

Thereafter, reinspect at intervals not to exceed 4,500 CSLI.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts P/N 1375M69P01, inspect in accordance with the following schedule:

(i) Inspect shafts which have not been previously inspected and have 6,500 CSN or greater on the effective date of this AD, within the next 2,500 CIS after the effective date of this AD.

(ii) Inspect shafts which have not been previously inspected and have less tha 6,500 CSN on the effective date of this AD, prior to accumulating 9,000 CSN.

(iii) Thereafter, for shafts that have been previously inspected and have greater than 9,000 CSN, reinspect at intervals not to exceed 6,000 CSLI, except as noted in paragraph (a)(2)(iv) below.

(iv) For shafts that have been previously inspected and have greater than 9,000 CSN and greater than 3,500 CSLI on the effective date of this AD, reinspect within the next 2,500 CIS from the effective date of this AD. Thereafter, reinspect at interals not to exceed 6,000 CSLI.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Install tapered turn-around bolts, P/N 1375M69P01, after the next inspection in accordance with paragraph (a) above. Tapered turn-around bolt, P/N 1375M69P01, that has been previously installed, need not be replaced.

Note: Information concerning the tapered turn-around bolt noted in (c) above can be found in GE SB 72-877.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. These documents 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.

Issued in Burlington, Massachusetts, on October 30, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26676 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 90-AWP-7]

Proposed Alteration of Jet Route; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-8 located between Needles, CA, and Gallup, NM. The realignment of this jet route is necessary to improve the flow of traffic and the efficiency of operation between Needles, CA, and Gallup, NM. This action would reduce controller workload.

DATES: Comments must be received on or before December 28, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 90-AWP-7, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docet and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airsapce Docket No. 90-AWP-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being places on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J-8 located between Needles, CA, and Gallup, NM. The realignment of this route would improve the flow of traffic between Albuquerque Air Route Traffic Control Center (ARTCC) and Los Angeles ARTCC. This action would provide a more precise alternate means of navigation between Needles, CA, and Gallup, NM. The adjustment of this route is designed to reduce controller workload and coordination and to establish optimum use of the airspace. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes the amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 contines to read as follows:

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–8 [Amended]

By removing the words "via Winslow, AZ;" and substituting the words "via Flagstaff, AZ;"

Issued in Washington, DC, on November 1, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90–26677 Filed 11–9–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Inspection and Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: By letter dated October 4, 1990, Ohio withdrew an amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) concerning abandoned sites. OSM is announcing the suspension of formal processing of the amendment.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission and Discussion Amendments

On June 5, 1990, (Administrative Record No. OH–1322) OSM published a notice in the **Federal Register** (55 FR 22931) announcing receipt and soliciting public comment on the program amendment for the definition of "abandoned site," the establishment of reduced inspection frequency at abandoned sites, and the citation of violations at abandoned sites. The proposed rule notice announcing receipt of the proposed amendment contained a typographical error. The deadline for requests to present oral testimony at the hearing was inadvertently published as July 2, 1990, instead of June 10, 1990. To correct this error, and to provide the public with sufficient time to request a hearing, the dates were revised. The date for receiving written comments and the date for a public hearing, if requested, were extended to July 12, 1990. The deadline for requests to present oral testimony remained unchanged at July 2, 1990.

By letter to Ohio on August 15, 1990 (Administrative Record No. OH–1348), OSM identified deficiencies in the program amendment, as submitted. In response to OSM's request, Ohio submitted a Revised Program Amendment No. 44 on September 18, 1990. By letter dated September 21, 1990, OSM notified Ohio that in *National Wildlife Federation* v. *Lujan* (Civil Actions 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, 89–0141, D.D.C. August 30, 1990), the U.S. District Court for the District of Columbia remanded the Federal rules at 30 CFR 840.11(g) and 840.11(h) and CFR 842.11(e) and 842.11(f) to the Secretary for further action. In line with this Court decision, OSM cannot approve any proposed state program amendments which concern the abandoned site provisions at 30 CFR 840.11(g) and 840.11(h) and 30 CFR 842.11(e) and 842.11(f). Therefore, OSM cannot approve Ohio's proposed Revised Program Amendment No. 44 concerning abandoned sites. Consequently, Ohio is withdrawing the proposed program amendment on abandoned sites based on the recent Court decision. The Director is announcing the withdrawal of the proposed program amendment and the suspension of processing of the amendment by OSM.

List of Subjects in 30 CFR 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90–26608 Filed 11–9–90; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–521, RM–7465]

Radio Broadcasting Services; Clinton, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Weber-King Broadcasting, licensee of Station KHPQ(FM), Channel 221A, Clinton, Arkansas, seeking the substitution of FM Channel 221C3 for Channel 221A and modification of its license accordingly. Coordinates for this proposal are 35–39–52 and 92–16–06.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Weber-King Broadcasting, Attn: Sid King, P.O. Box 33, Clinton, Arkansas 72031.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–521, adopted October 22, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–26726 Filed 11–9–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–524, RM–7501]

Radio Broadcasting Services; Sebring, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WJCM, Inc., requesting the allotment of Channel 298A to Sebring, Florida, as that community's second local FM service. The coordinates for the proposal are North Latitude 27–26–13 and West Longitude 81–21–59.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Booth, Freret & Imlay, 1920 N Street, NW., Suite 150, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–524, adopted October 19, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–26727 Filed 11–9–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–522, RM–7493, RM–7499]

Radio Broadcasting Services; Douglas, GA and LaCrosse, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by WDMG, Inc., licensee of Station WDMG(FM), Channel 258C1 at Douglas, Georgia, proposes the substitution of Channel 258C for Channel 258C1 at Douglas, Georgia, and modification of its license to specify operation on the higher class channel. The second petition, filed by Robert E. Wideman, proposes the allotment of Channel 258A to LaCrosse, Florida, as that community's first local FM broadcast service. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 258C at Douglas or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 258A at LaCross are North Latitude 29–44–57 and West Longitude 82–20–30. The coordinates for Channel 258C at Douglas are North Latitude 31–20–15 and West Longitude 82–43–50.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert E. Wideman, 3015 W. University Ave. Gainesville, Florida 32607 (Petitioner for LaCrosse, Florida), and Chester F. Naumowicz, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Attorney for WDMG, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–522, adopted October 22, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26728 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-523, RM-7495]

Radio Broadcasting Services; Lincoln, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by L&M Broadcasting Co., Inc., requesting the substitution of Channel 230A for Channel 261A at Lincoln, Illinois. Channel 230A can be allotted to Lincoln in compliance with the Commission's minimum distance separation requirement with a site restriction of 12.9 kilometers (8 miles) southeast in order to avoid a short-spacing to Station WKZW(FM), Peoria, Illinois. The coordinates for this allotment are North Latitude 40-02-00 and West Longitude 89-20-00.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Attorney for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-523, adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26729 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-510, RM-7491, RM-7496]

Radio Broadcasting Services; Taylorville and Virginia, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by USA Radio Corporation ("USA"), licensee of WTJY (FM), Channel 224A at Taylorville, Illinois, proposes the substitution of Channel 224B1 for Channel 224A at Taylorville, and modification of its license to specify operation on the higher class channel. The second petition, filed by Panther Creek Communications ("Panther"), proposes the allotment of Channel 223A to Virginia, Illinois, as the community's first local FM broadcast service. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 224B1 at Taylorville or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 223A at Virginia are North Latitude 39-57-30 and West Longitude 90-13-00. The coordinates for Channel 224B1 at Taylorville are North Latitude 39-32-00 and West Longitude 89-27-00.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Attorney for Panther Creek Communications), and David D. Oxenford, Matthew P. Zinn, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Attorneys for USA Radio Corporation).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-510, adopted October 12, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26611 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-511, RM-7500]

Radio Broadcasting Services; Burlington, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by John M. Giannettino seeking the allotment of Channel 276C3 to Burlington, Iowa, as the community's third local FM service. Channel 276C3 can be allotted to Burlington in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 276C3 at Burlington are North Latitude 40-48-36 and West Longitude 91-14-00.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Giannettino, P.O. Box 946, Burlington, Iowa 52601 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-511, adopted October 9, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26612 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-512, RM-7435]

Radio Broadcasting Services; Skowhegan and Bar Harbor, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dark Communications, Inc., requesting the substitution of Channel 300C3 for Channel 300A at Skowhegan, Maine, and modification of the construction permit for Station WHQO, to specify the higher class channel. The coordinates for Channel 300C3 are 44-42-46 and 69-43-36. To accommodate the upgrade at Skowhegan, we shall also propose to substitute Channel 299B1 for vacant Channel 299B at Bar Harbor, Maine. The coordinates for Channel 299B1 are 44-23-12 and 68-12-42. Since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Donald E. Martin, Spencer W. Weisbroth, Donald E. Martin, P.C., 2000 L Street, NW., Suite 200, Washington, DC 20036, (Counsel to the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-512, adopted October 10, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-26613 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-513, RM-7388]

Radio Broadcasting Services; Campbell, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jack G. Hunt, proposing the substitution of FM Channel 298C3 for 298A at Campbell, Missouri, and modification of his construction permit for Channel 298A to specify 298C3. The coordinates for Channel 298C3 are 36-29-42 and 89-51-17.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000,

Washington, DC 20005 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-513, adopted October 11, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-26614 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-525, RM-7505]

Radio Broadcasting Services; Creswell, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jed Broadcasting Co. of Oregon, Ltd., seeking the substitution of Channel 237C3 for Channel 237A at Creswell, Oregon, and the modification of its license for Station KAVE to specify operation on the higher powered channel. Channel 237C3 can be allotted to Creswell with a site restriction of 0.3 kilometer (0.2 mile) east of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 237C3 at Creswell are North Latitude 43-55-09 and West Longitude 123-00-59. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 237C3 at Creswell or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitoner, or its counsel or consultant, as follows: David M. Hunsaker, Esq., Cary S. Tepper, Esq., Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean, Virginia 22101 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-525 adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90-26730 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-509, RM-7360]

Radio Broadcasting Services; Port Henry, NY and Middlebury, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Pro-Radio, Inc., seeking the substitution of Channel 221C3 for Channel 221A at Port Henry, New York, and the modification of its license for Station WMNM(FM) to specify operation on the higher powered channel. In addition, the Commission proposes to substitute Channel 210A for Channel 219A at Middlebury, Vermont, and to modify the license for Station WRMC-FM to specify operation on the alternate Class A channel. Channel 221C3 can be allotted to Port Henry in compliance with the Commission's minimum distance separation requirements and can be used at Station WMNM(FM)'s presently licensed transmitter site. Channel 210A can be licensed to Middlebury, and can be used at Station WRMC-FM's presently licensed transmitter site. The use of Channel 210A at Middlebury, however, conflicts with the pending application of St. Lawrence University for Channel 210C3 at North Creek, New York (BPED-900117MA). The coordinates for Channel 221C3 at Port Henry are North Latitude 44-01-38 and West Longitude 73-28-54. The coordinates for Channel 210A at Middlebury are North Latitude 44-00-35 and West Longitude 73-10-45. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 221C3 at Port Henry or require Pro-Radio to demonstrate the availability of an additional equivalent class channel for use by such parties. Canadian concurrence in both allotments is required since Port Henry and Middlebury are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nathaniel F. Emmons, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 90–509, adopted October 13, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 90–26610 Filed 11–09–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Proposal to List the Plant Spiranthes diluvialis (Ute ladies'-tresses) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant *Spiranthes diluvialis* (Ute ladies'-tresses), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. *Spiranthes diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations), and in low elevation riparian areas in the Colorado River drainage in eastern Utah (five populations). The species' small populations are threatened by habitat disturbance. In addition, *S. diluvialis* is potentially vulnerable to collecting for horticultural purposes. A determination that *S. diluvialis* is a threatened species would protect it under the authority of the Act. The Service seeks data and comments on this proposal.

DATES: Comments from all interested parties must be received by January 14, 1991. Public hearing requests must be received by December 28, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524–4430 or FTS 588–4430.

SUPPLEMENTARY INFORMATION:

Background

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in mesic (i.e., moderately moist) to wet alluvial meadows along Clear Creek in Colorado, and from Utah. Examining these and other specimens from Colorado, Utah, and Nevada (some of which had been assigned in the past to other *Spiranthes* species), Sheviak (1984) found sufficient differences to justify formal designation of a new species, *Spiranthes diluvialis*. The type locality is along Clear Creek in Golden, Colorado. It should be noted that Welsh *et al.* (1987) leaves this species in synonomy with *S. porrifolia*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20–50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. These flowers have the distinctive bilateral symmetry of the species' genus and family. *S. diluvialis* is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown, or overgrazed (Coyner 1989, Jennings 1989).

Spiranthes diluvialis is endemic to relatively low elevation riparian meadows in three general areas in the interior western United States. The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though a historic collection was made from either Weld or Morgan County in the Platte River valley in 1856 by H. Engelmann of the Bryan expedition (Jennings 1989).

The central populations of *S. diluvialis* are in wet or mesic riparian meadows or in understory meadows of riparian woodlands in the Colorado River drainage of eastern Utah. Five separate populations are known: (1) Along the Green River in Browns Park in Daggett County; (2) in the Cub Creek drainage in Dinosaur National Monument; (3) along the Uninta River in the Uinta Basin in Duchesne and Uintah Counties; (4) along the Fremont River in Capitol Reef National Park in Wayne County; and (5) along Deer Creek in Garfield County. All these populations have been discovered since 1977 (Coyner 1989, Heil 1988, Jennings 1989).

The western populations of *S. diluvialis* were in riparian, lake and springside wet or mesic meadows in the eastern Great Basin of western Utah and adjacent Nevada. Five separate populations were known: (1) "Ogden" in Weber County, Utah—specimens from this population were collected in 1887 and have not been seen since; (2) wetlands in the Jordan River drainage in

Salt Lake County, Utah—specimens from this population were last collected in 1953; (3) Powell's Slough adjacent to Utah Lake in Utah County, Utah—specimens from this population were last collected in 1978; (4) Willow Springs near the town of Callao in Tooele County, Utah—specimens from this population were last collected in 1956; and (5) wet meadow in the drainage of Meadow Valley Wash near the town of Panaca in Lincoln County, Nevada—specimens from this population were last collected in 1936. Recent searches for *S. diluvialis* in the Great Basin have failed to rediscover any of the species' historic populations, and recent rare plant inventories have not discovered any new populations (Coyner 1989, Jennings 1989).

Most of the populations in Colorado occur on city park and greenbelt areas owned by the Cities of Boulder and Wheat Ridge. Existing populations in Utah primarily occur on lands managed by the Bureau of Land Management and the National Park Service, with one population on Ute Indian Tribal land within the boundary of the Uintah and Ouray Reservation. Though all populations are relict in nature, the largest populations occur in Boulder County, Colorado, and along the Uinta River in Utah.

Federal action on this species began on September 27, 1985, when the Service published a notice of review of candidate plants for listing as endangered or threatened species, which included *S. diluvialis* as a category 2 species (50 FR 39526). Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

After a review of status information acquired since 1985 (Coyner 1989, Heil 1988, and Jennings 1989), the Service upgraded *S. diluvialis* to category 1 in the plant notice of review published in the **Federal Register** on February 21, 1990 (55 FR 6184). Category 1 comprises those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the 1990 notice, *S. diluvialis* was given the common name "plateau lady's tresses" to provide the public a convenient reference. However, the Service proposes that "Ute ladies'-tresses" be used instead as the species' common name in recognition of the fact that the species' historic range was used largely by the Ute Indian Tribe.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes diluvialis* Sheviak (Ute ladies'-tresses) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Spiranthes diluvialis* has been adversely affected by modification of its riparian habitat. Most of thie riparian habitat along the Wasatch Front in Utah has been heavily modified by stream channelization and construction projects in and adjacent to the Jordan and Weber rivers and their tributaries and in wetlands and meadows adjacent to Utah Lake and the Great Salt Lake. All known historic populations of this species along the Wasatch Front in the populated north-central area of Utah are presumed extinct, as are all other known historic populations in the eastern Great Basin. It is believed that alteration of riparian habitat caused the extinction of these populations. Attempts in 1989 and 1990 to find the Nevada population were unsuccessful (Coyner 1989; Jim Coyner, State Arboretum of Utah, pers. comm., 1990). Extant populations in eastern Utah and Colorado are very small and potentially vulnerable to the same habitat changes that appear to have eliminated the Wasatch Front and eastern Great Basin populations. Fewer than 3,000 individual plants are known to exist in the 7 known populations.

The remaining populations are in areas that have not been overly degraded by agricultural activities, including farming and grazing. However, most of the current habitat of *S. diluvialis* is subject to livestock grazing and trampling. The full effects of livestock grazing and trampling are not known, but are though to be detrimental to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Spiranthes diluvialis* is potentially vulnerable to commercial exploitation for horticultural purposes as a specimen plant for terrestrial orchid gardens.

C. *Disease or predation.* Livestock grazing is thought to be detrimental to the species. The plant is highly palatable and is preferentially grazed. All the known remaining populations are relict in nature, with most in small areas where livestock grazing has been less intense than in other riparian communities within the species' range.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations directly protect *S. diluvialis* or its habitat. Most of the species' Utah populations occur on lands managed by the Bureau of Land Management or the National Park Service, which offer varying, but incomplete, levels of protection. Populations located in the greenbelt areas in the City of Boulder are also provided some protection. However, all of these areas are subject to livestock grazing. International trade in all orchids is regulated by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

E. *Other natural or manmade factors affecting its continued existence.* The species' low population numbers and restricted habitat makes it vulnerable to natural or human-caused disturbances. Localized catastrophic events have the potential to cause the extinction of individual populations. The rise of Utah Lake in the early 1980's may have caused the extirpation of the Powell Slough population (Sheviak 1984). It is not known if many of the species' smaller scattered populations are at levels that would ensure their continued existence over the long term, particularly the populations in Dinosaur National Monument and Capitol Reef National Park.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Spiranthes diluvialis* as a threatened species. With fewer than 3,000 known individuals in 7 known populations, collecting could lower its numbers significantly. Surface disturbances which eliminate or degrade the habitat in which the species occurs are likely to increase in the future.

Portions of the species' population occur within Capitol Reef National Park, Dinosaur National Monument, and greenbelt areas in the City of Boulder, which offer some degree of protection. However, all of these areas are open to livestock grazing. Threatened status, which means that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, would be an accurate assessment of the species' status. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *S. diluvialis*.

As discussed under Factor B in the "Summary of Factors Affecting the Species," as an orchid, *S. diluvialis* is potentially threatened by taking. Publication of critical habitat descriptions and maps would make *S. diluvialis* more vulnerable to take and increase enforcement problems. Protection of this species' habitat will be addressed through the section 7 jeopardy standard and recovery activities. Therefore, it would not now be prudent to determine critical habitat for *S. diluvialis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Much of the population of *S. diluvialis* is on Federal lands, managed by the Bureau of Land Management and the National Park Service. Both of these Federal agencies would be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *S. diluvialis*. In addition, the Corps of Engineers, which issues Federal dredge and fill permits which can affect wetlands and riparian areas, would be required to insure permitted actions are not likely to jeopardize the continued existence of *S. diluvialis*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Because of horticultural interest in *S. diluvialis*, trade permits may be sought, but few, if any, trade permits for plants of wild origin would ever be issued since the species is not common in the wild. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in cultivated plants. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Mangement Authority, U.S. Fish and Wildlife Service, Room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093; FTS 921-2093).

As a member of the family Orchidaceae, *S. diluvialis* is included on Appendix II of CITES. Species on Appendix II require a permit from the country of origin prior to export. International trade in this species is likely minimal.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *S. diluvialis*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provide by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within

45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

Coyner, J. 1989. Status check on reported historic populations of *Spiranthes diluvialis*. Memorandum, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 9 pp.

Heil, K.D. 1988. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park, Utah. Unpublished report. National Park Service, Torrey, Utah. 57 pp.

Jennings, W.F. 1989. Final report. Species studied: *Eustoma grandiflorum, Spiranthes diluvialis, Malaxis brachypoda, Hypoxis hirsuta, Physaria bellii, Aletes humilis*. Unpublished report prepared for The Nature Conservancy under the Colorado Natural History Small Grants Program. The Nature Conservancy, Boulder, Colorado. 48 pp.

Sheviak, C.J. 1984. *Spiranthes diluvialis* (Orchidaceae), a new species from the western United States. Brittonia 36(1):8–14.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524–4430 or FTS 588–4430).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Orchidaceae—Orchid family:						
*	*	*	*	*	*	
Spiranthes diluvialis	Ute ladies-tresses	U.S.C. (CO, NV, UT)	T		NA	NA
*	*	*	*	*	*	

Dated: October 25, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–26689 Filed 11–9–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 33

RIN 1018–AA50

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) would amend certain regulations in 50 CFR part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, state and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications would ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge fishing programs consistent with state regulations.

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

ADDRESSES: Send comments to: Assistant Director, Refuges and Wildlife, U.S Fish and Wildlife Service, 1849 C Street NW., MS 670–ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 1849 C Street NW., MS 670–ARLSQ, Washington, DC 20240; Telephone 703–358–2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with primary refuge purposes, (2) properly manage the fishery resource, and (3) protect other refuge values. On many refuges, the Service policy of adopting state fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement state regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance With Statutory and Regulatory Authorities." These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR part 33. Refuge-specific fishing regulations are issued only after the final publication in the **Federal Register** of the opening of a wildlife refuge to fishing.

This proposed rule would amend and supplement certain refuge-specific regulations in 50 CFR part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed state.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of the proposed rulemaking to

seek public input regarding the proposed amendments to refuge-specific fishing regulations. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director, Refuges and Wildlife (address above), by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In some cases, refuge-specific regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Effective Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific fishing regulations would make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, state or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

Type of Information Collection	OMB approval No.
Economic and public use permits	1018-0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes proposed in this rulemaking would not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the regional offices of the Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 911 NE 11th Ave, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303; Telephone (404) 331-0833.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:
Assistant Regional Director—Refuges

and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786–3538.

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, it is proposed to amend part 33 of chapter I of title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 33.5 would be amended by adding paragraphs (d) (3) and (4) as follows:

§ 33.5 Alabama.

* * * * *

(d) *Wheeler National Wildlife Refuge.* * * *

(3) Entry and use of airboats and hovercraft is prohibited on all waters within the refuge boundaries.

(4) Entry and use of personalized watercraft, such as but not limited to, jetskis, watercycles, and waterbikes are prohibited on all waters within the boundaries of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile market three.

3. Section 33.8 would be amended by revising paragraph (f)(1) as follows:

§ 33.8 Arkansas.

* * * * *

(f) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, the Arkansas Post Canal and Adjacent drainage ditches, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

* * * * *

4. Section 33.9 would be amended by removing paragraphs (a), (c) and (h); redesignating paragraph (b) as (a); redesignating pargraphs (d), (e), (f) and (g) and (b), (c), (d) and (e) respectively; redesignating paragraphs (i), (j) and (k) as (f), (g) and (h) respectively; and revisign newly redesignated paragraphs (b) and (h)(2) as follows:

§ 33.9 California.

* * * * *

(b) *Delevan National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted during daylight hours only from February 1 through October 15.

* * * * *

(h) *San Luis National Wildlife Refuge.* * * *

(2) Only the use of pole and line or rod and reel is permitted.

5. Section 33.12 would be amended by adding paragraph (a)(5) as follows:

§ 33.12 Delaware.

(a) *Prime Hook National Wildlife Refuge.* * * *

(5) The use of air thrust watercraft is not permitted.

6. Section 33.17 would be amended by revising paragraphs (a)(1); (b)(3) and (c)(1) through (4) and removing paragraphs (c)(5) through (8) as follows:

§ 33.17 Illinois.

(a) *Chautaugua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 bank fishing is permitted in the posted area that extends from the Recreation Area to the break in the cross dike and along Boatyard #3 to 100 feet west of the radial gate structure, from boats in Goofy Ridge Ditch, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

* * * * *

(b) *Crab Orchard National Wildlife Refuge.* * * *

(3) It is unlawful to take largemouth bass between 12" to 15" in length from Little Grassy Lake; there is not minimum length limit on largemouth bass in effect on Devils Kitchen Lake.

* * * * *

(c) *Mark Twain National Wildlife Refuge.* * * *

(1) Fishing is permitted all year in the Big Timber Division, Iowa including Turkey and Otter Island, and in the Gardner Division, Illinois.

(2) Fishing is permitted in the Louisa Division, Iowa, from February 1 until the start of the Iowa waterfowl hunting season with the exception of certain designated areas adjacent to the Port Louisa Road that are open all year.

(3) Fishing is permitted in the Keithsburg Division, Illinois, from January 1 through September 15. Bank fishing at the Spring Slough access is permitted all year.

(4) Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Division, Illinois, from December 16 through October 15.

* * * * *

7. Section 33.22 would be amended by revising paragraphs (c) (1) through (5) and (f); and removing paragraph (c)(6) as follows:

§ 33.22 Louisiana.

* * * * *

(c) *Catahoula National Wildlife Refuge.* * * *

(c) Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted.

(2) Boat launching on all refuge waters is permitted only at designated boat ramps. Boats with motors over the maximum size listed are prohibited, whether or not the motors are used for power. Boats may not be left on the refuge overnight.

(3) Cowpen Bayou is open to fishing year-round. Only nonmotorized boats or boats with electric motors are permitted.

(4) Duck Lake, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31. Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted.

(5) Muddy Bayou is open to fishing from March 1 through October 31. Only nonmotorized boats or boats with electric trolling motors are permitted.

* * * * *

(f) *Lacassine National Wildlife Refuge.* Fishing and crayfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and crayfishing are permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

(2) Only pole and line or rod and reel fishing is permitted. Crayfish may be taken only with drop nets or hand lines. The use or possession of any other type of fishing and crayfishing gear is prohibited.

(3) No person may take or possess more than 100 pounds of crayfish per vehicle per day.

(4) Only boats with motors totaling 25 horsepower or less are permitted in the Lacassine Pool. Entry and use of airboats and hovercraft is prohibited on all waters within refuge boundaries. Boats may not be left on the refuge overnight.

(5) Access into refuge marshes and ponds outside the Lacassine Pool is permitted by walking, poling, paddling or rowing. The use of outboard motors in these areas is prohibited.

(6) Boat access to the Lacassine Pool is prohibited from November 1 to March 1.

* * * * *

8. Section 33.27 would be amended by revising paragraphs (e) as follows:

§ 33.27 Minnesota.

* * * * *

(e) *Tamarac National Wildlife Refuge.* * * *

(1) Fishing is permitted in North Tamarac Lake and Wauboose Lake all year, in accordance with State seasons.

(2) Fishing is permitted on Two Island Lake, Blackbird Lake, and Lost Lake from the first day of the State walleye season through Labor Day.

(3) Bank fishing only is permitted in an area 50 yards on either side of the Ottertail River Bridges on County Roads #26 and #126 during State seasons.

* * * * *

9. Section 33.28 would be amended by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) as follows:

§ 33.28 Mississippi.

* * * * *

(b) *Mathews Brake National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: The designated waterfowl sanctuary is closed to entry from December 1 through March 15.

* * * * *

10. Section 33.32 would be revised by adding new paragraph (c) as follows:

§ 33.32 Nevada.

* * * * *

(c) *Sheldon National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Big Springs Reservoir—only non-motorized boats are permitted.

(2) Dufurrena Ponds—only float tubes and similar flotation devices are permitted.

(3) McGee Pond—only individuals 12 years of age and under, or 65 years of age and older, or handicapped individuals, are permitted to fish.

11. Section 33.40 would be amended by revising paragraph (b)(2) as follows:

§ 33.40 Oklahoma.

* * * * *

(b) *Salt Plains National Wildlife Refuge.* * * *

(2) Fishing is permitted from April through October 15.

* * * * *

§ 33.41 [Amended]

12. Section 33.41 would be amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as paragraph (g)(4).

13. Section 33.53 would be amended by revising paragraph (b) as follows:

§ 33.53 Wisconsin.

* * * * *

(b) *Necedah National Wildlife Refuge.* * * *

(1) Fishing is permitted in Areas 1, 2, 4, and 5 according to State seasons and regulations, except that the Suk Cerney Pool in Area 5 is open only from December 15 through September 15.

(2) Fishing is permitted in all waters of Area 3 that are located south of the Turkey Track Road and north of the Sprague-Mather Road including the Goose and Sprague Pools from December 15 through March 15 and from June 1 through September 15.

(3) Non-motorized boats are permitted in all areas that are open at the time of fishing.

* * * * *

14. Section 33.55 would be amended by adding new paragraph (a)(3) as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(3) Taking of fish by the use of spear "guns" is prohibited. Hand propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish.

Dated: October 15, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-26703 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research and Extension Users Advisory Board; Intent To Establish an Advisory Board

Notice is hereby given that the Secretary of Agriculture intends to establish the National Agricultural Research and Extension Users Advisory Board. The purpose of the Board will be to provide the Secretary of Agriculture with an assessment of, and recommendations on, program, budgetary, and policy matters relating to food and agricultural sciences. The Board will submit to the Secretary a statement of recommendations as to allocations of responsibilities and levels of funding for federally supported agricultural and extension programs; the Board also will submit a report to the President and to various Congressional committees on its appraisal of the President's proposed budget.

The establishment of this Board is necessary and in the public interest in connection with the work of the United States Department of Agriculture.

Interested parties are invited to submit written comments to John Patrick Jordan, Administrator, Room 305-A, Administration Building, United States Department of Agriculture, Washington, DC 20250-2200.

Done in Washington, DC, this 8th day of November 1990.

Adis M. Vila,
Assistant Secretary for Administration.

[FR Doc. 90-26813 Filed 11-8-90; 11:54 am]

BILLING CODE 3410-22-M

[Docket No. 90-023N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Notice is hereby given that meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held Monday through Thursday, November 26-29, 1990, in Houston, Texas, at the Hyatt Regency-Houston, 1200 Louisiana Street, Houston, Texas 77002.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

Scheduled sessions are as follows:

(1) Monday, November 26: 2 p.m. to 5 p.m.—Session of the Evaluation of Process Controls (Partially Defatted Species Products) Subcommittee.

(2) Tuesday, November 27: 8:30 a.m. to 5 p.m.—Session of the *Listeria monocytogenes* Subcommittee.

(3) Wednesday, November 28: 8:30 a.m. to 5 p.m.—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee; and

(4) Thursday, November 29: 8:30 a.m. to 12 noon—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee; and 1:30 p.m. to 5 p.m.—Full Committee session.

Notice is hereby given on the appointment of members to the Committee. The new members are: Dr. Charles W. Beard, Southeast Poultry Research Laboratory, Agricultural Research Service, Athens, Georgia, and Dr. Stanley S. Green, Food Safety and Inspection Service, Washington, DC.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this notice. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC on November 5, 1990.

Lester M. Crawford,
Chairman.

[FR Doc. 90-26657 Filed 11-9-90; 8:45 am]

BILLING CODE 3410-DM-M

Washington Game Farm Alternative Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that payments made to individuals under the Washington Game Farm Alternative Program are made primarily for the purposes of protecting or restoring the environment and providing a habitat for wildlife. This determination, which is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Curt Smitch, Director, Department of Wildlife, 600 North Capitol Way, GJ-11, Olympia, Washington 98504-0091, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. box 2890, Washington, DC 20013 (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that the payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may

be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the state conservation programs is the State of Washington Game Farm Alternative Program. The program is operated as part of the Lower Snake River Fish and Wildlife Compensation Plan authorized by the Water Resources Development Act of 1976, Public Law 94–587, as modified by section 856 of the Water Resources Development Act of 1986, Public Law 99–662. The program is implemented by the Washington State Department of Wildlife under the Revised Code of Washington, §§ 77.12.010 and 77.12.320. The program is funded by the U.S. Army Corps of Engineers, Walla Walla District, Washington, with Lower Snake River Fish and Wildlife Compensation Plan funds.

The objective of the Washington Game Farm Alternative Program is to establish, protect or enhance permanent wildlife habitat on privately owned farmland. The program objective is achieved by developing permanent wildlife habitat on private farmland through cost-shared land treatment or management practices.

Practices eligible for cost-sharing include, but are not limited to:

Grass or grass/legume filter strips
Shrub and tree plantings
Fencing riparian zones to protect from grazing
Planting small grain food plots

In addition, landowners are reimbursed for profits forgone as a result of reducing farmable acreage. It is noted that these payments for profits forgone are not directly related to the installation of the cost shared land treatment practice improvements, but rather are analogues to a rental payment for the non-farmed areas. As such, they are similar to rental payments which the Internal Revenue Service has determined to be outside of the scope of section 126. See 26 CFR 16A.126–1(b)(2)(iii) and 46 FR 27636 (May 21, 1981). Accordingly, the question of the eligibility of these particular payments for exclusion under section 126 is left for determination by the Internal Revenue Service. The determination of primary purpose set forth in this notice, however, does apply to such payments.

Procedural Matters

The authorizing legislation, regulations, and operating procedures for the Washington Game Farm Alternative Program have been examined using the criteria set forth in 7 CFR part 14. The U.S. Department of Agriculture has concluded that the payments made under this cost-share program are made to provide financial assistance to eligible persons in protecting or restoring the environment, and in providing wildlife habitat.

A "Record of Decision, Washington Game Farm Alternative Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. box 2890, Washington, DC 20013, or Director, Department of Wildlife, 600 North Capitol Way, GJ–11, Olympia, Washington 98504–0091.

Determination

As required by section 126(b) of the Internal Revenue Code of 1957, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Washington Game Farm Alternative Program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-share payments made under this program are primarily for the purposes of protecting or restoring the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Washington Game Farm Alternative Program.

Signed at Washington, DC on November 5, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–26658 Filed 11–9–90; 8:45 am]

BILLING CODE 3410–16–M

Animal and Plant Health Inspection Service

[Docket No. 90–214]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow field testing of tomato plants genetically engineered to express an anti-sense endopolygalacturonase (PG) RNA, in Riverside County, California. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at the same address. The environmental assessment should be requested under permit number 90–249–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment

and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express an anti-sense endopolygalacturonase (PG) RNA. The field trial will take place in Riverside County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting the finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A PG gene from tomato has been modified to produce anti-sense RNA. The modified gene was then inserted in the plant genome, resulting in the inhibition of expression of the endogenous PG gene. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the modified PG gene itself, nor the derived anti-sense RNA, confers on tomato any plant pest characteristic. The tomato cultivar (UC82B) from which the PG gene was obtained is not a plant pest.

3. The anti-sense PG gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on tomato any plant pest characteristics.

5. The vector used to transfer the anti-sense PG gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk therein. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed: that is, the genes that are necessary for pathogenicity have been removed.

6. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the anti-sense PG gene into a tomato plant cell, was eliminated and is no longer associated with a transformed tomato plant.

7. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tomto genome, the vector does not survive in or on the transformed plants. No mechanism is known to exist in nature to horizontally move an inserted gene from a chromosome of a transformed plant to any other organism.

8. The field test site is small, approximately 3 acres.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

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

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-26706 Filed 11-9-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-215]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permits for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test locations
90-282-01	Monsanto Agricultural Company	10-09-90	Potato plants genetically engineered to express the coat protein gene of potato leaf roll virus.	Florida.

Application No.	Applicant	Date received	Organism	Field test locations
90-282-05	Monsanto Agricultural Company	10-09-90	*Pseudomonas corrugata* strain 2140 genetically engineered to contain the *lacZY* marker gene.	Alabama, Illinois, Indiana, Missouri, Montana, Washington.

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

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-26705 Filed 11-9-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43-90]

Foreign-Trade Zone 2—New Orleans, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of Foreign-Trade Zone 2, requesting authority to expand its zone to two sites in Kenner, Louisiana, adjacent to the New Orleans International Airport, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 31, 1990.

On July 16, 1946, the Port received authority from the Board to establish a foreign-trade zone in New Orleans (B.O. 12, 11 FR 8235, 7/31/46). The zone was expanded in 1984 (B.O. 245, 49 FR 15006, 4/16/84) and in 1986 (B.O. 331, 51 FR 17783, 5/15/86). It currently involves a site (19 acres) at the Napoleon Avenue Wharf, a site (76 acres) within the Almonaster-Michoud Industrial District, and the entire Newport Industrial Park (700 acres) in New Orleans.

The Port is now requesting authority to expand its zone project to include two warehouse facilities in Kenner (Jefferson Parish), Louisiana, adjacent to the New Orleans International Airport. One facility is located at 200 Crofton Road (159,000 sq. ft., Lacour Warehousing, Inc.) and the other is at 2445-2447 Aberdeen Street (23,500 sq. ft., Quast and Company, Inc.). No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Richard V. Gorski, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, Louisiana 70160.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 24, 1990.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce, District Office, 432 World Trade Center, 2 Canal Street, New Orleans, LA 70130.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-26633 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-30-90]

Foreign-Trade Subzone 15D Mobay Chemical Plant, Kansas City, Mo; Determination of Scope of Manufacturing

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15 and Subzone 15D, at the agricultural chemical manufacturing plant of Mobay Corporation, Kansas City, Missouri, to determine whether certain proposed manufacturing activity is within the scope of manufacturing authority already approved by the Board.

On September 11, 1989, the Board authorized FTZ Subzone 15D at the Mobay plant (Board Order 440, 54 FR 38413). Authority was granted for the manufacture of pesticides (e.g., insecticides, herbicides and fungicides) (duty rates: 3.5-20%) utilizing foreign materials such as cyanuric chloride, benzenethial, surface agents, nitrogeneous compounds, ketones, nitriles and halogenated, sulfonated and nitrated derivatives of aldehydes (duty rates: 7.9-12.5%).

The original application listed a number of finished pesticide products which Mobay planned to produce under zone procedures. Mobay has informed the Board that it now plans to produce several additional related finished pesticide products for animal health applications (duty rates: 3.4-7.9%) that were not specifically listed in the original application.

The request under review also indicates that the company plans to use new, but related, foreign materials such as heterocyclic compounds with oxygen, polycarboxylic acids and related products, and esters of inorganic acids and related products (duty rates: 3.1-20.0%), in its production of pesticides.

It appears that the proposed activity is within the range of activity reviewed in the original application and authorized by Board Order 440, but the FTZ Staff invites the comments of interested parties for consideration in its review.

Comments must be submitted by December 10, 1990. They shall be addressed as follows.

A copy of the request is available for public inspection at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 4213, Washington, DC 20230.

Dated: November 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-26634 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-087]

Final Scope Ruling; Portable Electric Typewriters From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On August 7, 1990, we published a preliminary scope ruling, determining that certain later-developed portable electric typewriters (PETs) are within the scope of the antidumping duty order on PETs from Japan. Specifically, we found that the addition of an LCD, LED or CRT [1] display and expanded and/or removable text memory does not exempt a PET from the antidumping order. We notified the U.S. International Trade Commission (ITC) of our proposed inclusion of certain later-developed PETs. The ITC informed the Department that consultations were not necessary. Respondents submitted comments regarding the preliminary determination and, after reviewing these comments, we have found no evidence to merit changing the preliminary determination. Therefore, we reaffirm the preliminary determination, finding that certain later-developed portable electric typewriters, including so-called "personal word processors" (PWPs), are presumptively of the same class or kind as PETs within the scope of the order, if they meet the following seven physical criteria. To be of the same class or kind as a PET a typewriter must: be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; be electric, regardless of source of power; be comprised of a single, integrated unit; have a keyboard embedded in the chassis or frame of the machine; have a built-in printer; have a platen (roller) to accommodate paper; only accommodate its own dedicated or captive software.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Keir Bonine, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

Criteria

For purposes of determining whether the merchandise in question is within the scope of the antidumping duty order on portable electric typewriters from Japan, the Department will refer to section 781(d) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677j(d) ("the Act") and its interim final regulations on scope, published at 19 CFR 353.29 (1990). Because the product descriptions of the merchandise contained in the petition and prior determinations of the Department and the ITC during the original investigation are not dispositive as to whether PWPs are within the scope of the antidumping duty order, and because the allegations were that the PETs at issue are later-developed products, we considered the criteria listed in section 781(d) of the Act. The statute provides:

> (1) *In general.* For purposes of determining whether merchandise developed after an investigation is initiated * * * (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order * * * (the Secretary will) consider whether:
>
> (A) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product");
>
> (B) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier product;
>
> (C) The ultimate use of the earlier product and the later-developed product are the same;
>
> (D) The later-developed merchandise is sold through the same channels of trade as the earlier product; and
>
> (E) The later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

See also 19 CFR 353.29(h) of the Department's regulations.

The statute further provides that the Department may not exclude later-developed merchandise from an order merely because the merchandise permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise. *See* 19 U.S.C. 1677j(d)(2)(B) and 19 CFR 353.29(h)(2).

Documents from the underlying proceeding deemed relevant by the Department to the scope of the outstanding order were made part of the record to the instant scope review. In completing its analysis, the Department considered any written arguments that interested parties submitted within the specified time limits and information obtained from other Government offices and agencies. Documents that were not presented to the Department, or placed by it on the record, will not constitute part of the administrative record attendant to this scope proceeding.

Background

The antidumping duty order on PETs from Japan, published in the **Federal Register** on May 9, 1980 (45 FR 30618), defined the original scope of the order as all typewriters classifiable under Tariff Schedules of the United States Annotated (TSUSA) 676.0510. Following reclassification of some PETs under a different TSUSA number by Customs, the Department issued a scope clarification in Portable Electric Typewriters From Japan; Clarification of Scope of Antidumping Duty Order and Correction to Early Determination of Antidumping Duties, published in 46 FR 14006, 14007 (February 25, 1981), which defined "portable electric typewriters" as:

> (A)ll typewriters currently classifiable under TSUSA 676.0510, and some currently classifiable under 676.0540, depending on their individual characteristics * * * The characteristics we will consider include, but are not limited to, the dimensions, weight, presence of a carrying case, the type of market, and method of distribution.

The description of the original TSUSA Item number 676.0510, cited in the original petition, was:

> Typewriters not incorporating a calculating mechanism:
> Non-Automatic with hand-operated keyboard:
> Portable:
> Electric.

TSUSA number 676.0540 reads:

> Typewriters not incorporating a calculating mechanism:
> Non-Automatic with hand-operated keyboard:
> Other: Electric.

In 1983, after reviewing comments from interested parties, the Department found portable electronic typewriters to be of the same class or kind as PETs and therefore to be within the scope of the order. This finding was published in the Department's Final Results of Administrative Review of Antidumping Duty Order, 48 FR 7769 (February 24, 1983).

In its final results of the 1981-1982 administrative review, the Department determined that the scope of the order excluded automatic (text memory) typewriters and typewriters with a calculating mechanism. Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review, 52 FR 1505 (January 14, 1987). The petitioner sought judicial review of these scope determinations, in *Smith*

[1] Liquid Crystal Display, Light Emitting Diode, and Cathode Ray Tube, respectively.

Corona v. *United States*, CIT Number 87-02-00157. The Court of International Trade (CIT) remanded the case to the Department on December 31, 1987, to reconsider its scope determination and publish a revised determination as to whether PETs incorporating a calculator or text memory are within the scope of the antidumping duty order. On remand, the Department determined that typewriters with calculators are within the scope of the antidumping duty order, but portable electric typewriters with text memory (automatics) were not. The final results of this revised scope determination were submitted to the CIT on March 18, 1988. On September 20, 1988, the Court upheld the Department's determination that portable electric typewriters incorporating a calculating mechanism are within the scope of the order, but reversed the Department's determination that portable electric typewriters with text memory (automatics) are not included in the scope of the order. *See Smith Corona* v. *United States*, 11 CIT 954, 698 F. Supp. 240 (CIT 1988) (*Smith Corona*).

Defendant-intervenors appealed the CIT's decision to the Court of Appeals for the Federal Circuit (CAFC). The CAFC issued a decision affirming the CIT's decision on September 26, 1990.[2]

With the conversion to the Harmonized Tariff System, the Department explained how the new HTS numbers related to the old TSUSA system in Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review, published in 53 FR 40926 (October 19, 1988):

> (P)ortable electric typewriters currently classified under Tariff Schedules of the United States Annotated ("TSUSA") item 676.0510, and some currently classifiable under TSUSA item 676.0540, and Harmonized Tariff System item numbers HS 8469.21.00 and 8469.29.00.

On April 13, 1990, the Department sent instructions to Customs (C.I.E. N-57-79), to suspend liquidation on automatic PETs (*i.e.*, PETs with text memory). These instructions specified, however, that Customs is not to suspend liquidation on PETs which contain a drive that accommodates a removable storage medium, such as a floppy disk or an integrated circuit card. See also Portable Electric Typewriters from Japan; Court of International Trade Decision Concerning the Scope of the Antidumping Duty Order, 55 FR 12701 (April 5, 1990).

On August 7, 1990, the Department issued a preliminary scope determination, in response to Smith Corona's May 15, 1990, request for a ruling that certain "later-developed PETs" were within the scope of the PETs antidumping duty order. See Preliminary Scope Ruling: Portable Electric Typewriters From Japan, 55 FR 32107 (hereafter, Preliminary). In the preliminary, the Department determined that certain later-developed portable electric typewriters from Japan, including those with text display and expanded memory, are presumptively within the scope of the antidumping duty order on PETs, if they meet all of the following criteria:

> To be of the same class or kind as a PET, a typewriter must:
>
> (1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
>
> (2) Be electric, regardless of source of power;
>
> (3) Be comprised of a single, integrated unit (*e.g.*, not in two or more pieces);
>
> (4) Have a keyboard embedded in the chassis or frame of the machine;
>
> (5) Have a built-in printer;
>
> (6) Have a platen (roller) to accommodate paper;
>
> (7) Only accommodate its own dedicated or captive software.

In the preliminary, the Department ruled that

> * * * the storage ability and word processing capabilities of later-developed PETs do not create a different set of expectations for the ultimate purchaser. Later-developed PETs still retain the primary function found in the original PETs subject to the antidumping duty investigation and can be used as a traditional typewriter. In other words, PWPs with typing capability retain the same ultimate use as traditional PETs, that is, to type text. Unlike a PC, a PWP can only use its own dedicated, captive software. This limits the functions and use of a PWP. The same channels of trade exist for PETs, PWPs and PCs, as well as other consumer goods; therefore, channels of trade are not dispositive in this scope determination. Similarly, PETs and PWPs are advertised and displayed together with other consumer goods; therefore, advertisement and display are not dispositive in this case.

Id. at 32115.

In accordance with section 781(e)(1)(C), because we found that the later-developed merchandise incorporates a significant technological advance to an earlier product, we notified the ITC on July 27, 1990. On August 10, 1990, the ITC acknowledged notification and stated that it did not believe that consultations between the Department and the ITC were necessary.

In accordance with its preliminary determination, the Department notified Customs on August 7, 1990, to suspend liquidation on any PETs or PWPs which meet all seven of the aforementioned criteria.

On September 9, 1990, the Department notified Customs that PETs and PWPs potentially within the scope of the antidumping duty order may be classified under HTS numbers 8469 and 8469.10.000, and that liquidation of entries under these HTS numbers should be suspended if they meet the seven criteria listed in the August 7, 1990, notification.

Arguments

Smith Corona

Smith Corona argues that the Department's preliminary determination did "not go far enough" and that all of the machines the Department listed as representative models should be included within the scope of the PETs antidumping order, including those that the Department preliminarily found to be outside the scope. Smith Corona Comments on Preliminary Scope Ruling, September 6, 1990 (Smith Corona Comments), at 1-2. Smith Corona says that the machines found to be outside the scope "were excluded apparently on the basis of immaterial considerations, unrelated to the primary use of these machines and legally unsound as the basis for decision making." *Id.* at 2.

Physical Characteristics

Smith Corona argues that "the relevant physical characteristics should be related to the primary use of the merchandise." *Id.* at 2. It contends that the Department's preliminary scope ruling "arbitrarily limits the relevant physical characteristics of machines to be covered by the antidumping order." According to Smith Corona, physical characteristics such as a detachable keyboard, or separate printer, "should not become the basis for exclusion—otherwise next year's models of imported portable electric typewriters will all offer detachable keyboards or separate printers." *Id.* at 2. Smith Corona argues that such physical criteria are "immaterial to the functioning of the machine," which is the printing of characters on paper, "and its portability." *Id.* at 2.

Smith Corona continues by arguing that a manufacturer only needs "to make minor, inexpensive modifications to remove a machine from the scope of the antidumping duty order." *Id.* at 3. Smith Corona argues that "(t)his is particularly absurd given the low cost of

[2] This scope ruling will be subject to this court decision on whether automatic typewriters are within the scope of the order when the mandate issues. If the CAFC's September 26 decision is reversed on rehearing or on appeal, then this scope ruling will be revised in accordance with such final court decision

separating a printer from the chassis of a portable word processor or producing a detachable keyboard * * *" Smith Corona claims that the cost of "detaching a keyboard is less than 2% of the cost of a personal word processor, and the cost of separating the printer is a similar amount." *Id.* at 3, with evidence at Exhibit 1.

Smith Corona argues that the criteria of a detachable keyboard and a separate printer are "cosmetic modifications that do not affect whether the machines otherwise are portable and function as typewriters." *Id.* at 4. Smith Corona uses the Brother WP-80, which was one of the sample models listed in the appendix of the preliminary decision, as an example of what it argues would be within the scope of the order, if not for its detachable keyboard. "Otherwise, the WP-80 is portable and is intended to be used to type on paper as a result of operation of the keyboard." *Id.* at 4. Smith Corona argues that, in fact, it is the detachable nature of the keyboard on this particular machine which allows for its portable nature, and that if the keyboard were not detachable, "the overall dimensions of the WP-80 would be increased and its ease of portability diminished." *Id.* at 4.

Smith Corona contends that, "(a)lthough the detachable keyboard is a recognizable physical difference between models deemed in scope by ITA (International Trade Administration) and those excluded, every physical difference does not signify that a product is of a different class or kind." *Id.* at 5. Smith Corona argues that the "detached keyboard is not a 'substantially distinct' characteristic. Nor, for the same reason, is a detached printer a distinction with a difference, except to the extent that the size of the components is not consistent with portability." *Id.* at 6.

Smith Corona also disagrees with the preliminary decision to exclude from the scope Panasonic's KX-W1510—a sample model listed in the appendix of the preliminary ruling found to be outside the scope because it lacked a handle and was therefore not easily portable. Smith Corona contends that the machine's weight of 21.56 pounds indicates that it is "no less portable than other models found to be sufficiently portable to meet ITA guidelines." *Id.* at 7. Referring to the 27.5-pound Royal Administrator ruled within the scope of the PETs order, Smith Corona argues that "(b)y virtue of its weight, then, the KX-W1510 does not exceed the range historically characteristic of a portable typewriter." *Id.* at 7-8.

Smith Corona also argues that a PWP's capacity to use nondedicated software does not change its ultimate use. Smith Corona disagrees with the Department's criterion that a personal word processor (PWP) must only accommodate its own captive or dedicated software to be considered within the scope of the order. Smith Corona argues that this criteria is "irrelevant to (the machine's) primary use of typing text." *Id.* at 8. Smith Corona argues that if, as the Department said in its preliminary determination, word processing functions are "merely enhancements to typing functions," then Smith Corona reasons that "it should follow that variations of word processing capabilities provided by additional software would also be enhancements to the typing function." *Id.* at 8.

Referring to *Smith Corona* v. *United States*, 698 F. Supp. 240, 244-245 (1988), where the court ruled that the addition of a calculator to a PET did not create a new class or kind of merchandise, Smith Corona argues that, similarly, the addition of "flexible, noncaptive software does not change the primary use of personal word processors as typewriters * * *" *Id.* at 9. Smith Corona argues that if the ultimate use of the machine is "word processing and printing of text, then it should be considered within the scope of the order whether the software is captive or dedicated or not." *Id.* at 9.

Smith Corona addresses the Department's attempt to differentiate between personal computers (PCs) and PWPs with its "proprietary software" criterion by stating that "(t)he proprietor of the software * * * is immaterial." *Id.* at 10. Smith Corona further argues that:

> Advanced typewriters and personal word processors are distinguished from personal computers by the fact that the latter are designed and sold as a platform for the operation of any of various types of software, which may include word processing software. Personal word processors, however, trade on their similarity with typewriters and their dedication to word processing; they are typically equipped to type without loading software * * * To the extent that future models may offer commercial word processing programs or non-captive software, that development should not affect the coverage of the order, so long as the primary use of the merchandise is unchanged. *Id.* at 10.

Expectations of the Ultimate Purchasers

Smith Corona does not address this criterion specifically, except to say that the "addition of flexible, noncaptive software to a personal word processor may represent an identifiable difference, but it * * * does not significantly influence consumer expectations that the machine will perform as a typewriter." *Id.* at 9.

Ultimate Use

Referring to the Department's criteria in the preliminary scope determination for machines to be considered within the scope of the order, Smith Corona argues that "(c)riteria such as detachable keyboard, separate printer, and captive software are invalid bases for inclusion within the scope of the order * * *, in that none of these criteria affect either the ultimate or primary use of the machines." *Id.* at 10. Smith Corona argues that "the ITA has not analyzed the proposed criteria based on the statute's concerns" and that "these are not effective criteria consistent with the applicable law and regulations." *Id.* at 13.

Referring to the Department's preliminary criteria of an attached keyboard and self-contained printer for a machine to be within the scope, Smith Corona argues that "(t)he fact that the (detachable) keyboard is incidental to the primary use is illustrated by the advertising (for these machines)." *Id.* at 6.

Smith Corona claims that in promotional brochures for Brother and Panasonic machines, "the keyboard is shown in detached position in only about ¼ of the pictures of these machines * * * This emphasis does not detract from the primary use of these models or distinguish WP models from portable electric typewriters." *Id.* at 7.

In addition, Smith Corona argues that the primary use of PWPs for typing is evidenced by the fact that "many portable word processors retain a 'typewriter mode' so that the machines can be used both as a typewriter or word processor." And, "(i)n either mode * * * the machines ultimately are used to print letter on paper." *Id.* at 11-12.

Channels of Trade

Smith Corona argues that PWPs are sold in "consumer-oriented channels of trade—mass merchandisers and discount houses" such as K-Mart, Luskin's and W. Bell. *Id.* at 15. "Whether other products are sold through these channels is irrelevant," *Id.* at 17, because "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "That these stores also sell calculators, razors or watches hardly affects the obvious fact that word processors have displaced the top-of-the-line portable electric typewriters on the shelves and in the

customer's perception at the top of the typewriter line." *Id.* at 17–18.

Advertisement and Display

Smith Corona states that PWP models ruled outside the scope of the PETs order in the preliminary determination, "including the Panasonic Model KX–W1500 and Brother models WP–75 and WP–80 are currently being advertised during this promotional season as 'back to school' models by discount houses and mass merchandisers." *Id.* at 13. Smith Corona contends that "(i)t is well established that the back-to-school season is one of three peak promotional seasons," in which PETs are sold (the other two being "graduation-Father's Day" and Christmas). *Id.* at 14. Smith Corona thus concludes that "the subject machines (referred to above) are squarely within the scope of the order." *Id.* at 14.

Smith Corona argues that "ITA has correctly found that advertising and display for PETs and PWPs 'are virtually the same.' " "However," Smith Corona argues, "it is absurd to imply that (because) portable word processors are advertised with and marketed in the same channels with all kinds of other products * * * that advertising and marketing are unimportant." *Id.* at 16.

Smith Corona contends that "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "Whether other products are sold through these channels is irrelevant." *Id.* at 17.

Respondents

Later-Developed Merchandise

Respondents argue that the PWPs "at issue today are far removed from the electromechanical machines that were the subject of the original investigation and injury finding, and constitute a distinct class of merchandise." Nakajima Comments of September 6, 1990, at 4. Matsushita Comments of September 6, 1990, at 5. Respondents contend that the very existence of the term "personal word processor" demonstrates this. *See* Nakajima Comments of September 6, 1990, at 2.

Moreover, respondents argue that word processors were already in existence at the time of the original antidumping investigation and "were distinguished in the marketplace from typewriters based on functions and capabilities. Consequently, word processors were not included in the original antidumping investigation which was limited to portable electric typewriters ('PETs') * * * PWPs are a type of word processor and are not a 'later-developed' (PET)." Brother Comments of September 6, 1990, at 2.

Furthermore, respondents argue that "(i)n every context, other than this proceeding, Smith Corona has consistently differentiated PWPs and portable electric typewriters * * * as *entirely different product lines*—in effect, entirely different classes or kind of merchandise," Brother's emphasis. Brother Rebuttal Comments of September 17, 1990, at 1. *See also* Nakajima Comments of September 6, 1990, at 5, 6. Respondents argue that Smith Corona maintains this distinction, as shown by its filing with the SEC on June 5, 1989, where it lists "electronic typewriters" and "personal word processors" as separate product lines, differentiating them on the basis of a "built in disk drive for the external storage of a 100,000 character data disk." Nakajima Comments at 6, quoting from Smith Corona Form S–1, at Exhibit 22 of Brother Comments of June 25, 1990.

Respondents argue that this distinction is also evidenced by the words of Smith Corona's Vice President Fred Feuerhake, who stated that word processors and typewriters are "two products" produced by Smith Corona. *See* Nakajima Comments at 6, quoting from Attachment 15 to Brother Comments of June 25, 1990.

Respondents argue that the Department's failure to define the term "PWP" in the preliminary decision "acts to disguise conclusory statements purporting to be analysis." Nakajima Comments at 7. *See also* Brother Comments of September 6, 1990, at 3. Nor does the Department recognize the distinction between "personal word processors" and "word processing typewriters," which respondents argue is evident by the "large display, unlimited memory, and sophisticated 'block move' editing capability" of PWPs. *See* Nakajima Comments at 8.

Respondents argue that in its preliminary decision the Department did not follow the legal requirements set forth in the later-developed products (LDP) criteria. That is, they argue, despite stating that it would compare the later-developed product to the merchandise with respect to which the order was originally issued, the Department compared PWPs to automatic PETs, the most recent generation of PETs found to be within the scope of the order. Respondents argue that as a result the Department found a product within the scope of the order "which was not an advancement of the original product subject to the order but an advancement of a product which was only 'recently found to be within the scope of the order.' " Nakajima Comments at 3, 4. *See also* Matsushita Comments of September 6, 1990, at 8–9, 17–18.

Respondents argue that "the statutory concept of 'later-developed' product carries with it the notion of displacement of an (sic) similar predecessor product * * * Where displacement does not occur, an implication is raised that the new product is not of the same class or kind of merchandise as the earlier product.

Rather the new product creates a new use or a new expectation on the part of the customer." Thus, "word processors did not displace typewriters," because there is still a strong market for PETs at the same time that a market for PWPs has developed. Brother Comments of September 6, 1990, at 8–11. *See also* Brother Rebuttal Comments at 10.

Respondents also contend that the preliminary decision included "within the scope of an existing antidumping duty order merchandise embodying new and significant technological innovation representing a significant proportion of the cost of the new merchandise," contrary to the intent of Congress. Matsushita Comments at 9. Rather, they argue, Congress intended the later-developed products legislation to prevent circumvention of an existing antidumping duty order through minor alterations to covered products. *See Id.* at 9–15.

Physical Characteristics

Respondents argue that the Department's preliminary conclusion that display size does not differentiate between PWPs and PETs in a "meaningful" way is "unsupportable" (sic). Nakajima Comments at 19. They argue that "the one or two line display found on certain automatic typewriters, while sufficient for making changes to form letters, is inadequate for word processing." *Id.* at 19. Rather, "(i)t is the large display that makes word processing possible * * *" *Id.* at 20. *See also* Canon Comments of September 6, 1990, at 11–12.

Respondents argue that an external disk drive is another important physical difference between PETs and PWPs. *See* Nakajima Comments at 20, and Canon Comments at 11. "Clearly, the existence of hardware for access to external memory in the form of a floppy disk drive is a significant physical difference between PWPs and PETs. This hardware in turn requires sophisticated internal hardware, including microprocessors and power supplies." Matsushita Comments at 19. They argue that the existence of external memory is

a significant physical difference because it allows the user "the capability to word process not only many documents, but also lengthy documents, and to store one document while working on another." *See* Nakajima Comments at 20–21.

Respondents contend that the Department did not compare the physical characteristics of PWPs with the PETs originally investigated, but rather, incorrectly, compared them to the latest generation of automatic PETs. *See* Matsushita Comments at 17–18, and Brother Comments of September 6, 1990, at 6 and 11. Furthermore, respondents argue, even when compared with automatic PETs, the physical differences between PWPs and automatic PETs are great. A PWP has "more chips and software, between 3 and 20 times as much display, and an infinite amount of storage capacity" as compared to an automatic PET. Brother Comments at 14–15. Respondents contend that:

> The CIT has acknowledged these quantitative differences—more chips, more software, more display, more memory—rise to "high enough 'levels of sophistication' to support a finding" of a separate class or kind of merchandise. *Smith Corona, supra* 698 F. Supp. at 248. And, the CIT has indicated that these quantitative differences become a separate class or kind when they rise to "level of sophistication" of a word processor. *Id.*

Brother Comments at 15.

Furthermore, respondents argue, the "physical distinction between PETs (typing text on paper) and PWPs (inputting text onto a storage medium) can be readily observed by the distance between the keyboard and the printer." Brother Rebuttal Comments at 13. "Obviously," respondents assert, "where the operator is typing text directly onto the paper, proximity between they (sic) keyboard and printer is important." However, when using a word processor, "where the operator is inputting text onto a storage medium, the location of the printer is not nearly so important." *Id.* at 13.

In response to Smith Corona's criticism of the Department's preliminary criterion that a PWP within the scope must consist of "a single, integrated unit," respondents argue that PWPs that have separate components, "such as those with separate printers, do not have the same 'look and feel' as the PETs that were the subject of the antidumping order. Canon Comments of September 17, 1990, (Canon Rebuttal Comments) at 5. "Furthermore, the difference in physical appearance between PETs that are comprised of a single unit and PWPs that are not, creates different consumer expectations about the products." For example, consumers expect those PETs comprised of a single unit "to be easier to transport because only one unit need be carried." *Id.* at 5. Also, respondents argue that "(a) PWP comprised of different components conveys an impression that such machines are more like PCs than PETs." *Id.* at 5.

Respondents state that those PWPs which need separate printers are sold separately from the printer. Thus, they argue, "(a) (word) processor which is not sold together with a printer as an integral unit cannot conceivably be considered within the PETs Order for neither the processor nor the printer is capable of functioning as a typewriter, *i.e.*, to print characters on a page as corresponding characters on a keyboard are pressed." Matsushita Rebuttal Comments at 9.

Similarly, concerning the "embedded keyboard" criterion, respondents argue that, contrary to Smith Corona's arguments, "this is a valid criterion under the statute, and PWPs without embedded keyboards should remain outside of the antidumping order." Canon Rebuttal Comments at 8. Respondents argue that "the PETs that were the subject of the original investigation were single-unit machines" with "* * * keyboards that were firmly embedded in the frame or chassis of the machine, and thus shared the same basic design and footprint traditionally common to typewriters." *Id.* at 6.

Respondents argue that Smith Corona's cost arguments concerning a detachable keyboard and separate printer are "fallacious." Matsushita Rebuttal Comments at 10. Contrary to Smith Corona's argument that the estimated cost "for detachable keyboard and separate printer" is less than two percent of the cost of the word processor for each of these items. Respondents argue that these figures are inaccurate and that "Smith Corona's assertion regarding the printer is for *providing for* a separate printer. It does *not* cover the cost of the separate printer itself." Matsushita Rebuttal Comments at 10, referring to Smith Corona Comments at 3, Matsushita's emphasis.

Concerning the "portability" criterion, Respondents argue that "portability should not be ultimately dispositive as to whether a PWP falls within the order's scope." Canon Rebuttal Comments at 10. This is because, "although PWPs are portable in the sense that they can be transported, it is more accurate to state that the machines are designed to be placed more or less permanently at work stations and desks." *Id.* at 10.

Referring to the Department's preliminary criterion of dedicated software for a PWP to be considered within the scope of the order, some respondents argue that "the Department has created an inappropriate and arbitrary line which cannot serve as a proper basis for a determination that personal word processors are within the scope of the existing PETs order pursuant to section 781(d)." Matsushita Comments at 38.

Recognizing that the Department meant this criterion to distinguish PWPs from personal computers (PCs), respondents argue that, in fact, PWPs share many features with computers and compete directly against them in the market place. *See* Matsushita Comments at 42–43.

At the same time, rebutting Smith Corona's argument that the "captive software" criterion should be scrapped, respondents argue that "(i)f the only thing that counts, as postulated by Smith Corona, is a 'primary use of typing text', then PCs surely belong within the antidumping duty order because 'word processing (is) the main use of home PCs.' " Brother Rebuttal Comments at 5, quoting from *HFD*, Attachment 4 of Brother Comments of September 6, 1990. Respondents argue that "this leads to the preposterous result of bringing within the PETs order computers, a product which no one would have ever dreamed of falling in the same class or merchandise as PETs in 1979, now that they have become portable." Brother Rebuttal Comments at 5.

Respondents contend that "Smith Corona's attack on validity of the 'dedicated/captive software' criteria is clearly intended to remove an impediment to excluding PCs" from the PETs order in the future. Brother Rebuttal Comments at 7.

Referring to the July 23 and July 24, 1990, ITA Memoranda to the File, containing various definitions for word processors and typewriters from different government agencies and trade associations, respondents argue that the Department did not take these definitions into account. They contend that "five of the six sources clearly distinguish between word processors and typewriters, while the sixth source, which does not even purport to provide definitions, simply describes a broad marketing category." Nakajima Comments at 26. Respondents hold that two of the definitions, both from General Services Administration (GSA), exclude machines with external memory storage "(and therefore unlimited memory)" from the typewriter category *See Id.* at 27.

Respondents argue that "(w)hile these memoranda show that there is no uniform definition for a PWP or PET, they also establish that features such as a large display, external memory, and sophisticated word processing capability distinguish a word processor from a typewriter." Nakajima Comments at 28.

Thus, respondents argue, "(w)hile the trade (associations), other government agencies (referred to in the July 23 and July 24, 1990, ITA Memoranda), and the respondents, may differ as where the line should be drawn, distinguishing one class or kind of merchandise from another, all agree that a line should be drawn between typewriters and word processors as generically different merchandise." They conclude that the Department has an obligation to draw such a line. Brother Comments of September 6, 1990, at 16–17.

Finally, respondents argue that "automatic typewriters incorporating a computer interface are outside the scope of the order." Nakajima Comments at 28. They argue that the CIT's decision on automatic PETs in *Smith Corona* "addressed only *one* type of automatic typewriter—typewriters that are automatic because they incorporate text memory—and did *not* otherwise disturb the Department's January 14, 1987 Determination that *all* portable typewriters classified as automatic are outside the scope of the order." In other words, respondents contend that those automatic typewriters with a computer interface were not included in the CIT's ruling on automatics. *Id.* at 28.

Expectations of the Ultimate Purchasers

Respondents argue that in analyzing this criterion, "(a)gain, the Department improperly compared personal word processors to automatic PETs, not merchandise subject to the original investigation, which had no memory and no ability to store or manipulate text." Matsushita Comments at 24. Thus, if the expectations of the purchasers of PWPs were compared to the expectations of purchasers of the PETs originally investigated, the "ultimate purchasers of the 'original' PETs could hardly expect any word processing from their PETs, let alone the sophisticated level of word processing capability supplied by personal word processors." *Id.* at 24.

The argument follows that the "purchaser of a personal word processor buys the machine so that he or she may create and edit text without the necessity of printing on paper," in contrast to the purchaser of the PETs originally investigated, who simply expected to type on paper. *See* Matsushita Comments at 25, Brother Comments at 18–19 and Canon Comments of September 6, 1990, at 7–9.

Respondents argue that "the difference in physical appearance between machines with embedded keyboards and those without creates different consumer expectations. Consumers can anticipate that if a machine looks like a typewriter, it works like a typewriter." Canon Rebuttal Comments at 8. In contrast, "(a) PWP without an embedded keyboard," respondents argue, "conveys the impression that the machine is more closely related to a PC and is therefore capable of operating like a PC."

Respondents argue that, moreover, "personal word processors are aimed at a separate constituency than that for PETs." Matsushita Comments at 26. They state that, according to the original investigation, the principal users of PETs are "students and housewives." *See* Nakajima Comments at 13, quoting from 1980 ITC determination. They argue that PWPs "were developed for customers concerned about the complexity of personal computer hardware and software and the cost of this equipment." Matsushita Comments of September 6, 1990, at 26. These users "are quite price sensitive" and "would not choose to spend two, three, or four times as much in order to buy a PWP rather than a PET." Nakajima Comments at 14.

Respondents argue that Smith Corona's survey supporting its arguments of ultimate use and expectations of the ultimate consumers arguments, the "Parry affidavit," only serves to undercut these. "The Parry affidavit shows that these consumers are not PWP purchasers but are more likely to buy typewriters with, at most, limited word processing capability." Nakajima Comments of at 13. Respondents quote the Parry affidavit:

> The sales people typically indicated that customers on a tight budget (most often students) mainly look at the price of the machines. These customers look for functions such as spell checking, portability, reliability and *some* memory, to the extent they can afford these features.

Parry affidavit, quoted from Nakajima Comments at 14, Nakajima's emphasis.

Respondents further argue that there are in fact "separate markets for personal word processors and PETs and distinct expectations on the part of the respective users." Matsushita Comments of September 6, 1990, at 28. Respondents assert that "(t)he student or limited home use consumer stands in sharp contrast to that person who requires sophisticated word processing capabilities." Nakajima Comments at 14.

Respondents argue that "consumers have different expectations for PWPs precisely because it is easier to produce documents with PWPs than with PETs." Consumers are therefore "willing to pay more for PWPs because they expect such a machine to perform tasks that can be done only with great difficulty on PETs or that cannot be done at all." Canon Comments of September 6, 1990, at 9–10.

In other words, respondents argue that the unique capabilities of PWPs, such as unlimited storage, "shows that the PWP is something other than a typewriter, because to pay at least twice as much for a capability that is not a primary function is counterintuitive. Such persons are not the traditional cost-conscious PET purchaser." Nakajima Comments at 15. For example, "the minimum suggested retail price on Matsushita's least expensive personal word processor (the KX–W900) is $469.95, while present-day basic PETs are available for under $100." Matsushita Comments at 30. *See also* Brother Comments of September 6, 1990, at 19–20.

In addition, respondents argue that the Department's preliminary position that consumer expectations are the same for PWPs and PETs "ignores the fact that as technology evolves, new products are introduced, and consumers' expectations with regard to the new products must be compared with their expectations concerning the products subject to the original investigation." Nakajima Comments at 21–22.

Respondents further argue that it does not follow that "if consumers were really willing to pay for enhanced word processing functions, they would purchase a regular PC." They contend that "the evidence indicates that PCs continue to be significantly more costly than PWPs." Canon Comments at 10 (Canon cites a survey Commissioned by Smith Corona in PR Newswire, January 9, 1990). Respondents also contend that "a separate market exists for consumers who want a machine that will perform word processing functions like a PC, but for one reason or another feel threatened by the "complexity" of a PC, or intend a machine solely for word processing." *Id.* at 10.

Ultimate Use

Respondents argue that the ultimate use of a PWP is not the same as that of a PET, contrary to the Department's preliminary finding. They contend that the Department failed to provide any data to support its finding that the ultimate use of a PWP is "to type text." Respondents charge that "(t)he only

authority the Department cites for its claim that 'word processing features *merely* provide a technological advancement to typing' is Smith Corona's Rebuttal Comments," which provide no supporting evidence. *See* Nakajima Comments at 9–10, quoting from Preliminary Ruling at 32115. *See also* Matsushita Comments at 32.

Rather, respondents argue, "(t)he primary function of and ultimate use of a personal word processor is to input, store and manipulate information, *i.e.*, to process text, not simply to type text." Matsushita Comments of September 6, 1990, at 32. *See also* Brother Comments at 4, and Canon Comments at 4–6.

Respondents argue that by categorizing word processing "as a mere enhancement over typing," the Department "ignores the terms of the original order and the common understanding of the terms 'word processing' and 'typing.' " *See* Nakajima Comments at 10.

Respondents contend that the Department's position that the ultimate use of PWPs is to type text is difficult to reconcile with the exclusion of manual and office typewriters from the original order on PETs. "Yet, manual typewriters, office typewriters and (even) PCs possess the capability 'to type text.' Thus, if 'to type text' is the criteria to be employed to determine whether a particular machine properly comes within the scope of the class or kind of merchandise subject to the order, these three separate classes or kinds of merchandise, specifically excluded by Smith Corona and the ITA, would now be included within 'such class or kind.' " Brother Comments at 4. *See also* Nakajima Comments at 9.

Respondents argue that a PET "is distinguished from a portable manual typewriter chiefly by the greater ease of typing, along with the associated physical characteristic (the electric motor) that underlies that functional difference;" as well as "the difference in cost." Under this reasoning, respondents argue, "these differences would have to be dismissed as 'not meaningful' or not 'significant.' " But, "the original order on PETs recognizes that ease of use * * * and associated physical characteristics do in fact establish a different class of merchandise." Nakajima Comments at 11, 12. In other words, "the time saving and work reduction capabilities of PWPs * * * is the very reason why automatic typewriters and word processors were originally created, why they have been traditionally differentiated from typewriters, and why customers will always pay a price premium, even today, for them." Brother Comments at 27, footnote omitted.

Respondents argue that the ultimate use of PWPs is different, because word processing is dependent on the visual display and extensive text memory, as well as "sophisticated word processing functions such as search and replace, block delete, and block move * * *" *See* Nakajima Comments at 12. Rather than typing text directly onto paper, respondents argue that "PWPs electronically transfer text onto storage medium for replay and printout at a later time." Brother Comments at 4, footnote omitted.

In addition, respondents argue that "(t)he very existence of a 'typewriter use mode' on many PWPs (Preliminary Ruling, at 32109) compels the conclusion that the primary function of PWPs is something other than typing as performed on a PET. The typewriter mode is an additional function to the primary word processing mode." Nakajima Comments at 12.

Respondents point to surveys that they argue demonstrate the ultimate use of PWPs is different from that of PETs. Brother conducted a survey of Brother word processor owners which "indicates that PWPs are predominantly used for word processing, rather than typing," Brother Comments at 21. *See also* Canon Comments at 5, referring to Camarro Research survey cited in Nakajima's Comments of June 26, 1990, at 15.

Respondents contend that even Smith Corona recognized the difference in the ultimate use of PET as opposed to a word processor, but has since "flip flopped." They quote Smith Corona in September 9, 1986:

> In terms of use, word processors, which incorporate half-page video display, which are capable of block, which can write to external permanent storage media; and which utilize higher speed printers are clearly intended and actually used for more repetitive and complex tasks than PETs. (* * *) (T)he PET will likely continue to be distinguished by its intermittent largely non-repetitive use. Word processors, on the other hand, will be identifiable by the capabilities of manipulation and retrieval of unlimited amounts of text stored permanently on external magnetic storage media. (* * *) This use of a word processor clearly distinguishes it from a portable typewriter.

Matsushita Comments of September 6, 1990, at 36, quoting from Smith Corona Posthearing Brief of September 9, 1986 at 21–27.

Respondents further argue that, "(w)hile PWPs may replace either PETs or PC-based word processing systems, this does not make them of the same class or kind as the product replaced." Nakajima Comments of September 6, 1990, at 23. Respondents argue that, because "a PWP and a PC operate precisely in the same manner, i.e., electronically input text onto a storage medium(,) (a) PWP is a PC and not a PET." Brother Comments of September 6, 1990, at 5–6.

To bolster this argument, respondents argue that "Smith Corona's own survey shows that 77 percent of PC owners use their PCs 'mainly for word processing and spread sheets.' " Brother Comments at 22–23, referring to Brother's June 25, 1990, submission at 26. Thus, they reason, the ultimate use of PWPs is more like that of PCs than PETs.

In reply to Smith Corona's reference to a letter, attached as Exhibit 4 to its Comments of September 6, 1990, respondents argue that this letter actually supports their position that "while the typing mode (of a PWP) is useful for incidental tasks * * * (t)he word processing functions are primary." Matsushita Comments of September 17, 1990, (Matsushita Rebuttal Comments) at 4, referring to letter attached as Exhibit 4 to Smith Corona's Comments of September 6, 1990. Respondents further argue that "(n)one of these (word processing) functions can be performed by PETs of the type investigated and subject to the PETs Order. The typing mode retained within a word processor is not the primary use of the machine, and word processing functions are not mere enhancements to typing functions * * *" Matsushita Rebuttal Comments at 4. *See also* Nakajima Reply Comments at 6–8.

Respondents argue that Smith Corona "distorts the plain meaning of the term 'ultimate use' * * *" when it argues that whether the PWP is in typewriter mode or word processing mode, "the machines ultimately are used to print letters on paper." Nakajima Reply Comments of September 17, 1990, at 4, quoting from Smith Corona Comments of September 6, 1990, at 12. Respondents contend that ultimate use "refers to the manner of use made of the merchandise by the ultimate consumer, not merely the results of such use." Nakajima Reply Comments at 4.

However, if typing text is the ultimate use of a PWP, then respondents argue that "use is not dispositive." Otherwise, they argue, "the current antidumping duty order would cover office typewriters, manual typewriters, PCs and perhaps other machines." Brother Rebuttal Comments at 9.

Channels of Trade

Respondents concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita

Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9.

Advertisement and Display

All respondents except one concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9.

Sears argues that "Smith Corona's own advertising draws a distinction between PWPs and typewriters." Sears attached examples of this advertising to its submissions. Sears Comments of September 6, 1990, at 11.

Exclusionary Criteria

Respondents argue that they have demonstrated that, "in terms of physical characteristics, purchaser expectations and ultimate use, the primary function of a personal word processor is text manipulation and all that it entails." Furthermore, "(b)oth a comparison of cost and price of the merchandise in issue further corroborate the fact that the function of a personal word processor is far different from that of a PET." Matsushita Comments of September 6, 1990, at 44.

Respondents argue that the Department completely avoided the issue of the cost difference between PETs and PWPs in its preliminary decision. *See* Nakajima Comments of September 6, 1990, at 15–16. They argue that the "least expensive PWP that Smith Corona claims to be within the scope of the antidumping order is nearly twice (1.84) the list price of the most expensive PET. The price of the most expensive PWP is more than three (3.11) times the price of the most expensive PET." *Id.* at 16, referring to Exhibit 4 of Smith Corona's Ruling Request of May 15, 1990.

Respondents argue that the additional cost of the word processing function (mainly the display and external disk drive) constitutes more than a substantial proportion of the cost of production of a PWP. They also assert that the cost of display and external of a PWP is greater than the entire cost of a basic PET and provide proprietary cost data to back up both claims. *See* Matsushita Comments of June 25, 1990, at 20, Matsushita Comments of September 6, 1990, at 45, Nakajima Comments of June 26, 1990, at 16, and Brother Comments of June 25, 1990, at 27–28.

Respondents argue that the Department incorrectly equates PWPs and automatic PETs with limited word processing features. They argue that automatic typewriters have only limited text memory and display capabilities, and do "not have any significant ability to perform sophisticated word processing." Nakajima Comments of September 6, 1990, at 22. Respondents argue that the CIT's decision on automatic typewriters referred to by the Department as justification for including PWPs, *see* Preliminary Ruling at 32114–5, "is misplaced in that the CIT decision did not concern automatic typewriters with significant word processing capabilities." Nakajima Comments at 22. Furthermore, "(t)he CIT's determination that one or two line text display and small internal memory does not place an automatic PET outside the scope of the order was not a substantive finding that large display and external memory are 'insubstantial' differences." *Id.* at 23.

Smith Corona's Rebuttal Arguments

Later-Developed Merchandise

Smith Corona argues that all the sample PWP models in question in the preliminary determination should be "treated as later-developed machines within the class or kind. The physical characteristics (such as detachable keyboard) identified as the basis for distinguishing various PWPs from portable typewriters are not dispositive of the primary use of the machines." Smith Corona Rebuttal Comments of September 17, 1990, at 3.

In answer to respondents' comments that the Department must compare the later-developed PWPs to the PETs originally investigated, Smith Corona argues that "there has been very little fundamental change in the essential characteristics and primary use of the machines since the date of the original order." *Id.* at 11–12. Comparing text memory typewriters with the older less sophisticated PETs, Smith Corona quotes the Court in *Smith Corona* v. *United States:*

> While such components constitute physical differences, they do not add up to a different class or kind of merchandise. Any comparison of features of a manufacturer's older or obsolete machines with those of its most advanced should show differences, but such a phenomenon is not necessarily conclusive of substantially distinct general physical characteristics.

Id. at 13, quoting from *Smith Corona* v. *United States,* 698 F. Supp. at 246.

Smith Corona argues that in reference to PWPs: "So, too, here, the addition of features such as larger memory and a larger video display do not substantially distinguish the use of PWP from the class or kind of merchandise originally subject to investigation in 1980." *Id.* at 13.

Physical Characteristics

Smith Corona argues that the Department's preliminary "captive software" criterion is inappropriate as "the type of software used in these machines does not change the primary use of the machine. Nor would flexible software capability change the general physical characteristics, the expectations of the ultimate purchasers, channels of trade, or advertising and display, so long as the machines remains a 'word processor' as distinct from a personal computer." *Id.* at 21. Smith Corona contends that it should make no difference "(if) one software program is used instead of another, or if the program can be changed through the use of operating system." *Id.* at 21.

Smith Corona argues that this criterion is not necessary to distinguish PWPs from PCs, because "the factual differences between personal word processors and computers are large. A personal computer is a platform upon which numerous functions and programs can be added and varied according to the desires and objectives of the user." *Id.* at 21. "Indeed," Smith Corona argues, "the PC industry, as illustrated by the identification of lap top PCs in Exhibit 3, does not consider any of the lap-top PWPs to be personal computers. PWPs are instead considered to be advanced typewriters." *Id.* at 22, referring to Exhibits 3 and 4.

Smith Corona adds that while a "PWP may incidently provide a spreadsheet, just as in 1985 the EP–20 provided a calculating function as an incidental feature on a portable typewriter * * * the PWP is marketed, advertised, priced, displayed, intended to be used, and used for word processing. It is not sold as a platform for software, including data processing, word processing, data management, graphics, games, telecommunications, and so forth." Thus, Smith Corona concludes, "whether a PWP is offered with captive word processing software, or with some other brand word processing software 'out of the box,' it should not be considered another category of merchandise." *Id.* at 22.

Smith Corona argues that "(t)he ability of a machine to connect to a computer for the purpose of providing printing functions does not change any of the *Diversified Products* criteria * * *" Further, Smith Corona argues that respondents' "effort to exclude typewriters having a computer interface port is inconsistent with (the CIT's) holding." *Id.* at 20.

Expectations of the Ultimate Purchasers

In response to Matsushita (Matsushita Comments of September 6, 1990, at 26), Smith Corona argues that there is not a "separate constituency" of PWP purchasers distinct from PET purchasers, but that "the evidence before the agency establishes without doubt that the same types of consumers who purchased typewriters also purchase personal word processors." Smith Corona Rebuttal Comments at 13. Smith Corona contends that "(t)his has been shown in the affidavit of Joellyn M. Parry," wherein (i)nterviews with merchants and store personnel indicated that personal word processors were purchased by nonbusiness consumers, including housewives and students, small business persons and those operating home offices." *Id.* at 13–14, referring to Parry Affidavit attached to Smith Corona's Request for Scope Ruling dated May 15, 1990, at Exhibit 4.

Smith Corona argues that the "(v)arious user surveys conducted by or for Matsushita and Brother have not directly controverted the findings of the informal survey conducted in the stores of metropolitan Washington by Joellyn Parry and Susan McKittrick." *Id.* at 14. "Matsushita's survey * * * purports to distinguish portable electric typewriters and PWPs by distinguishing categories of word processing as finely as it elsewhere attempts to distinguish physical features." However, "the distinctions alleged by Matsushita are unconvincing." *Id.* at 14–15.

Smith Corona argues that when Nakajima argues that a price comparison should be conducted between "the later-developed product and that original product at the time of the time of the antidumping duty order," it then "uses prices currently charged for electronic typewriters and PWPs." However, Smith Corona argues, "(t)he relevant comparison should be between prices currently charged for the later-developed merchandise and prices charged for the original merchandise subject to the antidumping order." *Id.* at 15, referring to Nakajima Comments of September 6, 1990, at 3 and 15.

Smith Corona asserts that "(i)f inflation between 1979 and the present is taken into account, the electro-mechanical machines sold in 1979 would be selling for much higher real prices than the current line of personal word processors." *Id.* at 16. Smith Corona argues that "(t)he variety of different word processors were selling at a range of prices from $200 to $699" at the time of its Request for Scope Ruling of May 15, 1990. *Id.* at 16. "These data are relevant as they establish that PWP (sic) have filled the market niche formerly maintained by top-of-the-line (and lower) portable electric typewriters." *Id.* at 16.

Ultimate Use

Smith Corona argues that the "ITA correctly identified the primary use of the personal word processor as the same as the typewriter, the typing of words upon paper." Smith Corona contends that "(r)espondents' analyses are flawed to the extent that they ignore the obvious: text is not corrected, edited, and stored for its own sake; these functions are ancillary to the purpose of PWPs of producing letters, term papers, reports, and other documents traditionally produced by portable typewriters." *Id.* at 7.

In reply to respondents' contention that the ultimate use of PWPs is word processing, Smith Corona argues that "these (word processing) functions are not performed for their own sake. There is no evidence that textual documents are created on PWPs solely to be manipulated within the memory of the machine and read from its screen * * *." *Id.* at 10. Smith Corona asserts, furthermore, that "this argument * * * has already been rejected. Machines that move blocks of copy, perform the so-called word-processing type functions, use visual display in connection with text-memory machines are already within the scope of the order." *Id.* at 10, referring to *Smith Corona*, 698 F. Supp. at 254.

"In short," Smith Corona argues, "the fact that PWP (sic) are word processors does not distinguish their primary use from typewriters. Given that the machines under consideration are also portable, respondents' focus on word processing does not differentiate PWPs from the scope of the antidumping duty order for purposes of 19 U.S.C. § 1677j(d)." *Id.* at 11.

Analysis

Later-Developed Merchandise

We agree with respondents that the word processors in existence at the time of the original investigation were not covered by the investigation. *See* Brother Comments of September 6, 1990, at 2. However, we note that such word processors were not portable. Similar to the CIT's finding that "it was the non-portability of those earlier automatic machines, which were 'office' typewriters, that meant their exclusion from the order," *Smith Corona Corporation* v. *United States*, 698 F. Supp. at 247–248 (hereafter, *Smith Corona*), we find that PWPs were not excluded from the order. Therefore, we reaffirm our preliminary determination that consideration of PWPs under the later-developed merchandise criteria is appropriate. *See Preliminary* at 32113–32114.

Respondents argue that the Department's failure to define the term "PWP" in the preliminary decision "acts to disguise conclusory statements purporting to be analysis." Nakajima Comments of September 6, 1990 at 7. The submissions of the parties and the research independently conducted by the Department indicate that there is no generally accepted industry definition of PWP. Some manufacturers use the term "portable word processors," some "personal word processors," and some "word processing typewriters." As stated in the "SUMMARY," we use PWP interchangeably with "personal word processor." However, the definition of this term is precisely the issue this scope ruling will address.

We reject respondents assertion that, because Smith Corona identifies electronic typewriters and personal word processors as separate product lines, the two are to be considered different classes of merchandise. *See* Brother Comments at 1, and Nakajima Comments at 5–6. To accept such an argument is to ignore the criteria that the statute directs the Department to consider in determining whether the later-developed merchandise is within the scope of the outstanding order. *See* 19 U.S.C. 1677j(d).

We agree with respondents, and reaffirm our preliminary determination, that for purposes of determining whether the "later-developed merchandise" is within the scope of an order, the general physical characteristics, the expectations of the ultimate purchasers, the ultimate use, the channels of trade, and the manner of advertisement and display of the later-developed merchandise should be compared with those of the merchandise subject to the original investigation. *See Preliminary* at 32113–32114. The Petitioner did not contest this point.

Respondents argue, however, that the Department failed to carry out its analysis in this manner. They contend that the Department compared PWPs to automatic PETs, the most recent generation of PETs found to be within the scope of the order. They argue that this has resulted in the Department finding a product within the scope of the order "which was not an advancement of the original product subject to the order but an advancement of a product which was only 'recently found to be within the scope of the order.'" Nakajima Comments at 3, 4. *See also*

Matsushita Comments of September 6, 1990 at 8–9, 17–18. While we agree with respondents that the later-developed product should be compared with the earlier merchandise, at the same time, the Department must take cognizance of judicial decisions interpreting the scope of the order at issue. *See Smith Corona.* Therefore, for purposes of this final determination, we continue, where appropriate, to make comparisons between automatic PETs and the later-developed merchandise subject to this scope inquiry.

Finally, respondents also contend that the preliminary decision included within the scope "merchandise embodying new and significant technological innovation * * *" Matsushita Comments at 9. We agree that PWPs incorporate a significant technological advancement to the earlier merchandise. This, however, is not dispositive of class or kind of merchandise. Further, "later-developed merchandise" may incorporate "a significant technological development or a significant alteration of the merchandise involving commercially significant changes in the characteristics and uses of the product." *See* H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2039 (daily ed., April 20, 1988). This, by itself, however, does not dictate that such merchandise be found outside the scope of an existing order. Rather, Congress recognized that a significant injury issue can arise with regard to such products. As noted in the Conference agreement concerning ITC advice:

> * * * a later developed product incorporating a new technology that provides additional capability, speed, or functions would be covered by the order as long as it has the same basic characteristics and uses.

Id. at H2039.

In the preliminary ruling, we determined that PWPs represent a significant technological advance to, and significant alteration of the portable electric typewriters subject to the original investigations by the Department and the ITC. Therefore, we notified the ITC of our determination. On August 10, 1990, the ITC advised us in writing that it "does not believe that consultations between Commerce and the Commission are necessary."

Physical Characteristics

In the preliminary determination, we noted the absence of a consistent, objective definition of a portable electric typewriter, particularly when quantifying various physical features. Therefore, we identified the primary physical characteristics of PETs. *See Preliminary* at 32114.

For purposes of this final determination, we note that, in order to make a comparison of the physical characteristics of the portable electric typewriters subject to the original investigation with those of the later-developed merchandise, we must first identify the general physical characteristics of the "earlier merchandise."

The petition described the imported merchandise as: "(a)ll portable electric typewriters, whether utilizing typebars or single elements, and whether fully electric with powered carriage return or with manual carriage return, and whether with conventional ribbons or with cartridge or cassette ribbons." Smith Corona Petition for the Initiation of an Antidumping Proceeding on Portable Electric Typewriters from Japan, April 9, 1979, at 2.

The ITC noted that "(a) typewriter is a machine with a manually operated keyboard which produces characters like those of a letterpress as a substitute for handwriting * * * The typewriters which have been sold in the United States at less than fair value and which are the subject of this investigation are electrically operated portable units (customarily sold at retail with a carrying case)." USITC Final Determination of Material Injury, Pub. 1062, May 1980 at A–2, 3.

Furthermore, according to the Petitioner, "(t)he PET, as defined since 1979, is a single unit incorporating an electrically actuated keyboard and a printing mechanism in a portable package. *See* ITC Final Determination at A–2–3; Hearing Exhibit 3." Smith Corona Post Hearing Brief, September 9, 1986, at 16.

As stated in the preliminary, machines that are not "comprised of a single integrated unit" or do not "have a keyboard embedded in the chassis or frame" do not have the same general physical characteristics as PETs subject to the original investigation. *See Preliminary* at 32114. In upholding the determination that automatic typewriters were of the same class or kind of merchandise subject to the order, the Court of Appeals for the Federal Circuit (CAFC) stated that, with regard to the general physical characteristics, "(i)t was undisputed that the imported typewriters (automatics) generally looked like typewriters." *Smith Corona Corp.* v. *United States,* Slip Op. 89–1387 (September 26, 1990) at 8 ("CAFC Decision"). Later-developed merchandise that is comprised of two or more pieces, or that does not have a keyboard embedded in the chassis or frame cannot be considered to "generally look like typewriters." Therefore, where a PWP is comprised of more than one unit, the differences in general physical characteristics between the later-developed merchandise and the PETs subject to the original investigation are significant enough to constitute different classes or kinds of merchandise.

We disagree with Smith Corona's contention that a detachable keyboard and a separate printer are merely "cosmetic modifications." As noted above, one of the essential physical characteristics of a portable electric typewriter is that it is a single unit incorporating an electrically actuated keyboard and a printing mechanism. A machine such as the Panasonic KX–WL50, that has no printing mechanism, cannot be considered a self-contained unit for printing letters on paper. Rather, the absence of a built-in printer is a significant difference in physical characteristics between the later-developed merchandise and the portable electric typewriters subject to the original investigation. Machines that do not have a built-in printer are not of the same class or kind of merchandise as PETs.

We note that neither Smith Corona nor the respondents directly challenged the Department's criterion that a primary physical characteristic of merchandise of the same class or kind as a PET must be the presence of a platen (roller) to accommodate paper. *See Preliminary* at 32114.

We reject Smith Corona's argument that despite the absence of a handle on Panasonic's KX–W1510, the machine should be considered portable because its weight, 21.56 pounds, does not exceed the range historically characteristic of a portable typewriter. In the Department's July 6, 1990, scope ruling excluding certain Panasonic typewriters from the scope of the PETs order (involving office typewriters that weigh less than the maximum guideline established by the Department in the original investigation in 1980, and specified in the relevant tariff classification), the Department agreed with respondent's contention that "the 26 pound upper limit is not (sic) longer 'contemporary,' but rather is 'antiquated'." ITA Decision Memorandum of July 6, 1990, at 6. Further, in considering that "no carrying cases or handles are included or offered for any of the models in question," the Department restated that "(i)t is our opinion that the presence of a carrying case is a significant criterion in determining if a typewriter is within the

scope of the order, since it is unlikely that individuals wishing to purchase a PET would do so if a carrying case was not available even as an option." *Id.* at 7–8, quoting from ITA Letter of September 28, 1981, from Leonard Shambon to James Taylor, Jr. Therefore, we reaffirm our preliminary determination that to be of the same class or kind as a PET, the later-developed merchandise must have a handle and/or carrying case, or similar mechanism to facilitate portability.

We note that neither the petitioner nor the respondents challenged the Department's criterion requiring that a machine be electric, regardless of source of power, in order to be of the same class or kind of merchandise as a PET.

Smith Corona argues that the Department's "dedicated software" criterion is "irrelevant to (the machine's) primary use of typing text." Smith Corona Comments at 8. Smith Corona contends that the "proprietor of the software * * * is immaterial." *Id.* at 10. Some respondents also oppose this criterion, arguing that it creates "an inappropriate and arbitrary line * * *" Matsushita Comments of September 6, 1990, at 38. At the same time, other respondents argue that "Smith Corona's attack on validity of the 'dedicated/captive software' criteria is clearly intended to remove an impediment to excluding PCs" from the PETs order in the future. Brother Rebuttal Comments at 7. We disagree with Smith Corona and those respondents who criticize this criterion. Rather, we continue to agree with GSA that a machine that has an operating system which allows it to use software other than its own dedicated or captive software is not a typewriter. *See* July 23, 1990 Memorandum to File. The requirement that a PWP only operate on its own dedicated or captive software is a valid criterion and serves to differentiate between PWPs and PCs. *See* Preliminary at 32114.

Having reaffirmed that the criteria set out in the preliminary determination are, in fact, essential physical characteristics of the class or kind of merchandise subject to the order, we next considered respondents' assertions that expanded video displays and external memory storage devices constitute sufficient differences in physical characteristics to be dispositive of a distinct class or kind of merchandise.

Respondents argue that a PWP has "more chips and software, between 3 and 20 times as much display, and an infinite amount of storage capacity" as compared to an automatic PET. Brother Comments at 14–15. Respondents further argue that an external disk drive is a significant physical distinction of PWPs when compared with PETs. *See* Nakajima Comments of September 6, 1990, at 20 and Canon Comments of September 6, 1990, at 11. We do not agree with respondents' arguments. We find that the essential physical characteristics of PETs (as defined in the preliminary determination and reaffirmed above) are, in fact, the predominant physical characteristics.

In rejecting the respondents' assertions, we considered that, in *Smith Corona,* the CIT concluded (and the CAFC upheld) that, although there were differences in the general physical characteristics of PETs with text memory (*i.e.,* the existence of limited word processing features) and PETs without memory, those differences were not sufficient enough to alter the primary function of automatic PETs. Furthermore, the CIT stated that "[p]ortability, an electrically-activated keyboard, and an ability to imprint characters like those of a letterpress are common characteristics of PETs * * * When those characteristics are combined with 'pure typewriter mode operation' in a unit designed for easy manipulation of a variety of paper types, they amount to PETs of the class or kind subject to the original order." *Id.* at 248 (citation and footnotes omitted).

Additionally, we are cognizant of the CIT's ruling in *Funai Electric Company, Ltd.* v. *United States* 713 F. Supp. at 420 (CIT 1989), (which affirmed the Department's ruling that a combination television and video cassette recorder was within the scope of the antidumping duty order on television receivers, monochrome and color, from Japan). Although noting that the combination model in question "* * * contains a video cassette recorder, or 'VCR,' which can record television programs from the aforesaid [television broadcast] signals on the medium of video tape, and play back those tapes or * * * commercially recorded (tapes) * * *," the CIT found that "(i)n physical terms the television portion of the importation is prominent." *Id.* at 421–422. Similarly, the incorporation of features such as a display screen and expanded memory on a PET do not change the functions of the merchandise so significantly as to warrant exclusion from the order. The typing function is still prominent.

Finally, respondents argue that typewriters incorporating a computer interface are outside the scope of the order. They argue that the CIT's decision on automatic PETs in *Smith Corona* only found text memory typewriters within the scope of the order, but not typewriters considered automatic because of buffer memory necessary for the machine to operate as a printer using a computer interface. In other words, respondents contend that those automatic typewriters with a computer interface were not included in the CIT's ruling on automatics. Nakajima Comments of September 6, 1990, at 28. Petitioner rebuts, arguing that the ability to interface with a computer for printing does not change any of the Diversified Products criteria. Smith Corona further argues that such an exclusion of automatics with computer interface capability would be inconsistent with the CIT's ruling. *See* Smith Corona Rebuttal Comments at 20. We agree with petitioner that the CIT did not exclude automatic PETs with a computer interface from its decision. Further, because the presence of a computer interface does not change the underlying machine, we do not agree with respondents' assertion that typewriters incorporating a computer interface are outside the scope of the order.

In summary, we reaffirm the preliminary determination, that PWPs that have the same physical characteristics as PETs, are presumptively of the same class or kind of merchandise as PETs. These physical characteristics include: Ease of portability, as determined by the existence of a handle and/or carrying case, or similar mechanism to facilitate carrying; existence of an electric power source; the existence of a platen (roller) to accommodate paper or other medium (such as plastic sheets for use in overhead projectors); the existence of a built-in-printer; the existence of a keyboard embedded in the chassis or frame of the machine; and the fact that the machine is comprised of a single integrated unit. Also, the inability to use other software than that dedicated software already programmed into or designed for that brand of machine, is a determinative characteristic of a PET or PWP of the same class or kind as a PET.

Expectations of the Ultimate Purchasers

In our preliminary determination, we found that the word processing capabilities of PWPs "merely offer consumer(s) features in addition to the primary typing function" and that "(a)lthough more tedious on previous generations of typewriters, many users nevertheless composed on the keyboard and wrote long documents, even without the text-editing capabilities available on today's machines." *Preliminary* at 32114, 33115.

Respondents argue that the "ultimate purchasers of the 'original' PETs could hardly expect any word processing from their PETs, let alone the sophisticated

level of word processing capability supplied by personal word processors," and therefore, the expectations of the ultimate purchasers of PWPs are not the same as those of PETs. Matsushita Comments of September 6, 1990 at 24. Both Smith Corona and the respondents have submitted information purporting to demonstrate consumers' motives in purchasing PWPs, along with pricing information. Respondents argue that if consumers did not have distinct expectations of PWPs, they would not be willing to pay the price premium over the cost of a basic PET. *See* Nakajima Comments of June 26, 1990, at 18 and Canon Comments of September 6, 1990, at 9–10. Smith Corona, on the other hand, argues that the higher priced PWPs "have filled the market niche formerly maintained by top-of-the-line (and lower) portable electric typewriters." Smith Corona Request for Scope Ruling of May 15, 1990, at 16. Much of this "evidence," however, including the pricing information, is conflicting.

We have determined that expanded display screens and external memory storage devices are not significant enough distinguishing physical characteristics to warrant exclusion from the PETs order. We find that purchasers of PWPs are seeking a portable electric typewriter, with the word processing capabilities representing attractive supplementary features. We agree that the ultimate purchasers did not expect the "earlier merchandise" to possess word processing capabilities. We do not, however, agree that the addition of word processing features creates differing customer expectations sufficient to dictate a different class or kind of merchandise.

In addition, we agree that customers willing to pay a price premium for a PWP are interested in the additional features offered on many PWPs. Consumers' willingness to pay a premium for additional features is evident across a variety of product lines, such as automobiles and stereos. We do not, however, consider this willingness as dispositive of completely differing expectations. Rather, while word processing capabilities may facilitate the task, we find that customers continue to expect a self-contained, portable machine dedicated to producing on paper printed letters and other characters as a substitute for handwritten ones, through manual use of an electrically-actuated keyboard. See ITC Final Determination at A–2, 3. Therefore, we reaffirm our preliminary determination, that the ultimate purchasers have the same expectations of PWPs as they do of PETs.

Ultimate Use

Respondents argue that the preliminary determination that the ultimate use of PWPs is to type text is difficult to reconcile with the exclusion of manual and office typewriters from the original order on PETs, because "manual typewriters, office typewriters and (even) PCs possess the capability 'to type text.' " Brother Comments of September 6, 1990 at 4. They argue that such logic would lead to including office typewriters and PCs within the scope of the order. However, what the respondents fail to recognize is that ultimate use is but one of several criteria which, when considered with physical characteristics and the other criteria set forth in 19 U.S.C. 1677j(d), determine whether later-developed merchandise is in the scope of the outstanding antidumping order. Accordingly, the ultimate use of office typewriters may in fact be the same as that of PETs—to type text—however, this is not the only consideration. Among other distinctions, office typewriters are not portable. Therefore, we see no contradiction in previous Department findings that office typewriters are not in the scope of the order and in finding that the ultimate use of PETs and PWPs is the same.

Channels of Trade

The preliminary determination said that the channels of trade for PWPs and PETs are the same, but that channels of trade are not dispositive in this case, "because the usual channels of trade for PETs (mass merchandisers, consumer electronics stores, etc.) are the same for countless other products as well, including PCs." *Preliminary* at 32115. Smith Corona argues that the fact that other products are sold through these same channels of trade is "irrelevant," because "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." Smith Corona at 16, 17. Smith Corona argues that the fact that other products are sold through the same channels "hardly affects the obvious fact that word processors have displaced the top-of-the-line portable electric typewriters on the shelves and in the customer's perception at the top of the typewriter line." *Id.* at 17–18.

Respondents concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9. As stated in the preliminary determination, the channels of trade for PETs and PWPs are the same for countless other products, including PCs. The Department reaffirms its preliminary determination that the channels of trade in this inquiry are not dispositive. *See Preliminary* at 32115.

Advertisement and Display

Smith Corona agrees with the Department that advertising and display for PETs and PWPs "are virtually the same." However, Smith Corona argues, "it is absurd to imply that (because) portable word processors are advertised with and marketed in the same channels with all kinds of other products * * * that advertising and marketing are unimportant." Smith Corona Comments at 16. Smith Corona contends that "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "Whether other products are sold through these channels is irrelevant." *Id.* at 17.

All respondents except one concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9. Sears, the only dissenter, argues that "Smith Corona's own advertising draws a distinction between PWPs and typewriters." Sears Comments of September 6, 1990, at 11.

As with channels of trade, the Department reaffirms its preliminary determination that advertising and display is not a dispositive criterion in this case. In this case, the advertisement and display provide no useful gauge whatsoever in determining class or kind, because, along with PWPs and PETs, numerous other consumer items are sold in the very same channels of trade. *See Preliminary* at 32115.

Exclusionary Criteria

Respondents argue that the word processing function of PWPs "constitutes the primary use of the products" and that the cost of the word processing function "constitute(s) more than a significant proportion of the total cost of production of the products." *See* Matsushita Comments of September 6, 1990, at 45; Matsushita Comments of June 25, 1990, at 20; Nakajima Comments of June 26, 1990 at 16; and Brother Comments of June 25, 1990 at 27–28. However, as stated in the Preliminary, "the Department is not persuaded that the addition of a display, external

memory and/or word processing capabilities results in [a] determination that PWPs are not the same class or kind of merchandise as PETs." *Preliminary* at 32115. Therefore, it is not necessary to perform an analysis using this criterion.

Conclusion

For the foregoing reasons, the Department reaffirms its preliminary scope ruling, finding that certain PWPs have the same physical characteristics of PETs. They engender the same expectations of the ultimate purchasers as PETs and they have the same ultimate use as PETs. Thus, those PWPs which meet all of the following seven physical criteria are presumptively within the scope of the antidumping duty order on PETs from Japan:

To be of the same class or kind as a PET, a typewriter must:

(1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;

(2) Be electric, regardless of source of power;

(3) Be comprised of a single, integrated unit (*e.g.*, not in two or more pieces);

(4) Have a keyboard embedded in the chassis or frame of the machine;

(5) Have a built-in printer;

(6) Have a platen (roller) to accommodate paper;

(7) Only accommodate its own dedicated or captive software;

This scope ruling is in accordance with section 781(d) of the Tariff Act (19 U.S.C. 1677j(d)).

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix

Interested parties requested model-specific scope rulings on the following models:

Canon StarWriter 80 and Canon StarWriter 20.

These two models are not within the scope of the PETs order, because their keyboards are not embedded in the chassis or frame.

We also affirm our decision concerning the inclusion or exclusion of models listed in the preliminary determination, as shown below. *See Preliminary* at Appendix.

Models not Meeting the Criteria and Therefore, Outside the Class or Kind

Panasonic KX-WL50—no built-in printer
Panasonic KX-W1500—keyboard not embedded in the chassis or frame of the machine
Panasonic KX-W1510—not easily portable
Panasonic KX-W1550—not comprised of a single, integrated unit
Brother WP-75—keyboard not embedded in the chassis or frame of the machine
Brother WP-80—keyboard not embedded in the chassis or frame of the machine
Brother WP-90—keyboard not embedded in the chassis or frame of the machine
Brother WP-95—not comprised of a single, integrated unit
Brother WP-500—keyboard not embedded in the chassis or frame of the machine
Brother WP-650—keyboard not embedded in the chassis or frame of the machine
Brother WP-660—keyboard not embedded in the chassis or frame of the machine
Brother OPUS WP-510—keyboard not embedded in the chassis or frame of the machine

Models Meeting all of the Criteria and Therefore, Presumptively Within the Class or Kind

Panasonic KX-W900
Panasonic KX-W1025
Brother WP-4U
Brother WP-60
Brother WP-65
Brother WP-720
Brother WP-1400D
Brother WP-760D

[FR Doc. 90-26630 Filed 11-09-90; 8:45 am]
BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review

Not later than November 30, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping duty proceedings:	
Argentina: Barbed wire and barbless fencing wire (A-357-405)	11/01/89-10/31/90
Argentina: Carbon steel wire rod (A-357-007)	11/01/89-10/31/90
Japan: Bicycle speedometers (A-588-038)	11/01/89-10/31/90
Japan: (Titanium sponge A-588)	11/01/89-10/31/90
The Federal Republic of Germany: Drycleaning Machinery: (A-428-037)	11/01/89-10/31/90
The Republic of Singapore: Rectangular pipes and tubes (A-559-502)	11/01/89-10/31/90
Suspension Agreements	
Japan: Certain small motors (A-588-090)	11/01/89-10/31/90
Singapore: Certain refrigeration compressors (C-559-001)	04/01/89-03/31/90
Countervailing duty proceedings:	
Argentina: Certain textiles and textile products (C-357-048)	01/01/89-12/31/89
Argentina: Oil country tubular goods (C-357-403)	01/01/89-12/31/89
Peru: Deformed steel concrete reinforcing bar (C-333-502)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by November 30, 1990.

If the Department does not receive by November 30, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to

collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 5, 1990.

Bernard Carreau,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90-26632 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review; Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain continuous cast steel slabs.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 125,000 net tons of certain continuous cast steel slabs for the remainder of 1990 under article 8 of the U.S.-EC and U.S.-Brazil steel arrangements and Paragraph 8 of the U.S.-Mexico and U.S.-Venezuela steel arrangements.

SHORT-SUPPLY REVIEW NUMBER: 30.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain continuous cast steel slabs for use in the manufacture of hot-rolled coils, plate coils and cut-to-length plate. On October 30, 1990, the Secretary received an adequate petition from Tuscaloosa Steel Corp. ("Tuscaloosa Steel") requesting a short-supply allowance for 125,000 net tons of this product during the remainder of 1990 under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-EC arrangement"), Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement"), Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement"), and Paragraph 8 of the Arrangement Between the Government of Venezuela and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Venezuela arrangement").

On September 12, 1990, Tuscaloosa Steel requested a short-supply allowance under the U.S.-EC arrangement because domestic producers could not meet its needs for the fourth quarter of 1990 and because it could not obtain sufficient suplies of regular export licenses for its traditional offshore supplier. On October 10, 1990, the Secretary granted a short-supply allowance to Tuscaloosa Steel for 125,000 net tons of certain continuous cast slabs under the U.S.-EC arrangement.

The current petition does not request tonnage in addition to the October 10, 1990, allowance. Tuscaloosa Steel now is requesting that the Secretary grant a short-supply allowance for this quantity under the U.S.-EC, U.S.-Brazil, U.S.-Mexico and U.S.-Venezuela arrangements. In its new petition, Tuscaloosa Steel has slightly modified the specifications for the concast steel slabs requested.

The requested material should meet the following specifications:

Dimensions

Guage: 7.5 inches—10 inches
Width: 60 inches—less than 84 inches
Length: 240 inches—384 inches

Tolerances

:Thickness ±0.20 inch
Width: + 0.750 inch 0.500 inch
Length: + 0.0% − 1.6%
Flatness: < 1.0% bow maximum
Camber: < 0.2% length maximum
Weight: ± 2.0% ordered weight with actual weight provided
Taper: Maximum 1.0 inch in 384 inches (slab must be dimensionally within ordered width including width tolerances)
Wedge: Maximum 0.187 inch

Chemical Composition

C—0.09% to 0.30%
MN—0.30% to 1.25%
P—0.030% maximum
S—0.020% maximum
SI—0.15% to 0.30%
AL—0.000% to 0.080%
Residuals 0.12% maximum

Certified chemical test reports are required per heat.

Quality

Continuous cast process
Fully conditioned for rolling to hot-roll product
Hand conditioning is permissible
Torch cutting to length (¼ inch to ⅜ inch maximum dross allowable)

Identification

Each slab must be identified with a heat number, slab number, and Tuscaloosa Steel order number (complete heat traceability is required).

Miscellaneous

Supplier is required to provide a quality slab capable of meeting API, ASTM, or similar product specifications without further inspection or conditioning. Slab supplier will be expected to utilize statistical process control procedures to insure quality, and any non-conforming quality condition traceable to slab quality is considered for the account of the slab producer.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 29, 1990.

Comments

Interested parties wishing to comment upon this review must send written comments not later than November 20, 1990 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 20, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than

officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26631 Filed 11–9–90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review; Certain Large Diameter Pipe

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain large diameter pipe.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 34,550.5 net tons of certain large diameter pipe for the first half of 1991 under Paragraph 8 of the U.S.-Japan steel arrangement.

Short-Supply Review Number: 31.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.104(b)) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain large diameter pipe ("LDP"). On October 31, 1990, Enron Corporation ("Enron") submitted an adequate petition to the Secretary requesting a short-supply allowance under Paragraph 8 of the Arrangement Between the Government of Japan, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 34,550.5 net tons of American Petroleum Institute grade X–70 submerged arc welded steel pipe, 30 inches in diameter, and with a wall thickness of 0.30 inch. This pipe is for production of the Transwestern Pipeline Expansion and must be delivered during the first half of 1991. Enron is requesting a short-supply allowance because the domestic manufacturers of LDP are unable to meet Enron's needs for this material during the requested period and its potential foreign supplier has no regular export licenses available.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 30, 1990.

Comments

Interested parties wishing to comment upon this review must send written comments not later than November 20, 1990. To the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 20, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159 or (202) 377–4037.

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26635 Filed 11–9–90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Atlantic Swordfish Fishery

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (Amendment 1) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before January 4, 1990.

ADDRESSES: Copies of Amendment 1 are available from the South Atlantic Fishery Management Council, 1 Southpark Circle, suite 306, Charleston, SC 29407. Comments should be sent to Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or

disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 1 would (1) establish a three-year phase-in program, beginning in 1991, for achieving substantial reductions in fishing mortality (and allowable landings) of swordfish harvested from the western North Atlantic; (2) establish an annual procedure for specifying acceptable biological catch (stockwide), total allowable catch (TAC) for the U.S. fishery, allocation of the TAC between the directed swordfish fishery and the bycatch fishery, and import quota levels for swordfish harvested from the western North Atlantic; (3) allocate the directed fishery quota equally between two zones, one north and one south of a line extending eastward from the Georgia/Florida border; (4) institute new permit procedures that require a vessel owner to choose one zone in which the vessel would conduct a directed swordfish fishery; (5) establish a January–December fishing year for the southern zone and a June–May fishing year for the northern zone; (6) prohibit nighttime longlining when the directed fishery for that zone and the bycatch fishery are closed; (7) prohibit use and possession of artificial lights and lightsticks in areas closed to directed swordfish fishing; (8) reduce imports of swordfish from the western North Atlantic by the same percentage that the U.S. fishery is reduced; (9) prohibit drift entanglement gillnet fishing in the swordfish fishery; (10) restrict recreational fishing to use of rod and reel and prohibit sale of catch; (11) establish a control date of August 16, 1989, as a bench mark date for a possible limited entry system.

In July 1989, NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery conservation and management. In compliance with the revised guidelines, Amendment 1 proposes a definition of overfishing and measures to restore the resource.

Proposed regulations to implement Amendment 1 are scheduled for publication by November 20, 1990.

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

Dated: November 6, 1990.

Richard H. Schaefer,

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

[FR Doc. 90-26661 Filed 11-7-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

November 6, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 14, 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) 566-5810. 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).

The current limits for certain categories are being increased for carryover.

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 55 FR 3449, published on February 1, 1990; and 55 FR 13928, published on April 13, 1990.

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

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 25, 1990 and April 9, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1990 and extends through January 31, 1991.

Effective on November 14, 1990 the directives of January 25, 1990 and April 9, 1990 are amended further to adjust the limits for the following categories, under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted 12-mo. limit[1]
335	156,544 dozen.
336/636	258,367 dozen.
341	1,315,546 dozen of which not more than 676,943 dozen shall be in Category 341-Y.[2]
342/642	266,701 dozen.
351/651	423,576 dozen.
635	185,444 dozen.
638/639	1,039,146 dozen.
641	747,761 dozen.
645/646	244,587 dozen.
847	353,709 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1990.

[2] Category 341-Y: only HTS numbers. 6204.22.3060, 6206.30.3010 and 6206.30.3030.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-26629 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DR-M

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

November 7, 1990.

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

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

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, 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, refers to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. 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).

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

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and 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 47548, published on November 15, 1989.

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

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

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

Effective on November 15, 1990, the directive of November 8, 1989 is being amended further to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided in the current bilateral textile agreement between the Governments of the United States and Singapore:

Adjusted 12-mo. limit [1]	Category
Levels in group I:	
239	384,315 kilograms.
334	55,300 dozen.
335	122,436 dozen.
338/339	947,409 dozen of which not more than 524,758 dozen shall be in Category 338 and not more than 583,465 dozen shall be in Category 339.
341	130,018 dozen.
347/348	855,054 dozen of which not more than 506,479 dozen shall be in Category 347 and not more than 393,928 dozen shall be in Category 348.
604	775,687 kilograms.
634	196,941 dozen.
635	213,519 dozen.
638	606,690 dozen.
639	3,349,417 dozen.
640	129,521 dozen.
645/646	111,284 dozen.
647	469,833 dozen.
648	1,490,832 dozen.
Sublevel in group II:	
237	181,416 dozen.

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

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-26693 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Aquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Consultants'-Conflict of Interest.

ADDRESSES: Send comments to Mr. Stephen Holden, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, (202) 501-3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* To implement the requirement of section 6 of the Office of Federal Procurement Policy Act, and section 8141 of the 1989 Department of Defense Appropriations act with regard to regulation concerning Conflict of Interest for Consultants.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 4000; responses per respondent, 1.5; total annual responses, 6000; preparation hours per hour response, 2; and total response burden hours, 12,000.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeeping, 10,000; hours per recordkeeper, 2.5; and total recordkeeping burden hours, 25,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0111, Consultants'-Conflicts of Interest.

Dated: November 5, 1990.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 90-26617 Filed 11-9-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Salomon Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE and Salomon Inc, including five affiliated companies (Salomon), which was published for public comment in 55 FR 39698 (September 28, 1990), shall be made final. The Consent Order resolves matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in resales of crude oil for the period January 1, 1978, through January 27, 1981. To resolve these matters, Salomon will pay to the DOE $83,750,000, within thirty (30) days of the effective date of the Consent Order. Following receipt of the settlement monies, ERA will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., RG-32, Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On September 28, 1990, the DOE's Economic Regulatory Administration (ERA) issued a notice announcing a proposed Consent Order between DOE and Salomon which would resolve matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in crude oil resales for the period January 1, 1978, through January 27, 1981. 55 FR 39698. Specifically, the September 28 Notice provided information regarding Salomon's potential overcharge liability arising from some 3100 crude oil resale transactions at issue in a Proposed Remedial Order issued September 23, 1988, and detailed the range of possible outcomes in light of the risks of litigating to conclusion the numerous issues in dispute. Those considerations underlay the ERA's preliminary view that the proposed settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. ERA received two written comments, which were considered in making the decision to issue the proposed Consent Order as a final Order.

II. Comments Received

The Controller of California, and a group of utilities, transporters, and manufacturers (hereinafter "end users") submitted written comments on the proposed Consent Order. Both commenters questioned the adequacy of the settlement amount to be paid by Salomon. In addition, the end users addressed the distribution of the monies received in the settlement.[1]

III. Analysis of Comments

A. Adequacy of the Settlement Amount

The end users object to the settlement amount on the grounds that it is a lower percentage of Salomon's maximum potential liability than the percentages received by ERA in three other, assertedly similar settlements; and does not reflect the substantial weight that should be given to the "egregious nature" of Salomon's conduct and the "arrogance" of the firm's attempt to justify that conduct by filing a "veritable blizzard of paper" in the PRO proceeding before OHA. The Controller asserts that some of the potential litigation outcomes which ERA described in the September 28 Notice are improbable, and should not weigh in the risk assessment.

Upon consideration of these comments as explained below, ERA has concluded that they do not state a cognizable basis for rejecting or renegotiating the settlement.

As discussed in the September 28 Notice, ERA's initial determination that the settlement amount was appropriate reflected ERA's careful consideration of the number and nature of the factual and legal issues in dispute in the litigation and the litigation risks associated with establishing the alleged overcharges. These factors are, to a large degree, necessarily specific to each case, making comparisons of percentages of alleged potential liability in disparate cases an inappropriate basis for assessing the adequacy of a particular settlement. Here, the end users err in asserting that the settlements which DOE concluded with Canal Refining Company, Texaco Inc., and Tesoro Petroleum Corporation were "similar situations" to the *Salomon* case. While the three cited settlements all involved (in part) crude oil overcharges, as does *Salomon*, none of the three prior settlements involved the regulatory violations alleged against Salomon, and consequently concerned different legal and factual issues and different litigation risk considerations.

With respect to the end users' focus on the "nature" of Salomon's conduct as a determinant of the adequacy of a particular settlement sum, ERA considered the conduct at issue in the PRO proceeding in initially determining an appropriate settlement amount to the extent that this matter bore on the probability of proving in litigation the factual predicates required to establish that regulatory violations occurred. However, to the extent that the end users urge that "egregiousness" should increase the amount required for an adequate settlement by reason of suggesting willful misconduct, that is not an appropriate consideration. Willfulness is not an element of a regulatory violation in a civil enforcement proceeding for restitution. It is similarly inappropriate to exact a settlement premium because of the vigor with which Salomon has defended its conduct, as measured by the "blizzard of paper" the firm has filed in the PRO proceeding.

The Controller of California asserts that the proposed settlement amount is less than one-third of what Salomon "owes;" and objects, on grounds of irrelevance and implausibility, to consideration of possible litigation outcomes resulting in low violation amounts. Both objections are misdirected. First, Salomon does not "owe" either the sum the Controller computes, or any other amount, unless and until there has been a final adjudication of Salomon's liability. At the current stage of the enforcement proceeding, before either the issuance of a Remedial Order by OHA or any administrative or judicial reviews of such an order, it is appropriate to consider the full range of potential litigation outcomes in order to determine a reasonable settlement amount. Second, it was precisely for the purpose of advising the public of the full array of potential litigation outcomes—and not to "mislead," as the Controller maintains—that the September 28 Notice discussed not only Salomon's maximum potential liability but also other possible, alternative outcomes.

Finally, the Controller's comments ignore the transaction-specific nature of the layering charges alleged against Salomon. Even assuming OHA's rejection in this case of both the gross profit methodology of computing the alleged violation amount and the sum yielded by Salomon's pipeline tracing methodology, there remains the matter of establishing the regulatory violations. The PRO alleges layering in nearly 400 transactions, each of which contributes some specific portion of the total potential overcharges. As discussed in the September 28 Notice, Salomon has raised numerous transaction-specific defenses, and the complexity of the transactions alleged to be layered presents opportunities for Salomon to raise a number of defenses with respect to each such transaction. 55 FR 39699. Thus, the potential litigation outcome in this case is not an all-or-nothing matter as the Controller suggests, but a multiplicity of matters presenting a wide range of possible overcharge amounts.

In view of the foregoing, ERA has concluded that the settlement amount represents a fair and reasonable compromise and is in the public interest.

B. Distribution of Refunds

The end users' comment also raised a number of issues relating to the disposition of crude oil refund monies, primarily focusing on an assertion that

[1] The end users also requested that an oral hearing be convened to consider the proposed Consent Order. However, this settlement does not meet the criteria for holding a public hearing, set out at 49 FR 12301 (March 24, 1984). Furthermore, the September 28 Notice elicited responses from only two commenters. In determining to make the proposed Consent Order final, ERA has fully considered the views of both commenters.

the reservation of up to 20% of these monies for a claims procedure would be insufficient to pay claims. In general, the disposition of crude oil monies is governed by the Final Settlement Agreement in the *Stripper Well* litigation. More importantly, however, it is neither appropriate nor necessary to resolve disputes about that Agreement in the context of the Salomon Consent Order. Specific issues about the adequacy of particular refund formulae should be presented to the OHA which is responsible for subpart V procedures and decisions.

IV. Decision

Upon consideration of the two written comments received and addressed herein, and inasmuch as there were no other bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Salomon is made a final Order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC on November 5, 1990.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 90-26723 Filed 11-9-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RM91-2-000; RP86-119-000, TA84-2-9-015, and TA85-1-6-003]

Tennessee Gas Pipeline Co.; Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs

November 8, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for expedited Office of Management and Budget (OMB) review of data request.

SUMMARY: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Federal Energy Regulatory Commission (Commission) is submitting to the OMB a request for expedited review of a one-time information collection survey of state regulatory commissions concerning treatment of take-or-pay settlement costs at the state level. The Commission desires this information in order to assist in analyzing the wellhead burner tip impact of any pipeline proposals filed in response to the Commission's Order No. 528, issued November 1, 1990.

DATES: Comments are due to OMB by November 21, 1990. The Commission is requesting OMB clearance of the data request by no later than 5 p.m., November 30, 1990.

ADDRESSES: Send comments to:

Mike Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol St., NE., Washington, DC 20426.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202) 208-1274, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Commission is seeking expedited OMB approval of a request for certain information concerning the recovery of take-or-pay settlement costs at the state level. The Commission desires this information in order to assist in analyzing the wellhead to burner tip impact of any pipeline proposals filed in response to the Commission's Order No. 528 issued on November 1, 1990. In that order, the Commission stayed, effective 30 days after publication of Order No. 528 in the **Federal Register**, the authority of certain pipelines to collect fixed take-or-pay charges based on the purchase deficiency allocation method. The Commission also stated that pipelines may file new tariff provisions to replace the stayed provisions and set forth several principles that the Commission will use to evaluate revised allocation methods.

The respondents are the 47 state regulatory agencies in the contiguous United States. The total reporting and recordkeeping burden that will result from the collection of information is estimated to average four hours per response, including the time for reviewing the request, searching the available data resources, 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 Mr. Mike Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol Street NE., Washington, DC 20426; and to the Office of Informtion and Regulatory Affairs, Office of Management and Budget, attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503. The telephone number for the OMB Desk Officer is (202) 395-3084. OMB has requested that comments be submitted on or before November 21, 1990 in order to provide adequate time for OMB to review the comments on the data request.

A copy of the letter to the state commissions is attached to this notice as Attachment A.

Lois D. Cashell,

Secretary.

Attachment A

[Commission Letterhead]

Dear Chairman [_____]: In *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989), the United States Court of Appeals for the District of Columbia Circuit decided that the Commission's use of purchase deficiencies to allocate take-or-pay settlement costs among the customers of interstate pipelines violates the filed rate doctrine. On October 9, 1990, the Supreme Court of the United States denied the Commission's petition for certiorari (59 U.S.L.W. 3271 (Oct. 9, 1990)), and the decision of the Court of Appeals became final. In response to that decision, the Commission has issued Order No. 528 (copy enclosed), directing interstate pipelines, their customers, and other affected parties to formulate alternative proposals for the pipelines' recovery of the costs of their take-or-pay settlements with natural gas producers.

In order for the Commission to properly evaluate the alternative proposals to be filed by interstate pipelines pursuant to Order No. 528, the Commission is requesting information from each state regulatory commission. We are seeking your views and guidance so that we can better understand the impact of this Commission's take-or-pay policy at the state level. Accordingly, the Commission requests that the [insert name of state commission] (as well as regulatory agencies in other states) provide information on how it has addressed recovery of take-or-pay costs at the state level.

Specifically, we would like to know how the [insert name of state commission] has dealt with proposals, if any, by local distribution companies to recover take-or-pay settlement costs after they are billed by interstate pipelines. For instance, have you allowed 100 percent recovery of those costs, of have you required some amounts to be absorbed by entities subject to your jurisdiction? To the extent you have allowed cost recovery, have you allowed the costs to be direct billed, allocated to sales and/or transportation customers through a volumetric surcharge, or recovered through a PGA-type mechanism? The Commission is also interested in what guidelines you have used in developing plans for allocating those

costs. Finally, do you anticipate any changes in your policy on this issue as a result of the court's invalidation of the purchase deficiency method of allocation?

In conclusion, the Commission is interested in learning more from the state commissions on how you have dealt with this difficult issue. This will provide the Commission with your views, as well as a complete record upon which to assess the wellhead to burner-tip impact of this situation. Since we plan to deal with these issues expeditiously, it would be most helpful if we could receive your response by [insert date 30 days after letter is mailed].

Please direct your reply to the Secretary of the Commission, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426 and reference Docket No. RM91-2-000.

By direction of the Commission.

Secretary.

Enclosure

[FR Doc. 90-26817 Filed 11-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-499-000, et al.]

Niagara Mohawk Power Corporation, et al., Electric rate, Small power production, and Interlocking Directorate filings

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

1. Niagara Mohawk Power Corporation

[Docket No. ER90-499-000]

November 2, 1990.

Take notice that on October 31, 1990, Niagara Mohawk Power Corporation tendered for filing additional information requested by staff pertaining to its Transmission Service Agreement with Green Mountain Power Corporation in the above referenced docket.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Company

[Docket No. ER90-471-000]

November 2, 1990.

Take notice that on November 1, 1990, Central Maine Power Company (CMP) tendered for filing an unexecuted Revised Transmission Service Agreement between CMP and Massachusetts Municipal Wholesale Electric Company effective as of November 1, 1988, (the Revised Service Agreement). The Revised Service Agreement amends and supersedes the unexecuted Transmission Service Agreement filed by CMP by letter dated June 25, 1990. The amendments pertain to provisions setting forth charges for New England Power Pool dispatch costs imposed on CMP as a result of the transaction.

CMP requests that the Commission waive its notice and filing requirements to permit the Revised Service Agreement to become effective in accordance with its terms.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER90-539-000]

November 2, 1990.

Take notice that on November 1, 1990, Central Maine Power Company (CMP) amended its filing in the above-captioned docket by submitting the following to the Commission for filing:

1. An unexecuted Revised Transmission Service Agreement between Central Maine and Maine Public Service Company effective as of September 1, 1990 (the "Revised Service Agreement"). The Revised Service Agreement amends and supersedes the unexecuted Transmission Service Agreement filed by CMP by letter dated August 6, 1990. The amendments pertain to provisions setting forth charges for New England Power Pool dispatch costs imposed on Central Maine as a result of the transaction;

2. Updated cost of service information for the 1989 Period I test year; and

3. A revised rate calculation in support of the originally filed transmission rate of $15.02 per kW per year.

CMP requests that the Commission waive its notice and filing requirements to permit the Revised Service Agreement to become effective in accordance with its terms.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91-68-000]

November 5, 1990.

Take notice that on PacifiCorp Electric Operations (PacifiCorp), on October 31, 1990, tendered for filing, in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Third Revised Sheet No. 5D superseding Second Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements under PacificCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreements between PacifiCorp and the following parties:

Parties

Plains Electric Generation and Transmission Cooperative, Inc. (Plains)

Western Area Power Administration, Loveland Area Office (Western)

PacificCorp states that the Service Agreements provide for the sale of non-firm power and energy for resale in accordance with the rates specified in Service PPL-3 of PacifiCorp's Tariff. PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of October 1, 1989 be assigned to the Plains' Service Agreement and May 11, 1990 be assigned to the Western Service Agreement. These dates are consistent with the dates service commenced.

Copies of this filing were supplied to Plains, Western, New Mexico Public Service Commission, Public Utilities Commission of Oregon and the Public Service Commission of Wyoming.

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

5. Southwestern Electric Power Company

[Docket No. ER91-65-000]

November 5, 1990.

Take notice that on October 30, 1990, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed amendment to the Interconnection Agreement between SWEPCO and Oklahoma Gas and Electric Company (OG&E). The amendment is necessary to reflect SWEPCO's sale to OG&E on May 1, 1990 of the transmission line running for Fort Smith, Arkansas, to Bonanza, Arkansas, and the related shift of one to the SWEPCO-OG&E interconnection points from Fort Smith, Arkansas to Bonanza, Arkansas.

SWEPCO seeks an effective date of May 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on OG&E and the Oklahoma Corporation Commission.

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

6. Montaup Electric Company

[Docket No. ER91-75-000]

November 5, 1990.

Take notice that on November 1, 1990, Montaup Electric Company ("Montaup"

or "the Company") tendered for filing rate schedule revisions incorporating the 1991 forecast billing rate for its purchased capacity adjustment clause ("PCAC") for all-requirements service to Montaup's affiliates Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and contract demand service to one affiliate Newport Electric Company and two non-affiliated customers: The town of Middleborough in Massachusetts and the Pascoag Fire District in Rhode Island. The new forecast billing rate is $13.79232/kw-Mo. Montaup requests that the new rate become effective January 1, 1991 in accordance with the PCAC. Montaup states that the filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: November 19, 1990, in accordance with Standard Paragraph E end of the this notice.

7. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER91-64-000]

November 5, 1990.

Take notice that on October 30, 1990, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments and carrying changes including local tax rates, for the twelve-month period ending December 31, 1989. commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1962 through 1988.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

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

8. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER91-72-000]

November 5, 1990.

Take notice that on October 31, 1990, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) and Commonwealth Edison Company (Edison) submitted for filing a Letter Agreement, dated October 19, 1990. The Letter Agreement modifies certain provisions of the Electirc Service Agreement, dated July 1, 1941, as amended, and the Transmission Service Agreement, dated May 1, 1958, as amended, between Edison Indiana and Edison and is intended to resolve the concerns underlying the Commission's Order in Docket No. EL89-47-000 with respect to Edison Indiana's return on common equity.

Edison Indiana seeks an effective date of January 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Edison Indiana, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

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

9. Duke Power Company

[Docket No. ER91-70-000]

November 5, 1990.

Take notice that on October 31, 1990, Duke Power Company (Duke Power) tendered for filing a Contract for Purchases of Economy Energy (Contract) between Seminole Electric Cooperative, Inc. and Duke. The Contract provides for the sale or exchange of economy energy between the two non-contiguous utilities.

Duke asks that the sixty (60) day notice requirement be waived so that the Contract may be permitted to become effective on November 1, 1990.

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

10. Niagara Mohawk Power Corporation

[Docket No. ER91-32-000]

November 5, 1990.

Take notice that Niagara Mohawk Power Corporation (Niagara) on October 17, 1990, tendered for filing a cancellation if its Supplemental No. 8 to Rate Schedule No. 142, between Niagara and Long Island Lighting Company.

Niagara presently has on file an Agreement with LILCO dated April 6, 1990 which provides for the delivery of 100 MW of power and energy to LILCO for the period June 1, 1990 through September 30, 1990. This Agreement is designated as Niagara Mohawk Power Corporation Supplement No. 8 to Rate Schedule No. 142. This cancellation is a result of the expiration of the April 6, 1990 agreement by its own terms.

Copies of the cancellation were served upon LILCO and the New York State Public Service Commission.

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

11. Arkansas Power & Light Company

[Docket No. ER91-73-000]

November 5, 1990.

Take notice that on November 1, 1990, Arkansas Power & Light Company ("AP&L") tendered for filing two Letter Agreements which amend a sale of reserve capacity to Associated Electric Cooperative, Inc. (Supplement No. 7 to AP&L Rate Schedule FERC No. 87). AP&L requests effecive dates of January 1, 1991 for the 1988 Letter Agreement and June 1, 1991 for the 1989 Letter Agreement. AP&L states that it requests waiver of the Commission's notice requirements for the 1989 Letter Agreement, under § 35.11 of the Commission's Regulations.

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

12. Philadelphia Electric Company

[Docket No. ER91-76-000]

November 5, 1990.

Take notice that on November 1, 1990, Philadelphia Electric Company ("PE") tendered for filing, on behalf of itself and Delmarva Power & Light Company ("DPL"), what it describes as an initial rate under section 205 of the Federal Power Act and part 35 of the Commission's regulations. PE describes the filing as an Agreement between PE and DPL dated October 18, 1990. PE describes the Agreement as setting forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time. PE requests that the Commission waive its notice period and allow the Agreement to become effective on October 29, 1990. PE states that a copy of the filing has been sent to DPL and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

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

13. New England Power Pool

[Docket No. ER91-74-000]

November 5, 1990.

Take notice that on November 1, 1990, the New England Power Pool ("NEPOOL") Executive Committee filed an Amendment to the NEPOOL Agreement, dated as of October 1, 1990. The NEPOOL Executive Committee states that the Amendment changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated September 1, 1971, as previously amended by twenty-six (26) amendments. The NEPOOL Executive Committee states that the Amendment is intended: (1) To make clear that the pool's Management Committee has authority to require Participants to install, maintain and operate automatic generation control equipment in order to maintain proper frequency for the interconnected bulk power system of the Participants and control power flows on interconnections between Participants and non-Participant electric systems, (2) to authorize the Management Committee to establish a system for sharing by the Participants of costs incurred because of the installation, maintenance and operation of any automatic generating control equipment required by the Committee, and (3) to change the pool's planning structure. The NEPOOL Executive Committee also filed, as a supplement, rules for the automatic generation control billing system established pursuant to the Amendment.

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

14. West Texas Utilities Company

[Docket No. ER91-69-000]

November 5, 1990.

Take notice that on October 31, 1990, West Texas Utilities Company tendered for filing: (1) A Transmission Service Agreement (the "TNP agreement"), dated July 3, 1990, between WTU and Texas-New Mexico Power company (TNP); (2) a Transmission Service Agreement (the Tex-LA Electric Cooperative (Tex-LA)) and (3) a revised Master ERCOT Transmission Facility charge Rate Schedule.

Under the terms of the TNP Agreement, WTU will transmit up to 600 MW of capacity generated at TNP's generating station in Robertson County, Texas. Under the terms of the Tex-LA Agreement, WTU will transmit up to 40 MW purchased by Tex-LA from Central Power and Light Company. WTU will provide such transmission service rates based on the cost of service data specified in the Master ERCOT Transmission Facility Charge Rate Schedule. The revised Master ERCOT Transmission Facility Charge Rate Schedule reflects the addition of the TNP Agreement to the tariffs and contracts specified in appendix A of the schedule.

WTU seeks an effective date of January 1, 1990 for the Tex-LA Agreement and of June 1, 1990 for the TNP Agreement and the revised Master ERCOT Transmission Facility Charge Rate Schedule. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of the filing were served upon TNP, Tex-LA, the Public Utility Commission of Texas and the New Mexico Public Service Commission.

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

15. Entergy Services, Inc.

[Docket No. ER91-62-000]

November 5, 1990.

Take notice that Entergy Services, Inc. (Entergy Services) on October 30, 1990 tendered for filing a Letter Amendment to a sale of limited firm capacity to Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T). The sale extends the terms of the transaction by one year and increases the quantity of reserve capacity sold to SRG&T.

Entergy Services request an effective date of January 1, 1991 for the Letter Amendment.

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

16. New England Power Pool

[Docket No. ER91-71-000]

November 5, 1990.

Take notice that on October 31, 1990, the New England Power Pool tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Barton Village, Inc. electric system. Barton Village, Inc. has its principal office in Barton, Vermont. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that the Barton Village, Inc. has joined the over 90 other electric utilities that already participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Barton Village, Inc. a participant in the pool.

NEPOOL requests an effective date of December 1, 1990 for commencement of participation in the power pool in Barton Village, Inc., and requests waiver of the Commission's customary notice requirements to permit the membership of Barton Village, Inc. to become effective on that date.

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

17. The Connecticut Light and Power Company; Western Massachusetts Electric Company

[Docket No. ER91-66-000]

November 5, 1990.

Take notice that on October 31, 1990, the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a Notice of Termination effective October 31, 1990 with respect to a Northfield Mountain Purchase Agreement, between CL&P, WMECO, and the City of Holyoke, Massachusetts, Gas and Electric Department (HG&E) dated May 1, 1986.

The NU Companies state that this termination is in accordance with the terms of the Agreement.

The NU Companies request that the Commission waive its filing requirements to the extent necessary to permit the termination of this rate schedule to become effective as of October 31, 1990.

The NU Companies state that a copy of the termination notice has been mailed to HG&E.

The NU Companies further state that the filing is in accordance with section 35 of the Commission's Regulations.

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

18. The Connecticut Light and Power Company; Western Massachusetts Electric Company

[Docket No. ER91-67-000]

November 5, 1990.

Take notice that on October 31, 1990, the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a Notice of Termination effective October 31, 1990 with respect to a Northfield Mountain Purchase Agreement, between CL&P, WMECO, and the North Attleboro Electric Department (NAEC) dated May 1, 1986.

The NU Companies state that this termination is in accordance with the terms of the Agreement.

The NU Companies request that the Commission waive its filing requirements to the extent necessary to permit the termination of this rate

schedule to become effective as of October 31, 1990.

The NU Companies state that a copy of the termination notice has been mailed to NAEC.

The NU Companies further state that the filing is in accordance with section 35 of the Commission's Regulations.

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

Standard Paragraphs

E. Any person desiring to be heard or to protest said 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 Procdure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26650 Filed 11-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2180-000, et al.]

Hydroelectric Applications (Nekoosa Packaging Corporation, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Transfer of License.

b. *Project No.:* 2180-000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Nekoosa Packaging Corporation.

e. *Name of Project:* Grandmother Falls.

f. *Location:* On the Wisconsin River in Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Nekoosa Packaging Corporation, c/o Diane Durgin, Senior Vice President—Law Georgia Pacific Corporation, 133 Peachtree Street, NE., 11th Floor, Law Department, Atlanta, GA 30303, (404) 521-5208.

i. *FERC Contact:* Mary C. Golato (202) 357-0804.

j. *Comment Date:* December 7, 1990.

k. *Description of Project:* Nekoosa Packaging Corporation (transferor) proposes to transfer the license for the Grandmother Falls Project No. 2180 to Packaging Corporation of America (transferee). The purpose of the transfer is to have the transferor sell to the transferee the Grandmother Falls Project which supplies power to a paper mill associated with the project. Such a tansfer would provide a significant economic benefit to the paper mill. The hydroelectric project and the paper mill have historically been owned and operated by the same entity.

1. *This ntoice also consists of the following standard paragraphs:* B, C, & D2.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2389-008.

c. *Date Filed:* September 25, 1990.

d. *Applicant:* Edwards Manufacturing Company, Inc.

e. *Name of Project:* Edwards Dam.

f. *Location:* On the Kennebec River in the City of Augusta, Maine.

g. *Filed Pursuant to:* Federal Power Act (Act), 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Anthony W. Buxton, Joseph G. Donahue, Preti, Flaherty, Beliveau & Pachios, 45 Memorial Circle, P.O. Box 1058, Augusta, ME 04332-1058, (207) 623-5167.

i. *FERC Contact:* Dean C. Wight, (202) 357-0675.

j. *Comment Date:* November 30, 1990.

k. *Description of the Proposed Amendment:* The licensee proposed to add the State of Maine as a co-licensee, requests an extension of the license term, which expires on December 31, 1993, until December 31, 2000; and requests authorization to install upgraded fish passage facilities.

1. *Other Matters:* Augusta Development Corporation has filed a notice of intent to file an application for a new license for the project. The co-licensees, upon Commission approval of this amendment, intend to submit an application for surrender of license and authority to breach or remove Edwards Dam, effective no sooner than January 2, 1999. Should the Commission accept surrender of the license and/or authorize removal of the dam, relicensing of this project would become moot.

The application for amendment arises from a proposed agreement between the State of Maine and Edwards. The proposed agreement resulted from legislation considered by the Maine Legislature which, if enacted, would have granted eminent domain over Edwards Dam to the Atlantic Sea Run Salmon Commission. That Commission would remove the dam to facilitate the restoration of salmon to the Kennebec River.

m. *This notice consists of the following paragraphs:* B, C, and D2.

3 a. *Type of Application:* Minor License.

b. *Project No.* 6731-001.

c. *Date Filed*: October 7, 1988 and supplemented August 6, 1990.

d. *Applicant*: Aquenergy Systems, Inc.

e. *Name of Project*: Coneross Creek Hydropower Project.

f. *Location:* On the Coneross Creek near Seneca, Oconee County, South Carolina..

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Mr. Wayne E. Nelson, Rt. #2, Box 690H, Industrial Avenue, Sanford, ME 04073, (207) 490-1980.

i. *FERC Contact*: Ed Lee (202) 357-0809.

j. *Comment Date*: December 20, 1990.

k. *Description of Project*: The existing constructed project consists of: (1) a 288-foot-long and 25-foot-high concrete dam; (2) a 123-foot-long and 20-foot-high concrete spillway; (3) a 9-acre reservoir having a gross storage capacity of 13.5 acre-feet; (4) an intake gate and trashracks; (5) a 780-foot-long and 8-foot-diameter concrete penstock; (6) a concrete powerhouse housing three generating units (one 540-kW, one 243-kW, and one 106-kW) for a total installed capacity of 889 kW; (7) a 95-foot-long tailrace; (8) a 93-foot-long, 12.47-kV transmission line; and (9) appurtenant facilities. The applicant estimates the total annual power generation to be 3,826 MWh. All project works are owned by the applicant.

l. *Purpose of Project*: All project energy will be sold to Seneca Light & Water Company.

m. *This notice also consists of the following standard paragraphs*: A3, A9, B, C, and D1.

4 a. *Type of Application*: Surrender of License.

b. *Project No.*: 6913-007.

c. *Date Filed*: October 12, 1990.

d. *Applicants*: Weber Basin Water Conservancy District.

e. *Name of Project*: West Gateway.

f. *Location*: On the Weber River in Davis County, Utah.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Ivan Flint, General Manager, Weber Basin Water Conservancy District, 2837 East Highway 193, Layton, UT 84041, (801) 359-4494.

Barbara S. Jost, Esq., Donald H. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. *FERC Contact*: Hector M. Perez (202) 219–2843.

j. *Comment Date*: December 26, 1990.

k. *Description of Project*: The unconstructed 9,510-kW project was licensed on November 2, 1988. To protect fish resources, Articles 403 and 404 of the license require the licensee to maintain minimum flows of 194 cubic feet per second (cfs) or the Weber River streamflow, whichever is less, from April 1 to June 30 each year. The licensee filed a timely appeal proposing a minimum flow of 126 cfs in lieu of the 194 cfs. The appeal was denied on March 23, 1990. The licensee filed a timely Petition for Rehearing which is still pending before the Commission.

The licensee has concluded that the project is no longer economically feasible, even with the lower minimum flows requested in its appeal and rehearing requests.

l. *This notice also consists of the following standards paragraphs*: B, C, & D2.

5 a. *Type of Filing*: Major License.

b. *Project No.*: 10359–003.

c. *Date Filed*: August 28, 1990.

d. *Applicant*: Snoqualmie River Hydro.

e. *Name of Project*: Youngs Creek.

f. *Location*: On the Youngs Creek, in Snohomish County, Washington.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*:

Michael S. Wright, 1300—114th Ave. SE, #220, Bellevue, WA 98004, (206) 451–7371.

Frank Frisk, Jr., 1054—31st Street NW., Washington, DC 20007, (202) 342–5200.

i. *FERC Contact*: Hector M. Perez, (202) 219–2843.

j. *Comment Date*: January 2, 1991.

k. *Description of Project*: The proposed run-of-river project would consist of: (1) a new 12-foot-high, 65-foot-long diversion weir with a crest elevation of 1,530 feet mean sea level; (2) a new intake structure; (3) a new 51-inch-diameter, 1,450-foot-long penstock; (4) a new powerhouse with a turbine generator unit with a generating capacity of 7.5 MW; (5) a short tailrace; (6) a new 15.5-kV, 6.1-mile-long overhead transmission line; and (7) other appurtenances. The project would have an average annual generation of 29,500,000 kWh.

l. *Purpose of the project*: Project energy would be sold to the Snohomish PUD.

m. *This notice also consists of the following standard paragraphs*: A3, A9, B, and C.

6 a. *Type of Application*: Major License (less than 5 MW).

b. *Project No.*: 10461–002.

c. *Date Filed*: May 31, 1990.

d. *Applicant*: Niagara Mohawk Power Corporation.

e. *Name of Project*: Parishville.

f. *Location*: On the West Branch of the St. Regis River, St. Lawrence County, New York.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Michael W. Murphy, System Law Department, C–3, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6941.

i. *FERC Contact*: Michael Dees (202) 357–0807.

j. *Comment Date*: December 27, 1990.

k. *Description of Project*: The proposed project would consist of: (1) An existing dam composed of an earthen dike and various concrete structures; (2) an existing intake structure; (3) an existing penstock 2,561 feet long and six to 10 feet in diameter; (4) an existing powerhouse housing a 2,400-kW hydropower unit; (5) an existing tailrace 400 feet long; (6) a proposed penstock 75 feet long and 3.5 feet in diameter; (7) a proposed outdoor type hydropower unit with a capacity of 415 kW; (8) an existing 4.8-kV transmission line; (9) a proposed 4.8-kV transmission line 100 feet long; and (10) appurtenant facilities. The estimated annual energy production is 12.6 GWh. Project energy would be used by the applicant to satisfy its customers needs.

l. *This notice also consists of the following standard paragraphs*: A3, A9, B, C, and D1.

7 a. *Type of Application*: Minor License.

b. *Project No.*: 10900–000.

c. *Date Filed*: March 6, 1990.

d. *Applicant*: Thomas Hodgson & Sons, Inc.

e. *Name of Project*: China Mill.

f. *Location*: On the Suncook River in the Village of Suncook, Town of Allenstown, Merrimack County, New Hampshire.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Howard M. Moffett, P.O. Box 709, Concord, NH 03302, (603) 224–2381.

i. *FERC Contact*: Charles T. Raabe (tag) (202) 357–0811.

j. *Comment Date*: December 27, 1990.

k. *Description of Project*: The existing constructed run-of-river project would consist of: (1) A 25-foot-high, 250-foot-long concrete gravity-type dam having a 143-foot-long ogee-type spillway; (2) a reservoir having a surface area of 2 acres and a gross storage capacity of 14 acre feet at spillway crest elevation 226.63 feet NGVD; (3) a gated intake structure at the reservoir's left (south) bank; (4) a 34-foot-wide, 1,330-foot-long canal; (5) trashracks and gates leading to two 9-foot-diameter, 100-foot-long riveted steel penstocks; (6) a powerhouse containing a 1,480-kW generating unit operated at a 32-foot net head and at a flow of 600 cfs; (7) a tailrace; and (8) appurtenant facilities.

Applicant estimates that the average annual generation would be 4,100,000 kWh. Project power would be sold to Public Service Company of New Hampshire. The dam is owned by Thomas Hodgson & Sons, Inc.

l. *This notice also consists of the following standard paragraphs*: A3, A9, B, C, and D1.

8 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 10962–000.

c. *Date Filed*: June 22, 1990.

d. *Applicant*: Portland General Electric Company.

e. *Name of Project*: Timothy Lake.

f. *Location*: In Mount Hood National Forest, on Stone and Anvil Creeks and the Oak Grove Fork of the Clackamas River in Clackamas County, Oregon. Township 5 S Range 8 E.

g. *Filed Pursuant to*: Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact*: Ms. Peggy Y. Fowler, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8401.

i. *FERC Contact*: Michael Spencer at (202) 357–0846.

j. *Comment Date*: December 24, 1990.

k. *Description of Project*: The proposed project would be an amendment to the existing Oak Grove Project No. 135 and consist of: (1) 10-foot-high dams on Stone and Anvil Creeks and the existing dam at Timothy Lake; (2) a 36-inch-diameter, 2,000-foot-long penstock from Anvil Creek that will connect to a 60-inch-diameter, 5,000-foot-long penstock from Timothy Lake and a separate 36-inch-diameter, 6,500-foot-long penstock from Stone Creek; (3) a powerhouse containing two gneerating units with a total capacity of 4,000 kW and an estimated average annual generation of 20 GWh; and (4) a 10-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to

be conducted under the preliminary permit would be $200,000.

l. *Purpose of Project:* Project power would be used by the applicant.

m. *This notice also consists of the following standards paragraphs*: A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 10982–000.

c. *Date filed:* August 1, 1990.

d. *Applicant:* Bryant Mountain Hydroelectric Associates.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* On the Klamath Irrigation District's "D" canal in Klamath County, Oregon near the town of Malin. The project would occupy U.S. lands administered by the Bureau of Land Management. T41S, R12E; T40S, R12E and R13E. Willamette Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).

h. *Applicant Contacts:* Mr. Bart M. O'Keeffe, P.O. Box 60565, Sacramento, CA 95860, (916) 971–3717.

Mr. Horst Butz, ABB Power Generation Inc., 1460 Livingston Ave., North Brunswick, NJ 08902, (201) 932–6273.

Mr. Louis Rosenman, LeBeouf, Lamb, Leiby & MacRae, 1333 New Hampshire Ave., NW., Washington, DC 20036, (202) 457–7500.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 24, 1991.

k. *Competing Application:* Project No. 10971–000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) two earth dams with a crest elevation at 5,830 feet, one dam would be 80 feet high, 1,600 feet long and one dam would be 40 feet high, 1,600 feet long; enlarging (2) the Long Lake reservoir to 500 acres with a storage capacity of 29,000 acre-feet at elevation 5,820 feet, msl, to be utilized as the upper reservoir; (3) an intake structure; (4) a 35-foot-diameter, 1,370-foot-deep power shaft, connecting to; (5) a 35-foot-diameter, 15,200-foot-long power tunnel, splitting into four tunnels upon entering the powerhouse; (6) powerhouse containing four reversible pump-turbines with a combined installed capacity of 1,000,000 kW, producing an estimated average annual energy output of 2,555,000 MWh; (7) a 65-foot-high, 12,300-foot-long earth dam with a crest elevation at 4,230 feet, creating; (8) a 570 acre reservoir with a storage capacity of 29,000 acre-feet at elevation 4,220 feet, to be utilized as the lower reservoir; (9) a 36-inch-diameter, 2.5-mile-long water supply pipeline used to initially fill the lower reservoir with water from the "D" canal; (10) a pumping station; and (11) a 230-kV or 500-kV transmission line tying into an existing or proposed line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $3,000,000. No new roads will be needed for the purpose of conducting these studies.

Water flowing through the "D" canal is regulated by the U.S. Bureau of Reclamation.

m. *Purpose of Project:* Project power would be sold to a local utility or organization.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 10983–000.

c. *Date filed:* August 1, 1990.

d. *Applicant:* Russel Canyon Corporation.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* On the Klamath Irrigation District's "D" canal in Klamath County, Oregon near the town of Malin. The project would occupy U.S. lands administered by the Bureau of Land Management. T41S, R12E; T40S, R12E and R13E. Willamette Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).

h. *Applicant Contacts:* David B. Ward, P.C. Attorney at Law, Flood & Ward, 1000 Potomac Street, NW. Washington, DC 20007, (202) 298–6910.

Mr. Douglas Spaulding, EWI Engineering Associates, Inc. 715 Florida Ave., So. suite 306, Minneapolis, MN 55426, (612) 593–5650.

Mr. Ingolf Herman, Independent Hydro Developers, 1000 Shelard Parkway, Suite 404, Minneapolis, MN 55426, (612) 546–5110.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 24, 1991.

k. *Competing Application:* Project No. 10971–000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) two earth dams with a crest elevation at 5,825 feet, one dam would be 100 feet high, 3,000 feet long and one dam would be 80 feet high, 1,300 feet long; enlarging (2) the Long Lake reservoir to 420 acres with a storage capacity of 24,000 acre-feet at elevation 5,820 feet, msl, to be utilized as the upper reservoir; (3) an intake structure; (4) a 24-foot-diameter, 1,300-foot-deep power shaft, connecting to; (5) a 24-foot-diameter, 17,000-foot-long power tunnel, splitting into four tunnels upon entering the powerhouse; (6) an underground powerhouse containing four pump-turbines with a combined installed capacity of 1,000,000 kW, producing an estimated average annual energy output of 1,314 GWh; (7) a 90-foot-high, 12,000-foot-long earth dam with a crest elevation at 4,225 feet, creating; (8) a 475 acre reservoir with a storage capacity of 24,000 acre-feet at elevation 4,220 feet, to be utilized as the lower reservoir; (9) a 36-inch-diameter, 2.5-mile-long water supply pipeline used to initially fill the lower reservoir with water from the "D" canal; (10) a pumping station; and (11) a 230-kV or 500-kV transmission line tying into an existing or proposed transmission line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $850,000. No new roads will be needed for the purpose of conducting these studies.

Water flowing through the "D" canal is regulated by the U.S. Bureau of Reclamation.

m. *Purpose of Project:* Project power would be sold to a local utility or organization.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–10985–000.

c. *Date Filed:* August 1, 1990.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Lake Altoona Dam.

f. *Location:* On Eau Claire River, Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 20, 1990.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 223 feet long; (2) an existing reservoir with a surface area of 836 acres; (3) a proposed penstock 12 feet in diameter and 50 feet long; (4) a proposed powerhouse housing one hydropower unit with a total capacity of 875 kW; (5) a 4.16–kV transmission line 200 feet long; and (6) appurtenant facilities. The applicant estimates that the annual energy generation would be 2,468 MWh and that the cost of the studies to be performed under the permit would be $40,000. The energy would be sold to Northern States Power Company. The dam is owned by Eau Claire County, Wisconsin.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-10986-000.

c. *Date Filed:* August 1, 1990.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Lake Eau Claire Dam.

f. *Location:* On Eau Claire River, Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261-7975.

i. *FERC Contact:* Michael Dees (202) 357-0807.

j. *Comment Date:* December 20, 1990.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 170 feet long; (2) an existing reservoir with a surface area of 793 acres; (3) a proposed penstock 12 feet in diameter and 50 feet long; (4) a proposed powerhouse housing one hydropower unit with a total capacity of 800 kW; (5) a 4.16-kV transmission line 400 feet long; and (6) appurtenant facilities. The applicant estimates that the annual energy generation would be 1,853 MWh and that the cost of the studies to be performed under the permit would be $30,000. The energy would be sold to Northern States Power Company. The dam is owned by Eau Claire County, Wisconsin.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13 a. *Type of Applications:* Preliminary Permit.

b. *Project No.* 10991-000.

c. *Date filed:* August 13, 1990.

d. *Applicant:* Russell Canyon Corporation.

e. *Name of Project:* Tule Valley Pumped Storage Project.

f. *Location:* On Highline canal in Klamath County, Oregon near the town of Malin. The project would occupy lands administered by the Bureau of Land Management. T41S, R12E, T40S, R12E and R13E. Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)-825(r).

h. Applicant Contact:

Mr. David B. Ward, Flood & Ward, 1000 Potomac St., NW., Washington, DC 20007, (202) 298-6910.

Mr. Douglas Spaulding, EWI Engineering Associates, Inc., 715 Florida Ave. So. Suite 306, Minneapolis, MN 55426, (612) 593-5650.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219-2842.

j. *Comment Date:* January 28, 1991.

k. *Competing Application:* Project No. 10971-000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) three earth and rock fill dams with a crest elevation at 5,760 feet, Dam No. 1 would be 40 feet high, 800 feet long, Dam No. 2 would be 20 feet high, 500 feet long, and Dam No. 3 would be 20 feet high, 50 feet long; enlarging (2) the Worlow Meadows Reservoir to 241 acres with a storage capacity of 8,000 acre-feet, to be utilized as the upper reservoir; (3) an intake structure; (4) a 12-foot-diameter, 1,500-foot-deep power shaft; (5) a 12-foot-diameter, 13,500-foot-long power tunnel; (6) a powerhouse containing two pump turbines with a combined installed capacity of 200,000 kW, producing an estimated annual energy output of 1,576,800 MWh; (7) a 100-foot-high, 7,000-foot-long earth and rock fill dam at elevation 4,300 feet, creating; (8) a 834 acre reservoir with a storage capacity of 7,000 acre-feet, to be utilized as the lower reservoir; (9) a 42-inch-diameter, 5,800-foot-long water supply pipeline used to fill the lower reservoir initially with water from the highline canal; (10) a pumping station; and (11) a 55-kV, 2-mile-long transmission line tying into an existing utility line.

The applicant estimates the costs of the studies to be conducted under the preliminary permit would be $500,000. No new access road will be needed to conduct the studies.

This project competes with Project No. 10982-000 and Project No. 10983-000, which competes with Project No. 10971-000. Any competing application must be filed in response to the notice for Project No. 10971.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10998-000.

c. *Date filed:* August 27, 1990.

d. *Applicant:* Ochoco Irrigation District.

e. *Name of Project:* Prineville Power Project.

f. *Location:* On Crooked River in Crook County, OR, near the town of Prineville. The proposed project would occupy lands administer by the Bureau of Reclamation. T17S., R16E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.SC. 791 (a)-825(r).

h. *Applicant Contact:* Mr. Hugh Moore, Secretary-Manager, Ochoco Irrigation District, 1001 North Deer St., Prineville, OR 97754, (503) 447-6449.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219-2842.

j. *Comment Date:* January 29, 1991.

k. *Description of Project:* The proposed project would be located at the Bureau of Reclamation's (BUR) Arthur R. Bowman Dam and would consist of: (1) A 16-foot-diameter horseshoe tunnel extending from the BUR existing tunnel 96 feet upstream of the existing gate chamber, enclosing; (2) a 6-foot-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 2,900 kW, producing an estimated annual energy output of 17.07 million KWh; (4) a 10-foot-diameter, 80-foot-long tailrace tunnel returning project flows to the existing BUR tunnel 78 feet downstream of the existing gate chamber; and (5) 6.1 miles of upgraded transmission line.

All proposed project facilities would be located underground. No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $86,250.00.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-11001-000.

c. *Date Filed:* September 10, 1990.

d. *Applicant:* A.L.L. Natural Resources Company.

e. *Name of Project:* Nashua River Hydroelectric Project.

f. *Location:* On Nashua River, Middlesex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. James E. Lane, 29 Westminster Street, Fitchburg, MA 01420, (508) 342-4029.

i. *FERC Contact:* Michael Dees (202) 357-9807.

j. *Comment Date:* January 4, 1991.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 100 feet long and 15 feet high; (2) an existing reservoir with a surface area of 0.7 acre at a normal water surface elevation of 215 feet msl; (3) an existing intake structure 30 feet wide; (4) a powerhouse housing two hydropower units with a total capacity of 500 kW; (5) a tailrace 400 feet long and 50 feet wide; (6) a 13.8-kV transmission line 300 feet long; (7) and appurtenant facilities. The applicant estimates that the annual energy generation would be 2,500 MWH and

that the cost of the studies to be performed under the permit would be $50,000. The energy would be sold an electric utility. The dam is owned by the Mr. John Horgan, Executor.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

16a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 11004–000.

c. *Date Filed:* September 11, 1990.

d. *Applicant:* City of Shady Cove.

e. *Name of Project:* Prospect No. 5.

f. *Location:* On the North Fork Rogue River, in Jackson County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Shirley Oswald Mayor 22451 Highway 62, P.O. Box 1210, Shady Cove, Oregon 97539 (503) 878–2225.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* January 29, 1990.

k. *Description of Project:* The proposed project would consist of: (1) a new 35-foot-high, 150-foot-long roller compacted concrete dam with a crest a crest elevation of 1,982.5 feet mean sea level (msl); (2) a reservoir with a storage capacity of 25 acre-feet at surface elevation of 1,982.5 feet msl; (3) a new 7,350-foot-long conduit; (4) two new 114-inch-diameter, 170-foot-long penstocks; (5) a new powerhouse with 2 turbine-generator units with a total capacity of 12.5 MW; (6) a new 20.8–kV, 2-mile-long transmission line; and (7) other appurtenances. The proposed conduit would cross lands owned by the Army Corps of Engineers. The project would produce an average annual generation of 91,458,000 kWh to be sold to Pacific Power & Light.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2. .

17a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11007–000.

c. *Date Filed:* September 19, 1990.

d. *Applicant:* Sullivan Island Associates.

e. *Name of Project:* Sullivan Island Hydroelectric Project.

f. *Location* On the Oswegatchie River, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 27, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A proposed north dam approximately 125 feet long and 12 feet high, and a proposed south dam approximately 75 feet long and 15 feet high; (2) a reservoir with a surface area of 100 acres at a normal water surface elevation of 606 to 608 feet msl; (3) a new intake structure at the south dam; (4) a proposed powerhouse at the south dam housing two hydropower units with a total capacity of 2,000 kW; (5) a tailrace 50 feet long and 45 feet wide; (6) a 13.8–kV transmission line 700 feet long; and (7) appurtenant facilities. The applicant estimates that the annual energy generation would be 10 GWh and that the cost of the studies to be performed under the permit would be $50,000. The energy would be sold to Niagara Mohawk Power Corporation. The project site is owned by Bruce, Paul, and Daniel Gayne, Sallie Ann Stoner, Carl Cappellino, Robert and Barbara Sullivan, Roger and Catherine Blackburn, and Jean and Chester Cole.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

18 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11010–000.

c. *Date Filed:* September 24, 1990.

d. *Applicant:* Hydropower, Inc.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* On Loyalhanna Creek, near New Alexandria, Westmoreland County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Labant, 109 Apache Drive, Indiana, PA 15701, (412) 463–0737.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* January 4, 1991.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Loyalhanna Dam and reservoir and would consist of: (1) An existing penstock 10 feet in diameter; (2) a proposed penstock 10 feet in diameter and 150 feet long; (3) a proposed reinforced concrete powerhouse 30 feet by 40 feet housing a 2,100-kW hydropower unit; (4) a proposed tailrace 50 feet wide and 70 feet long; (5) a proposed 13.2-kV transmission line 700 feet long; and (6) appurtenant facilities. The estimated annual energy production is 8 GWh. Project power would be sold to Pennsylvania Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

19 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11011–000.

c. *Date Filed:* September 25, 1990.

d. *Applicant:* Western Renewable Energy Company.

e. *Name of Project:* San Juan Power.

f. *Location:* At the U.S. Bureau of Reclamation's Ridgeway Dam on the Uncompahgre River in Ouray County, Colorado, Township 46 North, Range 8 West.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Donald P. Scrimgeour, Western Renewable Energy Company, 875 Alpine Ave., #5, Boulder, CO 80302, (303) 449–0899.

i. *FERC Contact:* Mr. James Hunter, (202) 357–0843.

j. *Comment Date:* December 28, 1990.

k. *Description of Project:* The proposed project would utilize the Ridgeway Dam and Reservoir and would consist of: (1) a penstock connecting to the existing outlet works; (2) a powerhouse at the downstream toe of the dam containing a generating unit rated at 4,000 kilowatts and producing an average annual output of 20 gigawatthours; and (3) a 2,000-foot-long transmission line connecting to a local distribution line. The applicant estimates the cost of the work to be performed under the permit to be $150,000.

l. *Purpose of Project:* Power generated would be sold to a private or public utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

20. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11013–000.

c. *Date filed:* September 25, 1990.

d. *Applicant:* Western Renewable Energy Company.

e. *Name of Project:* Sun River Power.

f. *Location:* On the U.S. Bureau of Reclamation's Spring Valley Canal at the Turnbull Drop Structures in Teton County, Montana, Township 21 North, Range 4 West.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Donald P. Scrimgeour, Western Renewable Energy Company, 875 Alpine Ave., #5, Boulder, CO 80302, (303) 449–899.

i. *FERC Contact:* Mr. James Hunter, (202) 357–0843.

j. *Comment Date:* December 28, 1990.

k. *Description of Project:* The proposed project would consist of: (1) a diversion structure on the canal above the upper drop structure; (2) a 1.5-mile-long penstock; (3) a powerhouse containing a generating unit rated at 9400 kilowatts and producing an average annual output of 25 gigawatthours; (4) a

tailrace returning water to the canal below the lower drop structure; and (5) a transmission line interconnecting with a local distribution line. The applicant estimates the cost of the work to be performed under the permit to be $150,000.

l. *Purpose of Project:* Power generated would be sold to a private or public utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11015-000.

c. *Date Filed:* October 1, 1990.

d. *Applicants:* Washington Hydro Development Co.

e. *Name of Project:* O'Toole Creek.

f. *Location:* Partially within Mt. Baker-Snoqualmie National Forest on O'Toole Creek, a tributary of the Skagit River, in Skagit County, Washington. T35N, R7E in sections 20, 28, 29, and 33.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bill E. Covin, Washington Hydro Development Company, 1422–130th Avenue NE, Bellevue, WA 98005, (206) 455–0234.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 219–2845.

j. *Comment Date:* January 24, 1991.

k. *Description of Project:* The proposed project would consist of: (1) a 13-foot-high, 80-foot-long diversion structure at elevation 2,055 feet msl; (2) a concrete intake structure; (3) a 36-inch-diameter, 11,000-foot-long penstock; (4) a powerhouse containing a generating unit with a rated capacity of 7,150 kW; (5) a 34.5 kV, 7-mile-long transmission line; and (6) appurtenant facilities. The applicant estimates an average annual energy generation of 26.3 GWh. The approximate cost of the studies under the permit would be $300,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, & D2.

22 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11016–000.

c. *Date Filed:* October 1, 1990.

d. *Applicants:* CRV Corporation.

e. *Name of Project:* Crystal River.

f. *Location:* Partially within White River National Forest on Crystal River in Gunnison County, Colorado. T11S, R88W section 25, and T11S, R87W section 30.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas A. Rogers, CRV Corporation, 7 Mirror Lake, Irvine, CA 92714, (714) 552–6711.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 219–2845.

j. *Comment Date:* January 24, 1991.

k. *Description of Project:* The proposed project would consist of: (1) an existing 8-foot-diameter, 100-foot-long diversion tunnel at elevation 8,409 feet msl; (2) a 36-inch-diameter, 3,900-foot-long penstock; (3) a powerhouse containing a generating unit with a total rated capacity of 4.9 MW; (4) a 14.4 kV, 300-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates a 13.6 GWh average annual energy generation. The approximate cost of the studies under the permit would be $40,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, & D2.

23 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11018–000.

c. *Date filed:* October 4, 1990.

d. *Applicant:* Montreal Pumped Storage Corporation.

e. *Name of Project:* Montreal Pumped Storage Hydro Project.

f. *Location:* On the West Fork of the Montreal River near Montreal, Iron County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ingolf Hermann, Montreal Pumped Storage Corporation, c/o Independent Hydro Developers, 1000 Shelard Pkwy.—suite 404, Minneapolis, MN 55426, (612) 546–5110.

i. *FERC Contact:* Ed Lee (202) 357–0809 or 219–2809.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of a 500-MW close-looped pumped storage project designed to opeate with a minimum head of 1800 feet. The project would have a proposed 185-acre upper reservoir and the existing Montreal iron mine as the lower reservoir. The reservoirs will be connected by a proposed 18-foot/diameter concrete penstock with an underground power-pumping house located in the lower reservoir. The project would have a new 2.5-mile, 92-kV or 138-kV transmission line. No areas within or in the vicinity of the proposed project boundary are included or have been designated for study for inclusion in the National Wild and Scenic River System. The applicant estimates that the average annual generation would be 657 GWh for the proposed pumped storage project. The cost of the work and studies to be performed under the permit would be $850,000. No lands of the United States are included in the project. The applicant states that the location of any borings would be limited to areas which are accessible from existing roadways or those which would cause minimal environmental disturbances. The applicant will restore any disturbed areas caused by any field exploration.

l. *Purposes of Project:* The applicant will sell the generated power to one or more electric utilities located in Wisconsin.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

24 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11022–000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Owasco Power and Electric Company.

e. *Name of Project:* Aurelius Avenue Upper Dam Hydroelectric Project.

f. *Location:* On the Owasco Outlet, in the City of Auburn, Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato (202) 357–0804 or 219–2804.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing dam with a crest 13 feet above tailwater that will involve rehabilitation; (2) an existing penstock 15.5 feet long; (3) a proposed pond estimated to have a surface area of 2 acres and a volume of 10 acre-feet; (4) an existing powerhouse containing one single turbine generator having a total installed capacity of 500 kilowatts; (5) a proposed 13.8-kilovolt transmission line 300 feet long; and (6) appurtenant facilities. The owner of the dam is the City of Auburn, New York. The applicant estimates that the average annual generation of the project would be in the range of 2,000 megawatthours. The cost of the studies under permit would be about $25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

25 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11023–000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Owasco Power and Electric Company.

e. *Name of Project:* Swift Street Dam Project.

f. *Location:* On the Owasco Outlet, in the City of Auburn, Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato (202) 357–0804 or 219–2804.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) an existing dam with a crest 13 feet above tailwater that will involve rehabilitation; (2) an existing pond estimated to have a surface area of 10.5 square miles; (3) a new penstock 80 feet long and 8 feet in diameter; (4) a new powerplant with a single turbine generator unit having a total installed capacity of 500 kilowatts; (5) a 13.8-kilovolt transmission line 300 feet long; and (6) appurtenant facilities. The dam is owned by the City of Auburn, New York. The applicant estimates that the average annual generation would be 2,000 megawatthours, and the cost of the studies under permit would be about $25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

26 a. *Type of Application:* Declaration of Intention.

b. *Docket No:* EL91–4–000.

c. *Date Filed:* October 17, 1990.

d. *Applicant:* Wind & Water Power, Inc.

e. *Name of Project:* Filtrine Hydro Project.

f. *Location:* Nubanusit Brook, Town of Harrisville, Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ms. Constance Koons, Wind & Water Power, Inc., c/o Filtrine Manufacturing Company, Main Street, Harrisville, NH 03450–0805, (603) 827–3367.

i. *FERC Contact:* Diane M. Scire, (202) 219–2682.

j. *Comment Date:* December 17, 1990.

k. *Description of Project:* The existing project consists of: (1) A three-acre-foot pond; (2) a 33-foot-high, 109-foot-long stone masonry dam, with a stop long stanchion section and a concrete cap of about one foot installed in 1976; (3) a gated penstock intake; (4) a 140-foot-long, 42-inch-diameter welded steel penstock; (5) a turbine-generator unit, installed in 1976, with an installed capacity of 180 kilowatts (the decommissioned turbine, of unknown horsepower, was installed by a former owner in December 1938, and was used to mechanically power a conveyor belt system).

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To sell power generated to the Filtrine Manufacturing Company.

m. *This notice also consists of the following standard paragrahs:* B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in secton 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Dated: November 6, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26656 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–278–000]

Dartmouth Power Associates Limited Partnership; Order Accepting Rates for Filing and Granting and Denying Waivers

October 29, 1990.

Take notice that on October 19, 1990 the Federal Energy Regulatory Commission issued an Order Accepting Rates For Filing and Granting and Denying Waivers (Order). On March 21, 1990, as completed October 5, 1990, Dartmouth Power Associates Limited Partnership (Dartmouth) submitted a Power Purchase Agreement between Dartmouth and Commonwealth Electric Company (Commonwealth Electric), and an Amendment to the Agreement. The rates from Dartmouth to Commonwealth Electric were negotiated between the parties, and Dartmouth requested that the Commission find that its rates were just and reasonable, as market-based rates. In the Order, the Commission found that Dartmouth's market-pricing proposal would result in rates to Commonwealth Electric within the legally mandated zone of reasonableness.

The Commission's October 29, 1990, Order in Ordering Paragraphs (F), (G) and (H) reads as follows:

(F) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Dartmouth 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 Commissions Rules of Practice and Procedure (18 CFR and 385.214 (1990)).

(G) Absent a request for hearing within the period set forth in Ordering Paragraph (F) above, Dartmouth is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is November 28, 1990.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26652 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–111–000]

East Tennessee Natural Gas Company; Informal Settlement Conference

November 5, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on November 19, 1990, at 9 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will continue on November 20, if necessary.

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 addition information, contact Donald A. Heydt (202) 208–0248 or Irene E. Szopo (202) 208–1589.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26653 Filed 11–9–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-774-016]

Nantahala Power and Light; Filing

November 6, 1990.

Take notice that on October 23, 1990, Nantahala Power and Light Company tendered for filing its compliance filing for the period July 1, 1989 through September 30, 1990, pursuant to ordering paragraph (C) of Opinion No. 277.

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, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26654 Filed 11–9–90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Clean Coal Technology Program; Availability of Draft Program Opportunity

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of availability of a draft Program Opportunity Notice (PON) for the Clean Coal Technology (CCT) Program, and request for public comments.

SUMMARY: DOE is issuing a draft Program Opportunity Notice (PON), No. DE–PS01–91FE–62271, for public comments. The draft PON solicits proposals for cost-shared projects to demonstrate clean coal technologies that could be commercialized in the 1990's. A total of $600 million (less approximately $32 million for DOE's administrative expenses) has been appropriated for financial assistance awards under this solicitation.

DATES: The deadline for receipt of comments on the draft PON is December 14, 1990, at 4:30 p.m., e.s.t.

ADDRESSES FOR PUBLIC COMMENTS: Written comments must be delivered or mailed to the U.S. Department of Energy, Office of Procurement Operations, Attn: Herbert D. Watkins, PR 321.1, Room II–065, 1000 Independence Avenue, SW., Washington, DC 20585.

ADDRESSES FOR OBTAINING DRAFT PON: Written requests must be sent to the U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, PR–33, Washington, DC 20012. Written requests to be placed on the mailing list for the draft PON should be received by November 16, 1990. Also, copies of the draft PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J–005, 1000 Independence Avenue SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays. The draft PON is anticipated to be available on or after November 20, 1990. If you have received past solicitations and/or attended the 1988/1989/1990 Clean Coal Technology public meetings, you need not submit a written request for the draft PON.

SUPPLEMENTARY INFORMATION: On October 23, 1989, Public Law 101–121, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1990, and for Other Purposes" (the "Act"), was signed into law. This Act, among other things, provides funds to conduct cost-shared Clean Coal Technology projects (CCT IV) for the design, construction, and operation of facilities that would demonstrate the feasibility of future commercial applications of such "* * * technologies capable of replacing, retrofitting, or repowering existing facilities * * *." This Act makes available a total of $600 million for this program.

On May 25, 1990, Public Law 101–302 was enacted which delayed issuing the CCT–IV PON until September 1, 1991. Subsequently, on October 26, 1990, Congress passed, and the President has approved, an "Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1991," which directs the Department of Energy to issue the CCT IV PON not later than February 1, 1991. A preproposal conference will be held within 30 days after the release of the final PON and the time, date, and place will be announced in the final PON.

The final PON will establish a four-month deadline for the submission of proposals. The evaluation of proposals and selection of projects for negotiations will occur within eight months after issuance of the final PON.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel. (202) 586–1026.

Issued in Washington, DC November 6, 1990.

Michael R. McElwrath,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 90–26721 Filed 11–9–90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-80-NG]

Dartmouth Power Associates Limited Partnership; Application To Import Natural Gas From Canada

AGENCY: Department of Energy Office of Fossil Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 17, 1990, of an application filed by Dartmouth Power Associates Limited Partnership (DPA) to import Canadian natural gas. DPA requested authorization to import up to 16,000 Mcf of natural gas per day and up to a total of 116.8 Bcf over a 20-year term commencing approximately July 1, 1992. The natural gas would be imported at the proposed interconnection between TransCanada Pipelines Limited (TransCanada) and Iroquois Gas Transmission System (Iroquois) near Iroquois, Ontario.

The imported gas is to be used as fuel in a new 67.6 MW electric generating plant to be constructed and operated by DPA in the town of Dartmouth, Massachusetts (the Project).

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 13, 1990.

ADDRESS: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–

056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Steven Mintz, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9506

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: DPA is a limited partnership under the laws of the State of Massachusetts, whose general partner is EMI/Dartmouth, Inc. EMI/Dartmouth, Inc. is owned by James S. Gordon, President.

DPA intends to construct, own and operate a new combined-cycle, independent power facility in Dartmouth, Massachusetts. Construction is expected to commence on November 1, 1990. The Project is scheduled to have a generating capacity of approximately 67.6 megawatts (net) of electricity. DPA has contracted with Commonwealth Electric Company (CEC) for the sale to CEC of the power generated by the Project.

In order to fuel the proposed congeneration facility, DPA requests authority to import from Canada a volume of up to 16,000 Mcf of natural gas per day, up to 5,840,000 Mcf per year and a total of up to 116.8 Bcf over a 20-year term that it has arranged to purchase from four Canadian producers. The natural gas would be imported in accordance with the terms and conditions of four separate gas purchase agreements (collectively the Agreements) entered into between DPA, and Canadian Natural Resources Limited (CNRL), Columbia Gas Development of Canada, LTD (Columbia), Excel Energy Inc. (Excel), and Remington Energy Ltd. (Remington), (collectively the Suppliers). DPA has contracted to purchase up to 6,000 Mcf per day from Remington. Deliveries of gas under these gas purchase agreements are to commence on the initial firm delivery date: the later of November 1, 1992 or the date that all necessary facilities of the Canadian and U.S. transporters are in place and operational, and are to continue for twenty years from the initial firm delivery date.

The four gas purchase agreements contain no take-or-pay provisions. Each gas purchase agreement provides that if DPA fails to take the "triggering quantity" (generally defined under the Agreements as the quantity of gas equal to 70% of the actual average daily contract quantities) during any contract year after the first contract year, then the supplier under that Agreement may upon notice reduce DPA's daily and total contract quantities by the difference between the triggering quantity and the average deliveries actually taken. In addition, under the Columbia Agreement, Columbia may elect unilaterally to reduce the daily contract quantity once every five-years coincident with the date for price renegotiation.

The base price under all of the gas purchase agreements is $1.453 per MMBtu (U.S.), to be adjusted monthly based on the gas prices in the Alberta, United States and Northeast markets. The actual adjusted per MMBtu commodity price shall be based on a percentage of the base price. Such percentage is computed by dividing the Adjusted Fuel Cost (AFC) by a base index of 2.006. The base index was determined from the average price of the fuel cost adjuster for 1989. The AFC is the sum of:

1. Tennessee's CD-6 Commodity Rate and Gas Rate as specified in its FERC tariff, weighted at 25 percent; plus

2. Algonquin's F-1 Commodity Rate as specified in its FERC tariff, weighted at 25 percent; plus

3. The Alberta Average Market Price, multiplied by the Bank of Canada average exchange rate, multiplied by 1.054615, weighted at 50 percent.

DPA has entered into agreements for firm transportation of the gas with NOVA Corporation of Alberta (NOVA), TransCanada, Iroquois, Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin). The point of delivery under the Excel, Remington and Columbia Agreements are the points of inlet on the NOVA system. The point of delivery under the CNRL Agreement is the point of inlet on the TransCanada system.

Except for gas subject to the CNRL Agreement, the imported gas will be transported on NOVA system to the Alberta border. From the Alberta border, gas subject to each of the Agreements will be transported on the TransCanada system to Iroquois, Ontario at the Canadian and U.S. international border. From that point, Iroquois will transport the gas to Wright, New York to a point of interconnection with Tennessee. From the Tennessee interconnection, the gas will be transported to an existing interconnection with Algonquin at Mendon, Massachusetts. Algonquin will deliver the gas to the Dartmouth facility.

Tennessee, Iroquois and Algonquin plan to construct or upgrade, as necessary, facilities to provide transportation service to Dartmouth, applications for which are or will be pending at the Federal Energy Regulatory Commission (FERC) in the "open season" proceeding, Docket Nos. CP87-451 *et al.* Once FERC approves these transportation proposals and the new facilities become operational, Dartmouth will transport gas on the Iroquois, Tennessee and Algonquin systems.

In support of its application, DPA states that the natural gas that it seeks to import represents the best overall supply arrangement that it could secure on a long-term, firm supply basis. DPA further claims that after an extensive search for domestic supply, DPA could not secure an available domestic source of supply at a price and on terms that would permit economically feasible operation of the Project. DPA alleges that the gas purchase agreements afford DPA direct access to major natural gas sources with demonstrated reliability. Each of the suppliers are required under their respective Agreements with DPA to dedicate sufficient reserves to meet the daily and total contract quantities.

DPA maintains that the proposed imports are not inconsistent with the public interest as the terms and conditions of the Agreements are flexible with respect to both volume and price, insuring the long-term competitiveness of the proposed import with alternate fuels in New England, including gas from domestic suppliers.

Applicant filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants on February 28, 1990, pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (10 USC 3801 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Applicant's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The

applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing or a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Applicant's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 2, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26722 Filed 11-9-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3859-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Public Water System Information (EPA ICR #270.25; OMB #2070-0090). This ICR requests renewal of the existing clearance.

Abstract: Public water systems monitor drinking water for several organic, inorganic and biological contaminants at frequencies specified in general and contaminant specific rules, and they also maintain records on the analytical results of monitoring actions. Public water systems use the data to determine system specific needs and modify monitoring frequencies and schedules.

Primacy agents (designated States, Indian tribes or EPA regional offices): (1) Maintain an inventory of public water systems, (2) record the results of analyses of drinking water standards, (3) track plans for systems trying to achieve compliance and (4) submit annual and quarterly reports to EPA including analytical results for each public water system, by contaminant type for systems in violation. This reporting is a condition for establishing primacy and maintaining eligibility for State grants. Primacy agents use the data to evaluate system performance, to identify system needs and problem areas, and to identify enforcement targets and systems requiring remedial action.

The EPA, as steward of the safe drinking water program, uses the data to guarantee safe drinking water to the population served, to estimate the costs of new regulations and to conduct economic and policy analyses.

Burden Statement: The public reporting burden for this collection of information is estimated to average less than half an hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Public drinking water systems and primacy agents.

Estimated Number of Respondents: 200,264.

Estimated Total Annual Burden on Respondents: 6,112,594 hours.

Frequency of Collection: As required by statute, varies from daily to every 4 years.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: November 5, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-26699 Filed 11-9-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Community Bancorp, Inc.; 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 December 3, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bancorp, Inc.*, Rhinebeck, New York; to acquire Interim Federal Savings Bank, Rhinebeck, New York, and thereby engage in the acquisition and assumption of certain assets and deposit liabilities of the Mid-Hudson valley branches of Beacon Federal Savings Bank, Baldwin, New York, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26666 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

First Bancorporation of Ohio; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bancorporation of Ohio*, Akron, Ohio; to engage *de novo* through its subsidiary, First Bancorporation of Ohio Services Division, Brecksville, Ohio, and thereby engage in operating a disaster recovery hotsite for processing and transmitting financial, banking, and economic data and check processing pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26667 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

James Erskine Jordan, 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 27, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *James Erskine Jordan*, Aliceville, Alabama; to retain 0.49 percent of the voting shares of First National Bancshares of West Alabama, Inc., Aliceville, Alabama, for a total of 12.50 percent, as the result of a stock redemption, and thereby indirectly acquire First National Bank of Pickens County, Aliceville, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Galen R. Gilbert*, individually and trustee of the Phillip L. Gilbert Trust #1 and the Martha Gilbert Trust #1, Lamar, Colorado; to acquire an additional 15.47 percent of the voting shares of Valley State Investments, Inc., Lamar, Colorado, for a total of 97.68 percent, and thereby indirectly acquire Valley State Bank, Lamar, Colorado.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *George R. Tesch*, Robert L. Thurston, Brett N. Aamot, and Tennessen Properties; to acquire 100 percent of the voting shares of Olivia Bancorporation, Inc., Olivia, Minnesota, and thereby indirectly acquire American State Bank of Olivia, Olivia, Minnesota.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26668 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Main Street Banks Incorporated, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Main Street Banks Incorporated*, Covington, Georgia; to engage *de novo* through its subsidiary, Main Street Savings Bank, F.S.B., Conyers, Georgia, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Conyers, Georgia.

B. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional de Mexico, S.N.C.*, Mexico City, Mexico; to engage *de novo* in providing data processing services to Banco Nacional de Mexico, S.N.C. and American Express Travel Related Services Company, Inc.; license, install and maintain software in connection with the sale by licensed agents in the United States of Mexican peso-denominated electronic payment orders for the delivery of Mexican pesos at a participating branch of Banco Nacional de Mexico in Mexico pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26669 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

SNB Financial Corporation, 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 December 3, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *SNB Financial Corporation*, Summerville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Summerville National Bank, Summerville, South Carolina.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CNB Bancorp, Inc. Employees Stock Ownership Plan*, Independence, Kansas; to become a bank holding company by acquiring 33.95 percent of the voting shares of CNB Bancorp, Inc., Independence, Kansas, and thereby indirectly acquire The Citizens National Bank in Independence, Independence, Kansas.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26670 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Sun Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than November 29, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Sun Financial Corporation*, Earth City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of E Corporation, Earth City, Missouri, and thereby indirectly acquire Farmers State Bank of Ellington, Ellington, Missouri.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26672 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Siggi B. Wizzig, 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 23, 1990

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Siggi B. Wizzig*, Jersey City, New Jersey; to acquire an additional 0.9 percent of the voting shares of The Trustcompany Bancorporation, Jersey City, New Jersey, for a total of 15.3 percent, and thereby indirectly acquire Trust Company of New Jersey, Jersey City, New Jersey.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Charles S. Aycock, Jr.*, Rayville, Louisiana; to acquire an additional 9.8 percent of the voting shares of First Republic Bancshares, Inc., Rayville, Louisiana, for a total of 18.92 percent, and thereby indirectly acquire First Republic Bank, Rayville, Louisiana.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26671 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Occupational Exposure to Coal Dust

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the health and safety aspects of occupational exposure to coal dust that may occur during the mining or use of coal. Interested parties may submit published and unpublished data concerning occupational exposure to coal dust, including but not limited to: (1) Exposure data on the respirable and thoracic particulate mass fractions of coal dust (as defined by the American Conference of Governmental Industrial Hygienists) and on other components of coal dust, including quartz, (2) results of human health or epidemiologic studies, including exposure/effect relationships, (3) results of animal and other experimental studies, including cytotoxicity, biochemical, and serologic studies pertaining to the mechanisms of disease associated with exposure to coal dust, (4) descriptions of current work practices, protective equipment, and control technology, and (5) technical difficulties in the monitoring or control of coal dust exposures. NIOSH will use this information to evaluate existing health problems associated with coal dust exposure and to develop recommendations for minimizing and controlling these problems.

DATES: Comments concerning this notice should be submitted by January 14, 1991.

ADDRESSES: Please submit four (4) copies of any information, comments, suggestions, or recommendations to Dr. Richard Niemeier, Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Kuempel, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-32, Cincinnati, Ohio 45226, (513) 533-8363 or FTS 684-8363.

SUPPLEMENTARY INFORMATION: Pursuant to sections 20 and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 and 671) and sections 103 and 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 813 and 951), NIOSH is authorized to gather information in order to develop recommendations for improving occupational safety and health. NIOSH has been concerned with the potential health effects associated with occupational exposure to coal dust, including the following: (1) Simple coal workers' pneumoconiosis (CWP), (2) complicated CWP, or progressive massive fibrosis (PMF), (3) silicosis or mixed dust pneumoconiosis due to combined coal dust and silica exposures, (4) chronic bronchitis, (5) emphysema, (6) other chronic or acute obstructive airways diseases, (7) lung cancer, and (8) gastric cancer.

NIOSH would like to receive published and unpublished data on the following topics related to coal dust exposure:

1. Information on exposure to coal dust, including data on coal rank, mineral content (e.g., quartz), particle size (including respirable and thoracic mass fractions), and data collected for specific job categories in underground or surface mining, for specific mining operations (e.g., longwall, continuous, auger, highwall), or for other job categories or operations (e.g., during coal gasification or liquefaction, coal preparation or mineral processing, or during use of coal at power plants or steel mills).

2. Epidemiologic data on the prevalence or incidence of disease among workers exposed to coal dust or to coal dust mixed with other agents.

3. Results of *in vivo* toxicologic studies, including inhalation studies of concomitant combined exposures that may occur in underground or surface coal mines or in other occupational settings (e.g., coal dust with silica or with diesel exhaust or other combustion products), and *in vitro* toxicologic studies, including cytotoxicity of coal dust due to its noncoal components, surface characteristics, or particle size distribution.

4. Results of biochemical, serologic, and/or other clinical or biological studies of the etiologic factors involved in the development of diseases associated with exposure to coal dust or to coal dust mixed with other agents.

5. Data on the role of personal factors (e.g., use of tobacco products, age, gender, height, and weight) in the development of diseases associated with exposure to coal dust or to coal dust mixed with other agents.

6. Information on dust-producing operations or equipment in underground or surface coal mines or in other occupational settings and on the effectiveness of engineering controls (particularly new or innovative control technologies), work practices, personal protective equipment, respirators (including workplace protection factor data), and training programs that have been used to limit workers' exposures to coal dust.

All information received in response to this notice (except that designated as trade secrets and protected by Section 15 of the Occupational Safety and Health Act, or that exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: November 6, 1990.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 90-26716 Filed 11-9-90; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records (Health Insurance Master Record, HHS/HCFA/BPO No. 09-70-0502).

SUMMARY: Section 1862(g) of the Social Security Act authorizes the Secretary to enter into contracts with utilization and quality control peer review organizations pursuant to part B of title XI of the Social Security Act (Act) to promote the effective, efficient and economical delivery of health care services and to promote the quality of Medicare-covered health care services. These organizations collectively are referred to as Peer Review Organizations (PROs). PROs review the health care services provided by physicians, other health care practitioners, and institutional and noninstitutional providers of health care services for which payment may be made under title XVIII of Act (the Medicare Program). The purpose of the PROs' review is to determine whether such services are or were reasonable and medically necessary; whether the quality of such services meets professionally recognized standards of health care; and, in cases where such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, whether such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

The PRO's functions also include the review of services provided by health maintenance organizations (HMOs) and competitive medical plan (CMPs) pursuant to a risk sharing contract under Section 1876 of the Act. Review of such HMO and CMP services may also be performed by organizations known as Quality Review Organizations (QROs) in those states where a contract is not made with the PRO to perform such review. As a general rule, each state is designated as a geographic review are for PRO and QRO purposes. PROs and QROs review HMO and CMP services for the purposes of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organizations.

In order to assist the utilization and quality control peer review organizations in carrying out these functions, HCFA is proposing to add a new routine use to the Health Insurance Master Record, No. 09-70-0502, (last published at 55 FR 37554; September 12, 1990) that will permit us to provide Medicare data to PROs and QROs. The proposed disclosure was inadvertently not included in a previous notice that disclosed a variety of other information to the PROs. This routine use is currently included in four of our other systems of records, the Carrier Medicare Claims Records, No. 09-70-0501, (last published at 55 FR 37557; September 12, 1990), the Medicare Physician Identification and Eligibility System, No. 09-70-0525 (last published at 54 FR 28120; July 5, 1989), and the Common Working File, No. 09-70-0526 (last published at 53 FR 52806; Decemver 29, 1988).

EFFECTIVE DATES: The proposed new routine use will become effective December 13, 1990, unless HCFA receives comments which warrant modification of the notice.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 108, Security Office Park Building, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, Room G-E-7, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: The Health Insurance Master Record contains information on enrollment, entitlement, utilization query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA).

HCFA is currently evaluating a variety of methods for the distribution of mortality data, demographic data, enrollment data, and health insurance billing data to PROs. The Health Insurance Master Record data are useful for checking on risk HMO/CMP no-pay bill volumes, and selection of intervening care records for PRO review.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which the information was collected. We disclose information for "routine uses" when it is necessary to

carry out our programs. We may also routinely disclose information to other Federal, State or local or private agencies or individuals for purposes that are compatible with the purposes of our programs when the benefit of the proposed use outweighs the effect, or risk of any effect, on the privacy of individuals.

In complying with the technical requirements of the Privacy Act, we are proposing to add the routine use below to the above named system of records:

(18) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to part B of title XI of the Social Security Act.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7) and is compatible with the purpose for which the information is collected. Because the addition of this new routine use will not change the purpose for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of an altered system of records under 5 U.S.C. 552a(o). For the convenience of the reader we are publishing the entire system below.

In addition, we are taking this opportunity to make the following minor editorial changes to the systems of records noted below:

1. Carrier Medicare Claims Records, No. 09-70-0501 (last published at 55 FR 37550; September 12, 1990), in routine use 8, on page 37551, column 1, line 24, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

2. Intermediary Medicare Claims Record, No. 09-70-0503 (last published at 55 FR 37557; September 12, 1990), in routine use 8, on page 37558, column 1, line 50, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

3. Medicare Physician Identification and Eligibility System, No. 09-70-0525 (last published at 54 FR 28120; July 5, 1989), in routine use 4, on page 28120, column 2, line 12, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

4. Common Working File, No. 09-70-0526 (last published at 53 FR 52806; December 29, 1988), in routine use 8, on page 52807, column 2, line 30, change "Peer Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

Dated: November 3, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-0502

SYSTEM NAME:

Health Insurance Master Record. HHS/HCFA/BPO

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207. Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing workers' compensation entitlement information, and entitlement information from the Veterans' Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquiries from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health and Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a property identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibilitya for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

(16) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 USC 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 USC 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of service
- Diagnosis

To administer the Medicare Secondary payer provisions at 42 USC 1396y(b) (2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, nofault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example full or part time, self employed

(17) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(18) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to part B of title XI of the Social Security Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems securities are established in accordance with DHHS ADP Systems Manual. Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-26683 Filed 11-9-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; Announcement of Extension of Deadline for Filing Certain Petitions for Compensation

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (HHS), is announcing an extension for filing petitions for compensation under the National Vaccine Injury Compensation Program (the Program) for those injuries that took place before October 1, 1988. The Program, governed by subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. The new deadline for filing claims for compensation of injuries or deaths alleged to be associated with certain vaccines administered before October 1, 1988, is January 31, 1991.

Those seeking compensation for a vaccine-related injury or death are to file a petition with the United States Claims Court and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS.

For those who allege vaccine related injuries or deaths based on vaccines administered before October 1, 1988, the filing deadline under the previous version of the statute was October 1, 1990. However, Congress enacted and the President signed legislation to extend the deadline for this category of petitioners. As provided by the amendment (section 5(e)(1) of the Vaccine and Immunization Amendments of 1990, Pub. L. 101-502), petitions for this category must be filed no later than January 31, 1991.

For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, telephone (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Acting Administrator, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, 6001 Montrose Road, Suite 702, Rockville, Maryland 20852, 1-800-338-2382 (toll free).

The propose of this notice is to call the public's attention to this new deadline. Those seeking additional information may contact the Clerk of the United States Claims Court or the Vaccine Injury Compensation Program at the addresses noted above.

Dated: November 6, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-26607 Filed 11-7-90; 12:42 pm]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Notice of Meeting (President's Cancer Panel)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, November 16, 1990, at the National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A10, Bethesda, Maryland 20892.

This meeting will be open to the public on November 16 from 9 a.m. to 11:30 a.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; staff of the NCI.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Insitute, Building 31, Room 4A32, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide a roster of the Panel members and substantive program information upon request.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: November 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–26832 Filed 11–9–90; 8:45 am]

BILLING CODE 4140–01–M

Revision of the Guidelines Subcommittee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Revision of the NIH Guidelines Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on December 7, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed action under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958, May 7, 1986):

I. Revision of appendix K

Revision of Appendix K of the *NIH Guidelines* Regarding Establishment of Guidelines for Level of Containment Appropriate to Good Industrial Large Scale Practices (GILSP). In a letter dated June 28, 1990, the Industrial Biotechnology Association (IBA) and the Pharmaceutical Manufacturers Association (PMA) requested that the Recombinant DNA Advisory Committee revise Appendix K of the *NIH Guidelines* to reflect a formalization of suitable containment practices and facilities for the conduct of large-scale experiments involving recombinant DNA-derived industrial microorganisms. In attachments to this request, there are proposed definitions and requirements pertaining to the requested changes. During the RAC meeting on October 16, 1990, they considered the recommendations made by the Revision of the NIH Guidelines Subcommittee. Following a discussion, it was decided that further modifications of appendix K were necessary. Accordingly, the matter was referred back to the subcommittee. The Revision of the NIH Guidelines Subcommittee will report with recommendations to the Recombinant DNA Advisory Committee during their meeting on February 4, 1991.

II. Other Matters To Be Considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcement the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–26662 Filed 11–9–90; 8:45 am]

BILLING CODE 4140–01–M

Human Gene Therapy Subcommittee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on November 30, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958 May 7, 1986):

I. Addition to Appendix D of the "NIH Guidelines" Regarding Human Gene Transfer Protocols/Dr. Brenner

In a letter receive on October 5, 1990, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital of Memphis, Tennessee, indicated his intention to submit two human gene transfer protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The titles of these protocols are:

1. "A Phase II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Relapse/Refractory Neuroblastoma Without Apparent Bone Marrow Involvement: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse;" and

2. "Autologous Bone Marrow Transplant for Children with Acute Myelogenous Leukemia (AML) in First Complete Remission: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse."

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated

his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

III. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Cornetta

In a letter dated July 25, 1990, Dr. Ken Cornetta of the University of Wisconsin/Madison indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

BMT 9049—Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia: Understanding Disease Recurrence.

IV. Other Matters To Be Considered by the Committee

Protocols which are approved by the Human Gene Therapy Subcommittee will be forwarded to the Recombinant DNA Advisory Committee for consideration during their February 4, 1991, meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-26663 Filed 11-9-90; 8:45 am]

BILLING CODE 4140-01-M

Planning Subcommittee of the Recombinant DNA Advisory Commiee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Planning Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on December 6, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed action under the *NIH Guidelines for Research Involving DNA Molecules* (51 FR 16958, May 7, 1986):

I. Results of Regional Hearings

The subcommittee will consider in detail the results of the regional hearings. Based on these findings, a series of recommendations will be made concerning:

1. Changes in the defintion of recombinant DNA;
2. Review of experiments that involve deliberate transfer of drug resistance to microorganisms, and cloning of genes for biosysnthesis of vertebrate toxins;
3. Consideration of relinquishing review of experiments involving environmental release of genetically modified organisms;
4. Educational role of the Recombinant DNA Advisory Committee and its Human Gene Therapy Subcommittee with regard to human gene therapy protocols; and
5. Other changes in the *NIH Guidelines*

The Planning Subcommittee will report with recommendations to the Recombinant DNA Advisory Committee during their meeting on February 4, 1991.

II. Other Matters To Be Considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 6, 1990.

Betty J. Beveridge,

Committee Mangement Officer, NIH.

[FR Doc. 90-26664 Filed 11-9-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4212-13; N-48869]

Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Lands, Nevada

October 31, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Lands, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. The purpose of the exchange was to acquire non-Federal lands within the Toiyabe National Forest having high public values. The mineral estates in the Federal and non-Federal lands were also conveyed.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431, 702-355-5329.

SUPPLEMENTARY INFORMATION: On October 24, 1990, the United States issued Patent No. 27-91-0003 to D. Donald Lonie, Jr., as Trustee of the D. Donald Lonie, Jr. Family Trust, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 8, lot 39;
Sec. 17, NW¼NE¼, S½N½NE¼SW¼NE¼, S½NE¼SW¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, W½E½NE¼NW¼SE¼, E½W½NE¼NW¼SE¼, E½NE¼NW¼NW¼SE¼, E½NE¼SW¼NW¼SE¼, N½SE¼NW¼SE¼.

The area described contains 95 acres in Clark County, Nevada. In exchange for these lands, the United States acquired the following described lands from the above-named party:

Mount Diablo Meridian, Nevada

T. 19 N., R. 19 E.,
Sec. 31, all;
Sec. 32, N½NW¼, SW¼NW¼, NW¼SW¼.

The area described contains 798.03 acres in Washoe County, Nevada. Title to the non-Federal lands was accepted on October 18, 1990.

The values of the Federal lands and the non-Federal lands in this exchange were appraised at $2,090,000.00 and $2,000,000.00, respectively. In order to equalize values, the proponent paid the United States $90,000.00.

In accordance with 43 CFR 2200.3(c), the lands acquired by the United States are hereby transferred to the Secretary of Agriculture as part of the Toiyabe National Forest and are subject to all the laws, rules, and regulations applicable thereto.

At 10 a.m., on December 13, 1990, said lands shall be open to such forms of disposition as may be made of national forest lands, including location and entry under the United States mining laws. Appropriation of said lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 10 a.m., on December 13, 1990, the land acquired by the United States in this exchange will also be opened to applications under the mineral leasing laws.

Robert G. Steele,
Acting State Director, Nevada.

[FR Doc. 90-26542 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-HC-M

[WAOR 45733; OR-130-01-4212-13; GP1-006]

Amendment of Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille and Stevens Counties, Washington

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice amends the Realty Action published in Vol. 55, page 2,155 of the **Federal Register** on January 22, 1990, to include the following lands proposed for acquisition by exchange:

Willamette Meridian

T. 21 N., R. 35 E.,
Sec. 25, N½NE¼;
T. 21 N., R. 36 E.,
Sec. 15, Portion of N½S½, S½S½;
Sec. 19, Portion of NE¼NE¼, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 20, Portion of NE¼NE¼, NW¼NE¼, S½NE¼, NW ¼, S½;
Sec. 21, Portion of N½N½, S½N½, S½;
Sec. 22, All;
Sec. 30, NE¼, N½NW¼;

Aggregating 3,032 acres more or less in Lincoln County, Washington.

Date of Issue: October 2, 1990.

Joseph K. Buesing,
District Manager.

[FR Doc. 90-26615 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Western Suisun Marsh Salinity Control Project, Plan of Protection for the Suisun Marsh, Phases III and IV, Suisun Marsh, Solano County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, and section 21100, et. seq., of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California State Department of Water Resources (DWR) intend to prepare a Draft EIS/EIR for the proposed Western Suisun Marsh Salinity Control Project, Plan of Protection for the Suisun Marsh, Phases III and IV, Suisun Marsh, Solano County, California.

The Western Suisun Marsh Salinity Control Project is aimed at lowering channel water salinity in the western portion of the Suisun Marsh (Marsh). Salinity standards were set by the California State Water Resources Control Board to provide optimum habitat for waterfowl food plant production and to preserve the Suisun Marsh as a brackish water tidal marsh. The project is a component of the Plan of Protection for Suisun Marsh.

The Western Suisun Marsh Salinity Control Project consists of constructing the Boynton-Cordelia Ditch, the Cordelia-Goodyear Ditch, and Goodyear Slough Culverts. As presently conceived, the Boynton-Cordelia Ditch would be an earthen ditch, approximately 3.5 miles long, for using the tide to move lower salinity water from the eastern Suisun Marsh westward, through Boynton Slough, to Cordelia Slough. The Cordelia-Goodyear Ditch would be an earthen ditch, approximately 2.8 miles long, for using the tide to move lower salinity water from upper Cordelia Slough to Goodyear Slough. The Goodyear Slough Culverts would be located in Goodyear Slough near Suisun Slough to reduce channel water salinity in Goodyear Slough.

Alternatives currently being considered include: (1) Obtaining additional water from creeks north of the Suisun Marsh, (2) constructing a water delivery ditch from Suisun Slough to Cordelia Slough via Frank Horan Slough, (3) improving the water delivery capacity of Cutoff and Volanti Sloughs, (4) installing tidal gates on Goodyear Slough at Suisun Slough, and (5) releasing additional water from State and Federal reservoirs. A no action alternative will also be considered.

The environmental document for the Western Suisun Marsh Salinity Control Project will consider the engineering feasibility and environmental, socioeconomic, and cumulative impacts of the Boynton-Cordelia Ditch, Cordelia-Goodyear Ditch, and Goodyear Slough Culverts. Measures to avoid or mitigate significant adverse impacts will be proposed.

DATES AND LOCATION: The Bureau of Reclamation and the Department of Water Resources encourage comments and suggestions concerning the proposed and alternative actions and possible environmental impacts to be considered in the environmental document. A public scoping meeting will be held from 7 to 10 p.m. on Thursday, December 13, 1990, in the Supervisors' Chambers, Solano County Courthouse, 580 Texas Street, Fairfield, California.

The Suisun Marsh Technical Advisory Committee (TECHCOMM) meetings will be the forum for additional public and agency input to the EIS/EIR. TECHCOMM meetings are scheduled for 9:30 a.m. on the last Thursday of each month at the Department of Water Resources, Central District Office, 3251 S Street, Sacramento, California (Large Conference Room). To receive TECHCOMM meeting announcements, agendas and minutes, contact Kamyar Guivetchi at (916) 445-7094.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Breitenbach, U.S. Bureau of Reclamation, 2800 Cottage Way, Room W-2103, Sacramento CA 95825, phone: (916) 978-5134, FAX: (916) 978-5284; or Mr. Dwight P. Russell, California Department of Water Resources, 3251 S Street, Room B-18, Sacramento CA 95816, phone: (916) 323-8888, FAX (916) 322-7184.

SUPPLEMENTARY INFORMATION: Suisun Marsh is situated in southern Solano County, California, west of the Sacramento-San Joaquin Delta and north of Suisun Bay. The Marsh represents over 10 percent of California's remaining natural wetlands, and is one of the largest contiguous brackish water tidal marshes in the United States. It covers approximately 55,000 acres of brackish water wetlands and 29,000 acres of bays and sloughs.

In 1974, the California legislature enacted the Suisun Marsh Preservation Act (SB 1981), requiring the development of a protection plan for the Marsh. In 1978, the California State Water Resources Control Board issued Water Right Decision 1485, establishing channel water salinity standards for the Suisun Marsh to provide optimum habitat for waterfowl food plant production and to preserve the Suisun Marsh as a brackish water tidal marsh.

In 1986, Federal legislation (PL 99-546) authorized funds to Reclamation for protecting the Suisun Marsh. In 1987 Reclamation, DWR, California State Department of Fish and Game, and Suisun Resource Conservation District signed the Suisun Marsh Preservation Agreement. Consequently, future activities will comply with both NEPA and CEQA regulations.

It is anticipated that the Western Suisun Salinity Control Project EIS/EIR will address a variety of environmental impacts such as: (1) Disturbance to the habitat of marsh flora along proposed ditch alignments, ponds, and culverts; (2) impacts to wildlife habitat and wildlife movement corridors due to the enlargement of natural channels, depositing of dredge spoils, and construction of ditches, ponds, and culverts; and (3) impacts to fish, both resident and migratory, by the transport of water from Boynton Slough to Cordelia Slough, and from Cordelia Slough to Goodyear Slough, as well as by diversion of water through ponds, culverts, and siphons. In addition, the cumulative impacts on the Marsh and Suisun Bay area will be assessed with respect to existing Marsh facilities and future facilities proposed in the Plan of Protection.

Because portions of the proposed sites for the Western Suisun Marsh Salinity Control Project are within wetland areas, the objectives and requirements of Executive Orders 11988 and 11990 will be considered throughout the planning and preparation of the EIS/EIR. Prior to construction and operation of the Boynton-Cordelia Ditch, the Cordelia-Goodyear Ditch, and the Goodyear Slough Culverts, Reclamation and DWR will have to obtain permits from Federal and State agencies, including, the U.S. Army Corps of Engineers, California State Department of Fish and Game, San Francisco Bay Conservation and Development Commission, San Francisco Regional Water Quality Control Board, and California State Lands Commission. These and other agencies will help evaluate the EIS/EIR for the Western Suisun Marsh Salinity Control Project to ensure that it complies with the requirements of NEPA and CEQA.

The draft EIS/EIR is scheduled to be completed and available for review by November 1991.

Dated: November 6, 1990

J. Austin Burke,

Deputy Assistant Commissioner, Administration.

[FR Doc. 90-26715 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 3, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forewarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 28, 1990.

Carol D. Shull,

Chief of Registration, National Register.

Alabama

Tuscaloosa County

Jemison, Robert, Servants' House, 2303 13th St., Tuscaloosa, 90001808.

CALIFORNIA

Colusa County

Colusa Carnegie Library, (California Carnegie Libraries MPS), 260 Sixth St., Colusa, 90001816

Humboldt County

Ferndale Public Library, (California Carnegie Libraries MPS), 807 Main St., Ferndale, 90001815.

Nevada County

Nevada City Free Public Library, (California Carnegie Libraries MPS), 211 N. Pine St., Nevada City, 90001809

Placer County

Lincoln Public Library, (California Carnegie Libraries MPS), 590 Fifth St., Lincoln, 90001814.

San Bernardino County

Upland Public Library, (California Carnegie Libraries MPS), 123 E. D St., Upland, 90001817.

Santa Barbara County

Lompoc Public Library, (California Carnegie Libraries MPS), 200 S. H St., Lompoc, 90001818.

Santa Clara County

East San Jose Carnegie Library, (California Carnegie Libraries MPS), 1102 E. Santa Clara St., San Jose, 90001813.

Stanislaus County

Patterson Branch Library, (California Carnegie Libraries MPS), 355 W. Las Palmas Ave., Patterson, 90001812.

Tulare County

Exeter Public Library, (California Carnegie Libraries MPS), 309 S. E St., Exeter, 90001811.

Yolo County

Yolo Branch Library, (California Carnegie Libraries MPS), 200 Sacramento St., Yolo, 90001810.

COLORADO

Custer County

Mingus Homestead, Off CO 165 M of jct. with Ophir Cr. Rd., San Isabel MF, Beulah vicinity, 90001791.

CONNECTICUT

Fairfield County

Old Mine Park Archeological Site, Address Restricted, Trumbull, 90001807.

Litchfield County

Canaan Village Historic District. Roughly bounded by W. Main, Bragg & Orchard Sts. & Granite Ave., North Canaan, 90001800.

New Haven County

Tuttle, Bronson B., House, 380 Church St., Naugatuck, 90001803.

FLORIDA

Charlotte County

Charlotte High School (Punta Gorda MPS), 1250 Cooper St., Punta Gorda, 90001796.

Punta Gorda Atlantic Coast Line Depot (Punta Gorda MPS), 1009 Taylor Rd., Punta Gorda, 90001797.

Punta Gorda Ice Plant (Punta Gorda MPS), 408 Tamiami Trail, Punta Gorda, 90001798.

INDIANA

Elkhart County

Stahly—Missley—Kuhns Farm, 1600 W. Market St., Nappanee, 90001793.

Johnson County

Forsyth—Schlosser House, 99 N. Forsythe St., Franklin, 90001795.

La Porte County

Smith, Everel S., House, 56 W. Jefferson St., Westville, 90001794.

IOWA

Ringgold County

Middlefork Methodist Episcopal Church, S of US 169 on E side of Middle Fork, Grand R., Reading, 90001801.

MARYLAND

Washington County

Potomac—Broadway Historic District, Roughly, Potomac St & Oak Hill Ave. from Franklin St. to Maple Ave. & North Ave. & Broadway from Park Pl. to Mulberry, Hagerstown, 90001804.

MASSACHUSETTS

Hampden County

Purchase—Ferre House, 1289 Main St., Agawan, 90001805.

MINNESOTA

Olmsted County

Pill Hill Residential Historic District, Roughly bounded by 3rd & 9th Sts. & 7th & 10th Aves. SW. Rochester, 90001799.

MONTANA

Ravalli County

Eil Capitan Lodge, Access Rd. 1111, N shore of Lake Como, Bitterroot MF, Hamilton vicinity, 90001792.

NORTH CAROLINA

Yancey County

McElroy, John Wesley, House, 11 Academy St., Burnsville, 90001802.

TEXAS

Shelby County

Shelby County Courthouse (Boundary Increase), Courthouse Sq., Center 90001819.

Washington County

Schmidt House, (Brenham MPS), 906 W. 5th St., Brenham, 90001806.

[FR Doc. 90-26690 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Consent Decree in Comprehensive Environmental Response, Compensation and Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *City of Spokane, Washington*, Civil Action No. CS-90-0462-JLQ, was lodged with the United States District Court for the Eastern District of Washington on November 1, 1990. This Consent Decree concerns a Complaint filed by the United States and the State of Washington against the City of Spokane pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act ("CERCLA") to compel the City to implement the remedial action selected in the Record of Decision issued by the Environmental Protection Agency ("EPA") on September 30, 1989 for the Northside Landfill Site. The Northside Landfill Site is located in Spokane, Washington, and is owned and operated by the City of Spokane. The Northside Landfill Site was placed on the National Priorities List on June 10, 1986 (51 FR 21,054).

The proposed Consent Decree requires that the City undertake the remedial action selected in the Record of Decision and pay the past and future costs of the United States and the State of Washington, which the United States and the State have incurred or will incur for response actions at the Site.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *City of Spokane, Washington*, 90-11-2-545.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Washington, West 920 Riverside, room 851, Spokane, Washington, 99201 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $63.75 payable to the "Consent Decree Library."

R.B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-26616 Filed 11-9-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Mine Safety and Health Administration

Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment; 1219-0054; on occasion; quarterly; program: 200 respondents × 0.5 hour=100 total burden hours.

Underground coal mine operators are required to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and certified by the operators' signature and date that the fire drills were conducted in accordance with the approved plan.

Extension

Pension and Welfare Benefits Administration

Class Exemption 86-128; 1219-0059; on occasion; businesses or other for profit; Small businesses or organizations; 327,000 responses; 64,719 hours.

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Departmental Management

Collection by Use of a Personal Charge Card; 1225-0047; individuals or households; 300 respondents; 5 hours; 1 minute per response.

Information will be collected from individuals' charge cards to allow agencies' servicing finance offices to process these transactions when collecting funds for the Department.

Employment Standards Administration

Request to be Selected as Payee; 1215-0166; CM-910; on occasion.

Individuals or households; Businesses or other for profit; nonprofit institutions; Small businesses or organizations 600 respondents; 200 total hours; ⅓ hr. per response; 1 form. If a beneficiary is incapable of handling his/her own affairs, the legal guardian or other responsible party may apply to receive the benefits on behalf of the beneficiary as a representative payee. The CM-910 is the form the potential representative payee must submit to DCMWC's staff for review to determine if the request can be approved.

Reinstatement

Employment and Training Administration

Internal Fraud Activities; 1205-0187; ETA 9000; annually; state or local governments; 53 respondents; 424 total hours; 8 hrs. per response; 1 form.

ETA 9000 is SESA, ETA and OIG's sole data collection for identifying continuing activity involving internal fraud, and assessing fraud prevention effectiveness. Resulting analyses will be communicated to SESAs to enhance management efforts in controlling false representation and fraud. Negative trends could result in ETA requesting OIG audit(s).

Signed at Washington, DC, this 6th day of November, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-26707 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-90-155-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Blacksville No. 2 Mine (I.D. No. 46-01968) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. Petitioner proposes to use air in the belt entry to ventilate active working places and planned longwall panels.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses. The petitioner outlines specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard, while compliance with the standard will result in a diminution of safety to the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26708 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-153-C]

Cordero Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Cordero Mining Compay, P.O. Box 1449, Gillette, Wyoming 82717-1449 has filed a petition to modify the application of 30 CFR 77.206(c) (ladders; construction; installation and maintenance) to its Cordero Mine (I.D. No. 48-00992) located in Campbell County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladders used regularly at fixed locations be anchored securely and provided with backguards extending from a point not more than 7 feet from the bottom of the ladder to the top of the ladder.

2. Petitioner requests to leave two backguards as originally fabricated, one 87 inches and one 85 inches above the bottom of the ladder instead of the required 84 inches. The petitioner outlines specific equipment and procedures in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Particia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26709 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-160-C]

Fantasia Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Fantasia Mining Company, P.O. Box 954, Barbourville, Kentucky 40906, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16984) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methance monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitor instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to detemine the methane conentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

(4) Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standard, Regulations and Variances.

[FR Doc. 90-26710 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-158-C]

Mason and Dixon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mason and Dixon Coal Company, P.O. Box 188, Muir, Pennsylvania 17957, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope mine (I.D. No. 36-07893) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations and respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the

miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26711 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONATUTICS AND SPACE ADMINISTRATION

[Notice 90-97]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: December 6, 1990, 9 a.m. to 5 p.m.; and December 7, 1990, 8:30 a.m. to 1 p.m.

ADDRESSES: Lockheed Engineering and Sciences Company, Suite 600, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2843.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

December 6, 1990

9 a.m.—Welcome.

9:15 a.m.—Discussion of Charter and Future Meetings.

1:30 p.m.—Briefing on Advanced Life Support Program.

3 p.m.—Briefing on ExtraVehicular Activity/Suit Technology Program.

5 p.m.—Adjourn.

December 7, 1990

8:30 a.m.—Briefing on Controlled Ecological Life Support Program.

10:30 a.m.—Group Discussion.

1 p.m.—Adjourn.

Dated: November 6, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26702 Filed 11-9-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 13, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494 and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extensions

Title: Organizational Survey.

Form Number: OMB No. 3136-0124.

Frequency of Collection: Once.

Respondents: Nonprofit organizations and groups.

Use: Application for funding.

Estimated Number of Respondents: 30.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: .50 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burdens: 15 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-26692 Filed 11-9-90; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the

Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 13, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable, (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504 (h).

Category: Extension

Title: Process of Application, Evaluation, Award, and Report of NEH Fellowships.

Form Number: OMB No. 3136-0083.

Frequency of Collection: Annual.

Respondents: Scholars, writers, and teachers in the humanities.

Use: Application for funding, evaluation, award-making, and reporting for NEH Fellowships.

Estimated Number of Respondents: 16,230.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 1.5 per respondent.

Estimated Total Annual Reporting and Record Keeping Burden: 24,465 hours.

Thomas S. Kingston,

Assistant Chairman for Operation.

[FR Doc. 90-26691 Filed 11-9-90; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-150]

Environmental Assessment and Finding of No Significant Environmental Impact Regarding Proposed Power Increase of Facility Operating License No. R-75; Ohio State University

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-75 to the Ohio State University (the licensee) for the Ohio State University Pool-Type Research Reactor (OSURR) located on the Ohio State University campus in Columbus, Ohio.

Environmental Assessment

This environmental assessment relates to the proposed power increase for the OSURR at Columbus, Ohio, in response to an application from the licensee of October 7, 1987, as supplemented on May 26, 1989, February 28, and June 12, 1990. The proposed action would authorize operation at a power level of 500 kilowatts (thermal) (kW(t)), from the presently licensed power level of 10 kW(t). The only hardware modifications that are required by the power increase and that change the environmental are those necessary to increase the capacity of the heat removal system and to increase the coverage of the radioactivity monitoring system, along with their associated instrumentation and controls. The heat removal system uses primary (pool water)-to-secondary (ethylene glycol and water mixture) coolant heat exchangers, a fan-forced air cooling unit (also called a drycooler) for initial cooling of the secondary coolant, and a city water-based heat exchanger for additional cooling of the secondary coolant. The primary-secondary coolant loop is a totally enclosed and self-contained loop. No liquid effluent releases are expected from normal OSURR operation. Any release of water from the reactor pool or secondary coolant fluid from the cooling system will be planned and controlled, and performed in accordance with appropriate regulations. By including a drycooler in the secondary loop, the OSURR avoids the use of a cooling tower. Thus, the drycooler produces no drift or fog and does not use city water. Makeup water for the reactor pool is obtained from the city water supply, after first passing through an initial cleanup demineralizer. All connections to the city water system will have backflow preventers to preclude the possibility of introducing reactor pool water to the potable water supply. The city water-based supplementary heat exchanger will draw water from the city water supply, but it will be used only when the outdoor drycooler is unable, because of the outdoor air temperature, to reduce secondary coolant temperatures to the point where primary coolant temperature returned to the pool is within specified limits. Thus, water use by the supplementary heat exchanger will be monitored and kept within thermal limits for discharge to the sanitary sewer system. Installation of the outdoor drycooler unit will require very little land because the unit is mounted on an 8 foot by 17 foot concrete pad, on an unused part of the grounds of the reactor building. Thus, no additional land use will result. To install the cooling unit, the licensee will not need to remove trees or move animal life. In addition, the cooling unit stands about 48 inches tall, and covers an area of about 8 feet by 14 feet, and thus will cause no disruption of visibility or visual distraction in the area. Operation of the fans of the drycooler will cause a small amount of noise, but no more than may be expected from a building air conditioner of modest size. In any case, the nearest residences are about one-quarter of a mile upwind of the reactor building, and persons in and near these areas will not experience any additional noise exposure because of fan operation. The environmental effluents (warm air) caused by increasing the power to 500 kilowatts are negligible.

The licensee plans to expand the radioactive monitoring system by installing additional monitors outside the restricted area. At leat four of these monitors will be positioned in the unrestricted area about 100 feet from the reactor building. The areas are normally unoccupied in all directions except about 150 feet to the south where a van de Graaff laboratory is located. The effect on the environment of these monitors is negligible.

Need for the Proposed Action

The licensee is planning to conduct research in neutron activation analysis, boron neutron capture therapy, and related medical and biological research, materials analysis, and instrumentation research and testing. Operation at 10 kW would not provide sufficient neutron flux to conduct these activities.

Environmental Impact

The OSURR operates in a shielded pool of water inside the reactor building on the Columbus campus of the Ohio State University. This licensing action

does not lead to a change in the physical environment except for the heat removal system and radioactivity monitoring system previously discussed.

Based on the review of the facility specific operating characteristics that are considered for possible effect on the environment, as set forth in the staff's safety evaluation report (SER) (*see* SER for Amendment No. 13 to Facility Operating License No. R-75) for this action, the staff concludes that increasing the power level to 500 kW at OSURR will have an insignificant environmental effect. Although the proposed operating features are judged to have an insignificant effect on the environment, the following paragraphs summarize those features with the greatest possible environmental effect.

Argon-41, a product from neutron irradiation of air during operation, is the principal airborne radioactive effluent from the OSURR during routine operations. Conservation calculations by the staff, based on the total amount of Ar-41 released from the reactor during the year, place the maximum credible dose assessment to members of the general public in areas that would normally be occupied at about 0.2 millirem per year.

The staff has considered hypothetical credible accidents at the OSURR and has concluded that there is reasonable assurance that such accidents will not release a significant quantity of fission products from the fuel cladding and, therefore, will not cause significant radiological hazard to the environment or the public.

This conclusion is based on the following:

(1) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(2) At a thermal power level of 500 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(3) The hypothetical loss of integrity of the cladding of the maximum irradiated fuel rod will not lead to radiation exposures in the unrestricted environment that exceed guidelines values of 10 CFR part 20.

In addition to the analyses in the SER summarized herein, the environmental effect associated with the operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental effect associated with the operation of research reactors licensed to operate at power levels up to and including 2 MW(t) and that an environmental impact statement is not required for the issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the OSURR and that this facility will have no special or unique features that would preclude reliance on the generic evaluation.

Alternatives to the Proposed Action

Alternatives considered to the proposed action were to not increase the power level or to increase the power level to some lesser power. Operation at 10 kW would not achieve the licensee's research objectives. Operation at a lesser power could achieve some but not all of the objectives and would result in essentially the same environmental effect as at 500 kW. The environmental effect between operation at 10 kW and at 500 kW is not significant.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff has obtained the technical assistance of the Idaho National Engineering Laboratory in performing the safety evaluation of continued operation of the OSURR facility.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action. For further details with respect to this action, see the licensee's request for a license amendment of October 7, 1987, as supplemented on May 26, 1989, February 28 and June 12, 1990. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26696 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-606]

Arkansas Tech University of Proposed Issuance of Construction Permit and Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a construction permit and subsequently a facility operating license to Arkansas Tech University (the applicant). The permit would authorize the applicant to construct for educational training and research purposes a nuclear research reactor (the facility) on the University's campus in Russellville, Arkansas. The license would authorize the applicant to operate the reactor at power levels not in excess of 250 kilowatts (thermal), with pulse step reactivity insertion not in excess of 2.00$.

Prior to issuance of the construction permit, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Upon completion of the construction of the facility in Russellville, Arkansas, in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor at the power and pulse levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by a representative of the Commission to determine whether it has been constructed in accordance with the application and the provisions of the construction permit. The license will not be issued until the Commission makes the findings required by the Act and the Commission's rules and regulations and concludes that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public or to the environment. In addition, the applicant will be required to execute an indemnity agreement as required by section 170 of the Act and by 10 CFR part 140 of the Commission's regulations.

By December 10, 1990, the applicant may file a request for a hearing with respect to the issuance of the construction permit and the 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and 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. 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 particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceedings. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the application 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.

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 Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: Petitioner's name and telephone number; date petition was mailed; Arkansas Tech University; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Jeff Bell, Deputy Attorney General, State of Arkansas, 200 Tower Building, 4th and Center Streets, Little Rock, Arkansas 72201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for construction permit and facility operating license dated November 13, 1989, as supplemented on December 19, 1989 and April 25, 1990, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26695 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-30870; License No. 53-23288-01 EA 90-190]

In the matter or Fewell Geotechnical Engineering, Ltd., Pearl City, HI; Order Modifying License (Effective Immediately)

I

Fewell Geotechnical Engineering, Ltd. (FGE or Licensee) is the holder of Byproduct Material License No. 53-23288-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to receive, possess, and utilize sealed sources of Iridium 192 in industrial radiographic exposure devices. The license was issued on January 26, 1989, was most recently amended on September 29, 1989, and is due to expire on January 31, 1994.

II

Under 10 CFR 20.105 and 20.201 and under FGE License Condition 15 on page 3 of the license and FGE Operating and Emergency Procedures ("OEP"), personnel performing licensed activities under FGE's license are required to conduct radiation surveys to establish the boundaries of restricted areas (OEP section IV, paragraph 2.5). In addition, duing radiographic operations, personnel are required to determine that the sealed source is returned to the fully shielded position after each source exposure (10 CFR 34.43(b); OEP section IV, paragraph 2.6), to secure the sealed

source assembly in the shielded position after each source exposure (10 CFR 34.22(a); OEP section IV, paragraph 2.6), to post and rope off the 2mR/hr boundary (OEP section IV, paragraphs 2.2. and 2.5), and to prevent entry into the restricted area of individuals other than radiographers and radiographer's assistants (OEP section I, paragraphs 5; OEP section IV, paragraph 2.5). Finally, information provided to the NRC by licensee personnel must be complete and accurate in all material respects (10 CFR 30.9).

Thomas E. Murray, a radiographer for the Licensee, has been a radiographer since December 1987, having satisfied the experience, training, and examination requirements of at least two NRC licensees (the U.S. Navy and FGE). In accord with 10 CFR 34.31, examinations by NRC licensees must include demonstrations by radiographer candidates evidencing their understanding of NRC requirements, including licensee operating and emergency procedures. During an NRC inspection conducted on October 4, 1990, Mr. Murray demonstrated a thorough understanding of proper procedures for surveys, source securing, and control of access into restricted areas.

An NRC investigator and an NRC inspector observed Mr. Murray, conduct radiographic operations on October 23 and 25, 1990 at Campbell Industrial Park, Oahu, Hawaii, contrary to the above-referenced NRC requirements as follows:

(1) On October 25, 1990, Mr. Murray conducted radiographic operations without performing surveys to establish the radiation boundary;

(2) On October 23 and 25, 1990 Mr. Murray failed to rope off any portion of the radiation boundary, and failed to post signs for most of that boundary;

(3) On October 23, 1990, on at least 12 occasions and on October 25, 1990, on at least 5 occasions, Mr. Murray failed to perform surveys of the exposure device to determine that the sealed source had been returned to its shielded position after radiographic exposures;

(4) On October 25, 1990, Mr. Murray failed to secure the radiographic source in the fully shielded position after each of several source exposures;

(5) On October 23, 1990, Mr. Murray failed to prevent entry into the restricted area of individuals other than radiographers and radiographers' assistants.

On October 25, 1990, Mr. Murray was asked by NRC personnel whether, during the NRC-observed operations of October 23 and 25, he had compiled with the above-referenced NRC requirements for the conduct of surveys to assure that the source had been retracted to its fully shielded position, for the securing of the source in this shielded position after each exposure, and for preventing the entry of unauthorized personnel into the restricted area. He stated that he had complied and also demonstrated to the NRC personnel the survey procedures he stated that he had used on those occasions, i.e., conducting a survey with a survey meter as he approached the radiographic exposure device, and circumferentially surveying the device with a survey meter. This demonstration again showed that he had a thorough understanding of Commission requirements.

III

It appears that Mr. Murray's actions were willful because he was experienced, trained, and knowledgeable concerning NRC and Licensee requirements pertaining to surveys, to securing the source in the fully shielded position after each source exposure, and to preventing unauthorized entry into a restricted area, and because he repeatedly failed to comply with these requirements on at least two days in one week. In addition, Mr. Murray gave the NRC false information concerning his actions, contrary to the observations of two NRC employees. Therefore, the NRC has concluded that false information was also provided willfully. As a result of these willful violations, the NRC does not have reasonable assurance that Mr. Murray will comply with regulatory requirements. Moreover, Mr. Murray's willful violations of Commission requirements cannot be tolerated.

Consequently, I lack the requisite reasonable assurance that, with Mr. Murray's involvement, the Licensee's current operations under License No. 53-23288-01 can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that License No. 53-23288-01 be modified to prohibit the utilization of Mr. Thomas E. Murray in Licensed activities. Furthermore, pursuant to 10 CFR 2.204, I find that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 34, it is hereby ordered, effective immediately, that License No. 53-23288-01 is modified as follows:

Fewell Geotechnical Engineering, Ltd., shall not utilize Mr. Thomas E. Murray in any licensed activities, including, but not limited to, activities performed by radiographers, radiographers' assistants, and helpers, for a period of three years.

The Regional Administrator, Region V, may relax or rescind, in writing, any of the above conditions upon a showing of good cause by the Licensee.

The Licensee, Mr. Thomas E. Murray, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within twenty days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee, Mr. Thomas E. Murray, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within twenty days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region V, 1450 Maria Lane, suite 210, Walnut Creek, California 94596, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Thomas E. Murray requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee, Mr. Thomas E. Murray, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Upon the Licensee's and Mr. Murray's consent to the provisions set forth in Section IV of this Order, or upon failure of the Licensee and Mr. Murray to file an answer within the specified time, and in the absence of any request for hearing, the provisions specified in section IV above shall be final without further Order or proceedings. An answer or a request for hearing shall not stay

the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 2nd day of November 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 90-26697 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-R5 and 50-444-OL-R5; Construction Permit Nos. CPPR-135 and CPPR-136]

Public Service Co. of New Hampshire, et. al., Seabrook Station, Units 1 and 2; (Emergency Planning—ALS Patients); Establishment of a Separate Atomic Safety and Licensing Board To Preside in Proceeding

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, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the request of the Atomic Safety and Licensing Board already established to preside in this operating license proceeding, a separate Atomic Safety and Licensing Board is being established to preside over the proceeding on the issue of evacuation time estimates for special facility Advanced Life Support patients.

This Board is being established pursuant to the Atomic Safety and Licensing Appeal Board's November 7, 1989 Decision concerning the New Hampshire Radiological Emergency Response Plan (NHRERP). ALAB-924, 30 NRC 331 (1989). One of the issues that the Appeal Board remanded for further proceedings in ALAB-924 was the Licensing Board's finding in LBP-88-32, 28 NRC 667 (1988) that intervenor SAPL's concerns regarding evacuation time estimates for special facility Advanced Life Support (ALS) patients were adequately reflected in the NHRERP's evacuation time assumptions.

The separate Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dr. Richard F. Cole, Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 2055.

Dr. Harry Foreman, Member, 1564 Burton Avenue, St. Paul, Minnesota 55108.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

This separate Licensing Board of limited jurisdiction (to be referred to for convenience as the "ALS" Board), exists solely to hear and resolve issues related to evacuation time estimates for special Facility Advanced Life Support (ALS) patients.

The Licensing Board comprised of Administrative Judges Smith, Cole and McCollom, sometimes referred to for convenience as the "offsite EP Board", stands in the shoes of the original Licensing Board constituted November 30, 1981 in response to the October 19, 1981 notice of hearing. *See* 46 FR 51,330 (1981). Thus, that Licensing Board has general jurisdiction over all matters pertaining now or in the future to the application for a license to operate Units 1 and 2 of the Seabrook Station not otherwise expressly assigned to the new separate "ALS" Board.

Dated at Bethesda, Maryland, this 5th day of November 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-26694 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17839; 812-7485]

American Capital Comstock Fund, Inc. et al.; Application

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: American Capital Comstock Fund, Inc.; American Capital Corporate Bond Fund, Inc.; American Capital Emerging Growth Fund, Inc.; American Capital Enterprise Fund, Inc.; American Capital Equity Income Fund, Inc.; American Capital Federal Mortgage Trust; American Capital Government Securities, Inc.; American Capital Government Target Series; American Capital Growth and Income Fund, Inc.; American Capital Harbor Fund, Inc.; American Capital High Yield Investments, Inc.; American Capital Pace Fund, Inc.; and any other investment companies whose shares may be distributed by American Capital Marketing, Inc. (together, the "Funds"); American Capital Marketing, Inc.; and American Capital Asset Management, Inc. (together, the "Applicants").

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an exemption under section 6(c) to permit the Applicant to impose and waive a contingent deferred sales charge on redemptions of its shares in certain cases.

FILING DATES: The application was filed on March 7, 1990 and amended on September 28 and October 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; on behalf of Applicants, c/o American Capital Asset Management, Inc., 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. The Funds are open-end investment management companies registered under the 1940 Act. Each of the Funds has or will enter into an underwriting agreement pursuant to which American Capital Marketing, Inc. (the "Distributor") acts as principal

underwriter for the Funds. American Capital Asset Management, Inc. is the Funds' investment adviser.

2. Each Fund currently offers its shares to the public at their net asset value plus a sales commission at the time of purchase, as set forth in each Fund's prospectus. Each of the Funds, except American Capital Comstock Fund, Inc. ("American Comstock"), has adopted a distribution plan pursuant to Rule 12b-1 of the 1940 Act (the "Plan"). Under the Plan, each Fund, except American Comstock, may pay the Distributor up to 0.25% per year of their respective average daily net assets for reimbursement of certain distribution expenditures.

3. The Funds propose to continue to offer shares for sale at net asset value plus a front-end sales charge in amounts determined by the size of the investment. However, for certain qualified purchasers, Applicants intend to waive the front-end sales charge and instead impose a contingent deferred sales charge ("CDSC") in the same amount in the event of certain redemptions of shares within a two year period. The CDSC would be equal to the initial sales charge that would have applied to purchase payments in the same amount made by investors other than Qualified Purchasers, and in no event would it be more than 1% of the value of shares purchased. Qualified Purchasers are defined as retirement plans purchasing Fund shares in amounts of $1,000,000 or more, in which a trustee or other fiduciary makes purchases for a single fiduciary account, and that qualify as a benefit plan under Internal Revenue Code Sections 401(a) and 457 ("Retirement Plans").

4. The CDSC would be imposed if a Qualified Purchaser redeems an amount which causes the value of the account to fall below the total dollar amount of purchase payments made by the Qualified Purchaser without an initial sales charge during a period of two years prior to the redemption. No CDSC will be imposed when Qualified Purchasers redeem amounts derived from (a) increases in the value of the account above the total dollar amount of purchase payments made during a two year period (either through growth in net asset value per share of the Fund or through reinvestment of dividends or capital gain distributions in additional shares of the Fund) or (b) purchase payments made more than two years prior to the redemption. Furthermore, no CDSC will be imposed on exchanges of shares between Funds. For purposes of the CDSC, when shares of one Fund are exchanged for shares of another Fund, the purchase date for the shares of the Fund exchanged into will be assumed to be the date on which shares were purchased in the Fund from which the exchange was made. In determining whether a CDSC is payable, the shares held the longest are assumed to be redeemed first. If a CDSC is imposed upon redemption, the amount of the CDSC will be equal to the lesser of a specified percentage of the net asset value of the shares at the time of purchase, or the same or a lower percentage of the net asset value of the shares at the time of redemption.

5. Applicants intend to waive the CDSC in connection with redemptions by Qualified Purchasers required to obtain funds to pay distributions made to beneficiaries pursuant to the terms of their Retirement Plans. Such payments include, but are not limited to, death, disability, retirement, or separation from service.

Applicants' Legal Conclusions

1. Applicants request an order under section 6(c) of the 1940 Act granting an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rule 22c-1 thereunder to permit the imposition and waiver of a CDSC on the terms described above. In addition, Applicants request that the exemptive relief referred to above also extend to other investment companies whose shares may be distributed by the Distributor on similar terms.

2. Applicants submit that the requested exemption is appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested exemptive relief is granted, Applicants agree that they will comply with the provisions of proposed Rule 6c-10 under the 1940 Act, Investment Company Act Rel. No. 16619 (Nov. 2, 1988), as currently proposed and as it may be further revised and adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26636 Filed 11-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17840; 811-5638]

DFA Dual Fund One, Inc.; Application for Deregistration

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The DFA Dual Fund One, Inc. (the "Fund").

RELEVANT 1940 ACT SECTION: Section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 1, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; on behalf of Applicants, 1299 Ocean Avenue, Suite 650, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant is a Maryland corporation and a closed-end diversified management company registered under the Act. On August 19, 1988, Applicant filed a Notification of Registration of Form N-8A pursuant to section 8(a) of

the Act. On that same date, Applicant filed a registration statement on Form N-2 under section 8(b) of the Act and the Securities Act of 1933.

2. Applicant has never made a public offering of its securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, not does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26637 Filed 11-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17841; International Series Rel. No. 187; 812-7270]

Prudential Corporation plc and Prudential Finance (Jersey) Ltd; Application

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Prudential Corporation plc ("Prudential") and Prudential Finance (Jersey) Ltd ("Prudential Finance").

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) permitting them to offer and sell their debt securities in the United States without registering as investment companies under the 1940 Act.

FILING DATES: The application was filed on March 13, 1989, and amendments were filed on July 25, 1990 and October 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 3, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Albert Francke, III, Curtis, Mallet-Prevost, Colt & Mosle, 101 Park Avenue, New York, New York 10178-0061.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. Prudential is an English corporation which is the parent company of a group of companies (the "Group") primarily engaged in insurance and reinsurance in the United Kingdom and other countries. The Group has the largest long-term insurance operations of any United Kingdom casualty insurer and includes the largest reinsurance company in the United Kingdom. At the end of 1988, the total market value of funds under management by the Group was $89 billion. Prudential's major subsidiary is The Prudential Assurance Company Limited. Prudential is also the parent company of Mercantile and General U.S. Holdings Inc., a registered Delaware insurance holding company, and Jackson National Life Insurance Company, a life insurance company licensed in 48 states and conducting business in 35 states and the District of Columbia.

2. The Group is organized into eight operating divisions. The Group's insurance activities are subject to extensive regulation in the United Kingdom, principally under the Insurance Companies Act 1982 and the Financial Services Act 1986. These acts and associated regulations impose on insurance companies operating in the United Kingdom, among other requirements, minimum solvency standards and auditing and reporting requirements. The Group's insurance activities are also subject to regulation and supervision in the United States and other countries in which the Group conducts business.

3. Prudential Finance is a direct subsidiary of Prudential Corporation Holdings Ltd., a direct holding company subsidiary of Prudential, and is registered in Jersey, Channel Islands, British Isles. Prudential Finance was formed for the sole purpose of issuing and selling its commercial paper and other debt securities and advancing substantially all of the net proceeds of the sale thereof to Prudential and/or other members of the Group for current operating expenses and for general short-term business needs.

4. Applicants propose to sell in the United States from time to time unsecured, prime quality commercial paper notes (the "Notes") and/or other debt securities (the "Debt Securities") issued either by Prudential or Prudential Finance. Notes and Debt Securities issued by Prudential Finance would be unconditionally guaranteed by Prudential. Applicants do not request relief to issue equity securities in the United States.

5. Substantially all (but in no event less than 85%) of the proceeds of the sale of the Notes and Debt Securities issued by Prudential Finance would be provided to Prudential or companies controlled by Prudential as soon as practicable, but in no event more than six months after receipt, on terms that would allow Prudential Finance to make timely payment on such securities.

6. Applicants seek access to the United States commercial paper and other debt securities markets to provide an alternative source of supply of United States dollars at favorable rates for short-term borrowings and to better manage the short-term general business needs of the Group.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the 1940 Act)." Applicants submit that the application meets these requirements.

2. Applicants seek an order permitting each of them to offer and sell Notes and/or Debt Securities in the United States without registering as investment companies under the 1940 Act. Prudential is applying for relief because it is a holding company of foreign insurance companies. Section 3(c)(3) of the 1940 Act provides an exception from the definition of "investment company" for any "insurance company." Section 3(c)(6) provides, among other things, that no company primarily engaged in the insurance company business through

majority-owned subsidiaries shall be an investment company. Section 2(a)(17) defines the term "insurance company" to be a company organized as an insurance company and subject to supervision by the insurance commissioner or a similar official or agency of a state. Because many of the insurance companies owned by Prudential are not subject to domestic insurance regulation, Prudential may not meet the exception provided by Section 3(c)(6) and, thus, could be an "investment company" required to register under the 1940 Act in connection with the issuance of its Notes and Debt Securities in the United States. Prudential Finance is applying for relief because its rights to receive repayments of loans made to Prudential and its subsidiaries out of the proceeds of sales of its Notes and Debt Securities could be "securities" under the 1940 Act, thereby causing Prudential Finance to be an "investment company" required to register under the 1940 Act.

3. On August 15, 1990, the Commission proposed amendments to Rule 6c–9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990); 55 F.R. 34,569 (Aug. 23, 1990). In its present form, Rule 6c–9 provides a conditional exemption from the 1940 Act that permits foreign banks and their finance subsidiaries to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act. The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign insurance holding companies and to foreign insurance companies and their finance subsidiaries offering or selling their debt securities in the United States. Applicants have agreed to comply with Rule 6c–9 (except as described in paragraph 4, below) as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with the issuance and sale of their Notes and Debt Securities in the United States.

4. Because of the particular corporate structure of the Group, applicants are unable to comply with all of the technical requirements of Rule 6c–9 as it is proposed to be amended (the "proposed amended Rule"). Under the proposed amended Rule, a "finance subsidiary" must be owned either directly or indirectly by a foreign insurance company. Prudential Finance, however, is wholly owned by a holding company that is wholly owned by Prudential. Although Prudential is a "qualifying holding company" of foreign insurance companies, as defined in the proposed amended Rule, Prudential Finance's sole shareholder is not a foreign insurance company or a company controlled by a foreign insurance company. Thus, Prudential Finance does not constitute a "finance subsidiary" under proposed amended Rule 6c–9(c)(1). In addition, the proposed amended Rule requires that the finance subsidiary transfer to its parent company or a company controlled by its parent company at least 85% of the cash raised through an offering of its securities. Proposed amended Rule 6c–9(c)(3) defines "company controlled by a parent company" to be either a foreign insurance company or a non-investment company, all of the securities of which are owned by a foreign insurance company. Because Prudential is itself a holding company and not a foreign insurance company, some of its subsidiaries to which Prudential Finance intends to transfer cash do not come within the definition of "company controlled by a parent company."

5. As required by the proposed amended Rule, the primary purpose of Prudential Finance is to finance the business operations of Prudential or companies controlled by Prudential that are foreign insurance companies or are not investment companies. Although Prudential Finance does not fall within the definition of "finance subsidiary" of a foreign insurance company in the proposed amended Rule, it is the type of entity to which the policy considerations underlying the proposed amended Rule apply. Offerings of securities by Prudential Finance will be in accordance with the requirements of the proposed amended Rule, except for the fact that Prudential Finance and some of the affiliates to which it transfers cash will be subsidiaries of a qualifying holding company but not of a foreign insurance company.

6. In proposing amendments to Rule 6c–9 under the 1940 Act, the Commission has indicated its view that foreign insurance companies, like domestic insurance companies, should be exempted from the 1940 Act's requirements. Similarly, in incorporating the Rule 3a–5 requirements for finance subsidiaries into the proposed amended Rule, the Commission recognized that it is not necessary to subject to the requirements of the 1940 Act certain finance subsidiaries serving as vehicles for issuing securities to finance the activities of a foreign insurance company group.

7. The requested relief is consistent with the protection of investors, the purposes fairly intended by the 1940 Act, and the spirit and general substance of the proposed amended Rule. The Commission has granted similar relief under similar circumstances. See *Legal & General Group plc*, Investment Company Act Release Nos. 16785 (Jan. 30, 1989) (notice) and 16835 (Feb. 24, 1989) (order).

Applicants' Condition

Applicants consent to any Commission order granting the application being expressly conditioned upon their compliance (except for the fact that Prudential Finance and some affiliates to which it transfers cash will not be subsidiaries of a foreign insurance company) with the proposed amended Rule under the 1940 Act as they are currently proposed and as they may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26638 Filed 11–9–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2461 and #2462]

Arizona And Contiguous Counties in Utah; Declaration of Disaster Loan Area

Conconino, Maricopa, and Pinal Counties and the contiguous counties of Gila, Graham, LaPaz, Mohave, Navajo, Pima, Yavapai, and Yuma in the State of Arizona, and Kane and San Juan Counties in the State of Utah constitute a disaster area as a result of damages caused by a severe monsoonal storm system which occurred between July 8 and September 14, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 21, 1990 and for economic injury until the close of business on July 22, 1991, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. box 13795, Sacramento, CA 95853–4795;

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000

	Percent
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 246111 for Arizona and 246211 for Utah. For economic injury the numbers are 715100 for Arizona and 715200 for Utah.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-26642 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2464]

Georgia, With Contiguous Counties in South Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 19, 1990, and an amendment thereto on October 22, 1990, I find that the Counties of Burke, Columbia, Emanuel, Jefferson, Johnson, McDuffie, Richmond, and Screven in the State of Georgia constitute a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990. Applications for loans for physical damage may be filed until the close of business on December 19, 1990, and for loans for economic injury until the close of business on July 19, 1991, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308;

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bulloch, Candler, Effingham, Glasock, Jenkins, Laurens, Lincoln, Montgomery, Tattnall, Toombs, Treutlen, Warren, Washington, Wilkes, and Wilkinson in the State of Georgia and Aiken, Allendale, Barnwell, Edgefield, and Hampton Counties in the State of South Carolina may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246406 and for economic injury the numbers are 715400 for the State of Georgia and 715500 for the State of South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 25, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-26643 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2464]

Georgia, Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated October 22, 1990 to the President's major disaster declaration of October 19 to include Jenkins County in the State of Georgia, which was inadvertently omitted from the original declaration, as a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 19, 1990, and for economic injury until the close of business on July 19, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 29, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-26644 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2465]

Maryland (and a Contiguous County in Pennsylvania); Declaration of Disaster Loan Area

Baltimore County and the contiguous counties of Anne Arundel, Carroll, Harford, and Howard, and Baltimore City, in the State of Maryland, and York County in the State of Pennsylvania constitute a disaster area as a result of damages caused by a tornado which occurred on October 18, 1990 in the town of Reisterstown, Maryland. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 24, 1990 and for economic injury until the close of business on July 23, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 246512 for the State of Maryland and 246612 for the State of Pennsylvania. For economic injury the numbers are 715600 for Maryland and 715700 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 23, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-26645 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2468]

Minnesota; Declaration of Disaster Loan Area

Ramsey County and the contiguous counties of Anoka, Dakota, Hennepin, and Washington in the State of Minnesota constitute a disaster area as

a result of damages caused by a fire which occurred in the Grand Pre apartment complex located in the City of Little Canada on October 9, 1990. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on December 31, 1990 and for economic injury until the close of business on August 1, 1991 at the address listed below: Disaster Area 2 Office, Small Business Adminstration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,

or other locally announced locations.

The interest rates are:

	Percent
For physical damange	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246805 and for economic injury the numbers are 716000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 1, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-26646 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2467]

South Carolina (With Contiguous Counties in North Carolina); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 22, 1990, I find that the Counties of Aiken, Calhoun, Cherokee, Darlington, Kershaw, Lee, Spartanburg, Sumter and Union in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990. Applications for loans for physical damage may be filed until the close of business on December 21, 1990, and for loans for ecomomic injury until the close of business on July 22, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chester, Chesterfield, Clarendon, Fairfield, Florence, Greenville, Lancaster, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Saluda, and York in the State of South Carolina and Cleveland, Polk, and Rutherford Counties in the State of North Carolina may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrences.

The interest rates are:

	Percent
For physical damage	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246706 and for economic injury the numbers are 715800 for the State of South Carolina and 715900 for the State of North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 29, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-26647 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2463]

Virginia; Declaration of Disaster Loan Area

The Independent City of Portsmouth and the contiguous Independent Cities of Chesapeake and Norfolk in the State of Virginia constitute a disaster area as a result of damages caused by flooding which occurred on August 24, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 24, 1990 and for economic injury until the close of business on July 23, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 246306 and for economic injury the number is 715300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 23, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-26648 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0136]

Super Market Investors, Inc.; Surrender of License

Notice is hereby given that Super Market Investors, Inc., 23000 Roundy Drive, Pewaukee, Wisconsin 53072-0901, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (Act). Super Market Investors, Inc. was licensed by the Small Business Administration on January 25, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 26, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 2, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26639 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Firday, November 30, 1990, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mt. Pleasant Avenue, Livingston, New Jersey, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, telephone (201) 645-3580.

Dated: October 31, 1990.

Veronica De Nardo,

Acting Director, Office of Advisory Councils.

[FR Doc. 90-26641 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5191]

Continental SBIC, Issuance of Small Business Investment Company License

On December 27, 1989, a notice was published in the **Federal Register** (54 FR 53230) stating that an application has been filed by Continental SBIC, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business Friday, January 26, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-5191 on October 19, 1990, to Continental SBIC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.01 Small Business Investment Companies)

Dated: November 2, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26640 Filed 11-1-90; 8:45am]

BILLING CODE 8025-01-M

[License No. 02/02-5532]

Yuzary Capital Funding, Ltd.; Issuance of Small Business Investment Company License

On January 31, 1990, a notice was published in the **Federal Register** (55 FR 3296) stating that an application has been filed by Yuzary Capital Funding, LTD. 386 Park Avenue South, Suite 1101, New York, New York 10016 with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 21, 1990, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, a amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5532 on October 19, 1990, to Yuzary Capital Funding, LTD. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 5, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26649 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Addison Airport, Addison, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Town of Addison, Texas under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 24, 1990, the FAA determined that the noise exposure maps submitted by the Town of Addison under part 150 were in compliance with applicable requirements. On October 18, 1990, the Administrator approved the noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Addison Airport's noise compatibility program is October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0612, (817) 624-5594. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Addison Airport, effective October 18, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas

preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrators prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Town of Addison submitted to the FAA on November 6, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 2, 1987 through March 5, 1990. The Addison Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 24, 1990. Notice of this determination was published in the Federal Register on May 11, 1990.

The Addison Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1994. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 24, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such programs within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation at the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 18, 1990.

Outright approval was granted for all of the specific program elements. The approved elements included the institution of a noise complaint response and investigation system, update and review of the approved program, and initiation of a pilot education and noise abatement brochure distribution program.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 18, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Addison Airport.

Issued in Forth Worth, Texas, October 31, 1990.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 90-26674 Filed 11-9-90; 8:45am]

BILLING CODE 4910-13-M

Illustration of Technical Feasibility of FAA's Interaction and Integration Laboratory (I-Lab)

Notice is hereby given that an illustration of the technical feasibility of FAA's I-Lab will be held on Wednesday, November 28, 1990, at the MITRE Corporation's Westgate Facility, 7525 Colshire Drive, in McLean, Virginia.

The I-Lab is FAA's prototype of the National Simulation Laboratory which is expected to be operational within the next several years. The I-Lab has been developed to illustrate the technical feasibility of: Horizontally integrating existing National Airspace System air traffic control subsystems in a simulation environment; identifying system engineering problems and issues; and answering questions about the interaction of different elements of the aviation system.

The illustration will take approximately one (1) hour to complete. Attendance is open to interested organizations but limited to space available. Organizations wishing to attend should elect to send one (1) representative and should contact Herb Goldstein, Manager, System Analysis Division, Operations Research Service, C/O FAA, 800 Independence Avenue SW., Washington, DC 20591; (202) 267-3411. Mr. Goldstein will schedule the times for the illustration based on the demand; please contact him no later than November 21, 1990.

Issued in Washington, DC on November 5, 1990.

Herbert P. Goldstein,

Manager System Analysis Division, AOR-100, Operations Research Service.

[FR Doc. 90-26673 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-01-VE-NO3]

Final Determinations That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final determinations that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice announces final determinations by the National Highway Traffic Safety Administration (NHTSA) that certain motor vehicles which do not comply with the Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because they are:

(1) Substantially similar to motor vehicles which were originally manufactured and certified to conform to the Federal standards and were imported into and sold in the United States, and

(2) Capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

A notice of tentative determination was published on April 25, 1990.

DATES: The determination is effective November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (366-5306).

SUPPLEMENTARY INFORMATION: In order that the public fully understand the final determinations of this notice, NHTSA refers the reader to the full discussion that was provided in the notice of tentative determinations published on April 25, 1990 (55 FR 17518).

Background

On April 25, 1990, NHTSA published tentative determinations of eligibility with respect to two categories of motor vehicles that were not certified by their original manufacturers under section 114 of the Act as conforming to all

applicable Federal motor vehicle safety standards. The first of these categories was comprised of passenger cars of 1989 and earlier model years, and all other vehicle types, that were certified by their original manufacturers as complying with all applicable Canadian motor vehicle safety standards, but not all applicable Federal motor vehicle safety standards, and which were substantially similar to vehicles that, having been originally manufactured for sale in the United States, are certified as complying with all Federal safety standards. Final determinations regarding this category of vehicles was published on August 13, 1990 (55 FR 32988).

The second category was comprised of certain nonconforming passenger cars manufactured in Great Britain, Germany, Italy, and Japan, which were substantially similar to conforming counterparts manufactured and certified for sale in the United States and which have been the subject of sufficient demonstrations of conformance since 1987 to justify release of the performance bond under which they entered the United States.

Vehicles Successfully Conformed Since January 1, 1988

Over the years, the typical practice of manufacturers outside the United States who wish to sell passenger cars in the American market has been to offer versions of their home-market products that they have re-engineered and originally manufactured to conform to the Federal motor vehicle safety standards. The so-called "grey market" is comprised of foreign motor vehicles not originally manufactured to conform to the U.S. standards. In many instances, these vehicles are equipped with a body whose visual appearance, other than lighting equipment, bumpers, and rear view mirrors, is identical to that of U.S.-certified vehicles, and share a large number of the same structural components. Thus, there is a large body of passenger cars which the agency tentatively determined in the April 25, 1990, notice were substantially similar to vehicles of the same model and model year certified by their original manufacturers for sale in the United States.

In making a determination of eligibility for importation, NHTSA is required by 15 U.S.C. 1397(c)(3)(C)(iii) to give due consideration to information available to it. The primary information that is readily available to the agency consists of its own records, reflecting the importation of noncomplying motor vehicles under bond over the years, and data submitted by their importers in substantiation of statements that the vehicles have been brought into compliance with all applicable Federal motor vehicle safety standards. Much of the data that NHTSA found acceptable were based upon modifications of a relatively minor nature, without the necessity for major structural modifications or destructive component testing. For example, adhesives have been added to windshields as a guarantor of compliance under the dynamic test conditions of Standard No. 212, *Windshield Mounting*. Because a vehicle certified as complying with the Federal motor vehicle safety standards by its original manufacturer is a variation of one that is not so certified, but is "substantially similar" to it, the agency believes that a "substantially similar" vehicle will be more likely to incorporate structural features adaptable to conformance than will vehicles for which there is no substantially similar U.S. certified model.

On the basis of its enforcement history with respect to those models and model years of substantially similar non-certified vehicles for which NHTSA has accepted such statements with some frequency so as to afford familiarity with the vehicle, NHTSA tentatively determined that the vehicles listed as an Annex to the April notice were readily capable of conformance.

As of the effective date of the regulation, January 31, 1990, no registered importer had been approved, therefore no vehicle eligibility petition could be filed by a registered importer (nor had any manufacturer filed one). In order to expedite the continued importation of motor vehicles, the agency decided to make determinations on its own initiative, as permitted by statute. To further expedite the process, the agency decided to use its experience in admitting grey market vehicles during the two most recent years, 1988 and 1989, and choosing within these years the most frequently imported models and model years. The agency then decided that if at least 10 model and model years of a particular car had been imported in those years, and compliance work found satisfactory, a basis existed upon which a tentative determination could be made that the vehicles were readily capable of conformance. The agency identified almost 500 imported nonconforming passenger cars that are equivalent counterparts to passenger cars certified by their original manufacturers for importation into and sale in the United States, and for which not less than 10 acceptable compliance packages have been received. These makes, models, and different model years, as divided, covered BMW (106), Ferrari (5), Jaguar (15), Mazda (3), Mercedes-Benz (279), Nissan (10), Porsche (51), Rolls-Royce (10), and Toyota (12). A complete listing of these makes, models, and model years appeared as an Annex to the notice of tentative determinations.

Comments on the Notice of Tentative Determinations

Comments on the Notice of Tentative Determinations were submitted by registered importers (Wallace Environmental Testing Laboratories, Inc., ICI International, Inc., Liphardt & Associates, Inc., Import Trade Services, USA. Inc. on behalf of Registered Importers), and original manufacturers (BMW of North America, Mercedes-Benz of North America). Two principal issues were raised by the commenters.

1. Composition of List of Vehicles Covered by Tentative Determination

Liphardt, Wallace, Import Trade Services, and Mercedes-Benz commented on the composition of the list of vehicles in annex A of the notice of tentative determination. In general, the commenters felt that NHTSA's determinations should be based on chassis series or body type, rather than the engine families that comprised the list. For example, annex A listed 35 variations of the BMW series 3 under the nomenclature 316, 318i, 320, 320i, 323i, 325, 325e, and 325i, and covering model years 1976 to 1987. During that period, BMW changed the body shell only once. Thus, in the commenter's opinion, the list could be reduced to two variations. Conversely, the list omitted certain productions years of vehicles with the same body style as vehicles covered by the tentative determinations. For example, annex A included model years through 1986 of the Mercedes S class, whose body has remained unchanged since 1979, but did not include them for the years 1987–89. Import Trade Services submitted its own list which it felt met NHTSA's criteria. It thought the agency erred in selecting low-volume import years (1988, 1989) as its reference points, rather than including such high-volume years as 1984 and 1985. Mercedes-Benz thought NHTSA's classification procedure insufficient to allow for detailed meaningful comment. For example, the agency included the 1980 280 SE in annex A, but there were two completely different 280s manufactured in that year. The manufacturer commented that it might be necessary to propose annex A

using the model identification that it had furnished the agency in 1989.

The agency has taken these comments into consideration into formulating its final list. Where feasible, engine families have been subsumed into models whose bodies remained unchanged over their production lives. Additional model years have been added to include models whose bodies remained unchanged from those that were imported in sufficient numbers during 1988 and 1989 to have been included in the list of tentative determinations. For example, the entry on the Mercedes S class covers 11 different models under the company's internal identification of the vehicle as Model 126, and coverage has been broadened to cover all model 126s in the inclusive model years of 1981–89.

2. Whether Certain Vehicles are Readily Capable of Conformance

Original manufacturers (Mercedes-Benz, and BMW) took issue with NHTSA's inclusion of their vehicles in annex A, commenting that the modifications required of their vehicles were so extensive that they did not meet the test of being "readily capable of conformance." BMW stated that the structure of its vehicles had been considerably modified in order to conform with U.S. standards, and that non U.S. versions had not been tested for compliance with the standards. Mercedes argued that it could not provide a definitive analysis in the short comment period provided, but used the fuel system integrity regulation, Standard No. 301, as illustrative of its views: It stated that the majority of the vehicles listed by NHTSA were built with fuel systems that were never designed to meet either the Federal or Canadian Motor Vehicle Safety Standards. Mercedes cited, as an example, the European version of its station wagon in production before 1986 (the model 280 TE for 1979–85 in annex A) which was available in the U.S. only as a diesel. It argued that the gasoline fuel systems used in its European station wagons would require extensive modifications (structural, electrical, piping, vapor recovery, etc.), based on destructive crash testing, to certify compliance with Standard No. 301.

The agency has considered the comments of these manufacturers. It notes that the objection by BMW is general in nature, while that of Mercedes is more specific. Although BMW noted that its conforming models have been structurally modified, it did not explain this remark, and it conceded that it had not tested its non-U.S. models for conformance. In the absence of such testing, NHTSA does not feel foreclosed from determining that BMW's non-U.S. vehicles are capable of being readily modified to achieve conformance when it has reviewed and accepted (and rejected as well) countless statements of conformity over the years.

Mercedes appeared prepared to present a more detailed analysis in support of an argument that its vehicles are not capable of being readily modified, but did not follow through with detailed comments, except for a comment regarding the difficulties of achieving conformance with Standard No. 301. The agency has characterized Standard No. 301 as one for which substantially similar vehicles could be readily modified to achieve conformance. However, the differences in fuel systems between the U.S.-certified Mercedes models and those for the home market lie chiefly in the routing of fuel lines, and the provision of check valves for cars intended to meet Standard No. 301. In the agency's judgement, such alterations that are called for do not involve major structural modifications. Therefore, NHTSA has not omitted any BMW or Mercedes for which it had made a tentative determination of eligibility on the basis of these manufacturers' comments.

Importation Code Numbers for Eligible Vehicles

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate "VSA #" indicating that the vehicle is eligible for entry. VSA#1 applies to Canadian vehicles admissible under the final determination published on August 13, 1990. The determinations of this notice apply to BMW (VSA#s 2 through 35 covering 59 models and model years 1968–89) Ferrari (VSA#s 36 through 39 covering 4 models with varying model years in the 1980s), Jaguar (VSA#s 40 and 41 covering two models of varying model years in the 1970s and 1980s), Mazda (VSA#s 42, covering the 1979–81 RX 7), Mercedes-Benz (VSA#s 43 through 55 covering 13 cars with internal designations comprising 83 models of model years 1968–89), Porsche (VSA#s 56 through 61 covering 19 models of model years 1968–89), Rolls Royce (VSA#s 62, covering the 1970–79 Silver Shadow, and Toyota (VSA#s 63 through 65 covering three models of model years 1988–89).

Fees

Under 15 U.S.C. 1397(c)(3)(A)(iii), registered importers must pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(I) on its own initiative that motor vehicles are eligible for importation. At the time of the April 1990 tentative determination, the regulation applicable in Fiscal Year 1990 required that a fee of $1,560 be payable by the first importer of a substantially similar vehicle covered by a determination on the Administrator's initiative. Subsequently the agency proposed and adopted a revised fee structure for Fiscal Year 1991, under which a fee of $156 will be furnished the Administrator by the registered importer (owing by the importer of record) who submits a certificate of conformity on the vehicle. This means that any vehicle for which a final determination has been made in this notice is subject to the $156 fee if it is imported between the issuance of this notice and September 30, 1991, the end of Fiscal Year 1991.

Theft Prevention Standard Reminder

Some of the passenger cars covered by this notice of Final Determination are car lines subject to the requirements of 49 CFR part 541 *Federal Motor Vehicle Theft Prevention Standard*. Under the standard, certain vehicle parts must be marked before the vehicle can enter the United States. Unlike its authority with respect to the Federal motor vehicle safety and bumper standards, NHTSA has not authority to allow post-entry conformance of passenger cars subject to the theft prevention standard. Accordingly, it wishes to advise registered importers who may be interested in importing a passenger car covered by this determination to refer to appendix A of part 541 to see whether the car appears on the list, and, if it does, to ensure that the parts specified are marked appropriately and that the required certification label is attached before the car is offered for entry.

Final Determinations

Accordingly, on the basis of the foregoing, NHTSA hereby determines that each of the passenger cars listed in annex A is substantially similar to a passenger car originally manufactured for importation into and sale in the United States, certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and of the same model year, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and 1397(c)(3)(C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: November 6, 1990.

Jeffrey R. Miller,

Deputy Administrator.

Annex A

Nonconforming Motor Vehicles Eligible for Entry into the U.S. VSA#

1 Canadian Vehicles Admissible Under Final Determination Of August 13, 1990 (55 FR 32988)

* * * * *

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

	Model type	Model year
	BMW	
2	1600	1968 through 1971.
3	2002	1968 through 1976.
4	2000 and 2000A	1969 Only.
5	1500 and 2500A	1969 through 1970.
6	2800 and 2800A	1969 through 1971.
7	2002A	1970 through 1976.
8	2800CS and 2800CSA.	1970 through 1971.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

	Model type	Model year
9	2.8 and 2.8A Bavaria.	1971 Only.
10	2002Tii	1972 through 1974.
11	3.0 and 3.0A Bavaria.	1972 Only.
12	3.0CS and 3.0CSA	1972 through 1974.
13	30S and 3.0SA	1974 Only.
14	3.0Si and 3.0SiA	1975 Only.
15	530i and 530iA	1975 through 1978.
16	320i and 320iA	1977 through 1983.
17	630CSi and 630CSiA.	1977 Only.
18	633CSi and 630CSiA.	1978 through 1984.
19	733i and 733iA	1978 through 1984.
20	528i and 528iA	1979 through 1981.
21	528e and 528eA	1982 through 1988.
22	533i and 533iA	1983 through 1984.
23	318i and 318iA	1984 through 1985.
24	325e and 325eA	1984 through 1987.
25	535i and 55iA	1985 through 1989.
26	524tdA	1985 through 1986.
27	635CSi and 635CSiA.	1985 through 1989.
28	735i and 735iA	1985 through 1989.
29	L7	1986 through 1987.
30	325i and 325iA	1987 through 1989.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

	Model type	Model year
31	325is and 325isA	1987 through 1989.
32	M6	1987 through 1988.
33	325iX and 325iXA	1988 through 1989.
34	M5	1988 Only.
35	M3	1988 through 1989.
	Ferrari	
36	308	1980 Only.
37	328 GTS	1986 through 1987.
38	GTO	1985 Only.
39	TESTAROSSA	1987 through 1988.
	Jaguar	
40	XJS	1986 through 1987.
41	XJ6	1970 through 1983.
	Mazda	
42	RX7	1979 through 1981.

Note: (1) Model Year Starts After the First Model ID Was Manufactured for the U.S. Market. (Model ID is Key for Eligibility)

(2) The Following Model Suffixes Will Not Be a Factor for the Elibigility Status: E (Fuel Injection), D (Diesel) and T (Turbo).

Model		Model Type	Model ID	Model Year
		Mercedes Benz		
43	100	600	100.012	1968 through 1981.
		600 Long 4 door	100.014	1968 through 1981.
		600 Landaulet	100.015	1968 through 1981.
		600 Long 6 door	100.016	1968 through 1981.
44	107	380 SL	107.045	1981 through 1989.
		44390 SLC	107.025	1981 through 1989.
		450.SL	107.044	1972 through 1989.
		450 SLC	107.024	1973 through 1989.
		500 SL	107.048	1986 through 1989.
45	108	280 S	108.016	1968 through 1972.
		280 SE	108.018	1968 through 1972.
		280 SEL	108.019	1968 through 1972.
		280 SE 3.5	108.057	1972 through 1973.
		280 SEL 3.5	108.058	1972 through 1973.
		280 SE 4.5	108.067	1972 Only.
		280 SEL 4.5	108.068	1972 Only.
46	109	300 SEL	109.016	1968 through 1972.
		300 SEL 4.5	109.057	1972 Only.
		300 SEL 6.3	109.018	1969 through 1972.
47	111	280 SE Coupe	111.024	1968 through 1971.
		280 SE Conv	111.025	1968 through 1971.
		280 SE 3.5 Coupe	111.026	1971 Only.
		280 SE 3.5 Conv	111.026	1971 Only.
48	113	230 SL	113.042	1968 through 1971.
		250 SL	113.043	1968 through 1971.
		280 SL	113.044	1968 through 1971.
49	114	230 .6	114.015	1968 through 1976.
		250	114.010	1968 through 1976.
		250	114.011	1971 through 1976.
		250 C	114.023	1970 through 1976.
		250 CE	114.022	1970 through 1976.
		280	114.060	1972 through 1976.
		280 E	114.06	1972 through 1976.
		280 C	114.073	1972 through 1976.
		280 CE	114.072	1972 through 1976.
50	115	220 D	115.110	1968 through 1976.
		240 D	115.117	1974 through 1976.
		240.D 3.0	115.114	1974 through 1976.
		230 .4	115.017	1974 through 1976.
51	116	300 SD	116.120	1978 through 1970.
		280 S	116.020	1975 through 1980.
		280 SE	116.024	1975 through 1988.
		450 SE	116.032	1972 through 1980.

Model		Model Type	Model ID	Model Year
		450 SEL	116.033	1972 through 1988.
		450 SEL 6.9	116.036	1972 through 1988.
52	123	240 D	123.123	1977 through 1985.
		240 TD	123.183	1977 through 1985.
		300 D	123.130	1977 through 1985.
		300 D	123.133	1977 through 1985.
		300 TD	123.190	1977 through 1985.
		300 TD	123.193	1977 through 1985.
		300 CD	123.150	1978 through 1985.
		300 CD	123.153	1978 through 1985.
		230	123.023	1977 through 1985.
		230 E	123.223	1977 through 1985.
		230 T	123.083	1977 through 1985.
		230 TE	123.283	1977 through 1985.
		280	123.030	1977 through 1985.
		280 E	123.033	1977 through 1985.
		280 TE	123.093	1977 through 1985.
		280 CE	123.053	1978 through 1985.
53	126	300 SD	126.120	1981 through 1989.
		300 SE	126.024	1988 through 1989.
		300 SEL	126.025	1988 through 1989.
		380 SE	126.032	1984 through 1989.
		380 SEL	126.033	1981 through 1989.
		420 SEL	126.035	1986 through 1989.
		500 SEL	126.037	1984 through 1989.
		380 SE	126.043	1982 through 1989.
		500 SEC	126.044	1984 through 1989.
		560 SEL	126.039	1986 through 1989.
		560 SEC	126.045	1986 through 1989.
54	201	190 E 2.3	201.024	1984 through 1989.
		190 E	201.028	1986 through 1989.
		190 E 2.6	201.029	1987 through 1989.
		190 E 2.6 16	201.034	1986 through 1989.
		190 D 2.2	201.122	1984 through 1989.
		190 D	201.126	1984 through 1989.
		300 D T	124.133	1986 through 1989.
55	124	260 E	124.026	1987 through 1989.
		300 E	124.030	1986 through 1989.
		300 TE	124.090	1986 through 1989.
		300 CE	124.050	1988 through 1989.

	Model type	Model year
	Porsche	
56	911 COUPE	1968 through 1989.
	911 TARGA	1968 through 1989.
	911 TURBO	1976 through 1989.
	911 CABRIOLET	1984 through 1989.
	911 CARRERA	1974 through 1989.
57	912 COUPE	1968 through 1969.
	912 TARGA	1968 through 1969.
	912 KARMANN	1968 through 1969.
58	914	1970 through 1976.
59	924 COUPE	1977 through 1989.
	924 TURBO COUPE	1979 through 1989.
	924 S	1987 through 1989.
60	928 COUPE	1978 through 1989.
	928 S COUPE	1983 through 1989.
	928 S4	1979 through 1989.
	928 GT	1979 through 1989.
61	944 COUPE	1984 through 1989.
	944 TURBO COUPE	1985 through 1989.
	944 S COUPE	1987 through 1989.

	Model type	Model year
	Rolls Royce	
62	Silver Shadow	1970 through 1979.

	Model type	Model year
	Toyota	
63	Camry	1987 through 1988.
64	Celica	1987 through 1988.
65	Corolla	1987 through 1988.

[FR Doc. 90-26619 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[Number: 120-03]

Transfer of Functions

November 5, 1990.

Subject: Transfer of functions to the Director, Bureau of Alcohol, Tobacco and Firearms, to administer and enforce 26 U.S.C. 4181 and 4182, relating to excise tax on firearms.

By virtue of the authority vested in me as Secretary of the Treasury by 31 U.S.C. 321(b), it is ordered that:

1. There is hereby transferred, as specified herein, the functions, powers, and duties of the Commissioner of Internal Revenue (hereinafter referred to as the Commissioner) arising under certain laws relating to firearms to the Director of the Bureau of Alcohol, Tobacco, and Firearms (hereinafter referred to as the Director).

2. The Director shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law:

a. Sections 4181 and 4182 under chapter 32 of the Internal Revenue Code of 1986;

b. Subchapters F and G of chapter 32 of the Internal Revenue Code of 1986, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Internal Revenue Code of 1986; and

c. Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1986, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Internal Revenue Code of 1986.

3. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by the Director with the approval of the Secretary.

4. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph 2., which are in effect or in use on the effective date of this Order, shall continue in effect as regulations, rules, instructions and forms of the Bureau of Alcohol, Tobacco, and Firearms until superseded or revised.

5. The Director shall adopt all rulings and interpretations of the Internal Revenue Service in existence on the effective date of this Order which concern the laws specified in paragraph 2. and shall consult with the Commissioner to achieve uniformity and consistency in administering such laws.

6. All existing activities relating to the discovery of civil liability, determination, assessment, collection, processing, depositing, or accounting for taxes (including interest, additional amounts, additions to the tax, and assessable penalties), under the laws specified in paragraph 2. shall continue to be performed by the Commissioner until the Director shall otherwise direct.

7. Except as provided in paragraph 6., the term "Commissioner of Internal Revenue" to the exent used in regulations, rules, instructions and forms, issued or adopted for carrying out the fucntions, powers and duties specified in paragraph 2. which are in effect or in use on the effective date of this Order shall be held to mean the Director.

8. Except as provided in paragraph 6., the term "District Director of Internal Revenue," and "District Director" to the extend used in regulations, rules, instructions and forms, issued or adopted for carrying out the functions, powers and duties specified in paragraph 2. which are in effect or in use on the effective date of this Order shall be held to mean the Director.

9. Except as provided in paragraph 6., the term "internal revenue officer" to the extend used in any regulations, rules, instructions and forms, issued or adopted for carrying out the functions, powers and duties specified in paragraph 2. shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau of Alcohol, Tobacco, and Firearms who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions, or orders of the Secretary.

10. To the extend that any action taken by the Commissioner or his delegates or the Director or his delegates which relates to administration or enforcement of the laws specified in paragraph 2. prior to the effective date of this Order requires ratification, such action is hereby affirmed and ratified.

11. Nothwithstanding paragraph 6., the Commissioner shall pursue to conclusion all cases and investigations open or otherwise in process as of the date the Director assumes the responsibility for performing the activities specified in paragraph 6.

12. Except as provided in paragraph 11., once the Director assumes the responsibility for performing the activities specified in paragraph 6., the Director shall enter all assessments, process all claims for abatement and refund, and make all proper adjustments to tax liability under the laws specified in paragraph 2., even though such actions relate to tax liability incurred for return periods preceding the date the Director assumes such responsibilities.

13. Upon request of the Director, the Commissioner shall transfer documents and records relating to the administration and enforcement of the laws specified in paragraph 2. to the Director.

14. The authorities delegated by this Order may be redelegated.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 26684 Filed 11-9-90; 8:45 am]

BILLING CODE 4810-31-M

Office of Thrift Supervision

Boonslick Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Boonslick Federal Savings and Loan Association, Boonville, Missouri, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26624 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

DeSoto Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for DeSoto Federal Savings Association, Mansfield, Louisiana on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26626 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Riverside Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Riverside Federal Savings Bank, Riverside, New Jersey, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26625 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Boonslick Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Boonslick Savings and Loan Association, Boonville, Missouri, Docket No. 6209, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26621 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

DeSoto Federal Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for DeSoto Federal Savings and Loan Association, Mansfield, Louisiana on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26628 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

First Standard Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivison (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Standard Federal Savings Association, Fairmont, West Virginia, Docket No. 8766, with the Resolution Trust Corporation as sole Receiver for the Association on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26622 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Riverside Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Riverside Savings Bank, SLA, Riverside, New Jersey, Docket No. 5606, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26623 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-62; OTS No. 1382]

First Federal Savings Bank of LaFayette, Lafayette, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on October 23, 1990, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Lafayette, Lafayette, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Indianapolis, 8250 Woodfield Crossing Blvd., suite 305, Indianapolis, Indiana 46240.

Dated: October 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26627 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

November 7, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: November 14, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 926th Meeting—November 14, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 3865-036, Guadalupe-Blanco River Authority
CAH-2.
Project No. 2756-015, Burlington Electric Company and Winooski One Partnership
CAH-3.
Project Nos. 8435-010, 8466-012 and 8812-009, Independence Electric Corporation
CAH-4.
Project No. 10645-002, City of Richmond, Virginia
CAH-5.
Project No. 8747-005, Power Resources Development Corp.
CAH-6.
Docket No. UL90-9-001, Wisconsin Power and Light Company
CAH-7.
Project No. 7941-002, Enviro Hydro, Inc.
CAH-8.
Project Nos. 10635-001 and 10813-000, Town of Summersville, West Virginia
Project No. 10634-000, City of Manassas, Virginia
CAH-9.
Project No. 6939-012, City of Jackson, Ohio
CAH-10.
Project No. 8662-006, Nockamixon Hydro Associates
CAH-11.
Docket No. EL88-37-001, Kentucky Utilities Company
CAH-12.
Project No. 8662-007, Nockamixon Hydro Associates
CAH-13.
Docket No. UL88-23-001, City of Seattle, Washington
CAH-14.
Docket No. UL89-34-002, Consolidated Hydro, Inc.
CAH-15.
Project No. 10418-004, City of Harrisburg, Pennsylvania
CAH-16.
Omitted
CAH-17.
Docket No. RM87-19-000, Electric Utilities; Classification of Dams

Consent Agenda—Electric

CAE-1.
Docket No. ER89-581-003, Portland General Electric Company
CAE-2.
Docket No. ER90-223-003, Texas Utilities Electric Company
CAE-3.
Docket No. ER90-355-001, Pacific Gas and Electric Company
CAE-4.
Docket No. ER90-527-001, Northern States Power Company (Minnesota)
CAE-5.
Docket Nos. ER90-333-001, ER89-256-003 and EC89-10-002, Palisades Generating Company
CAE-6.
Docket No. EC90-8-001, Central Vermont Public Service Corporation and Allied Power and Light Company
CAE-7.
Omitted
CAE-8.
Docket No. FA88-8-001, Century Power Corporation
CAE-9.
Docket No. ID-1964-002, Norman Barker, Jr.
Docket No. ID-2214-001, Joseph J. Pinola
Docket No. ID-2383-000, Roy A. Anderson
Docket No. ID-2384-000, Warren Christopher
CAE-10.
Docket No. EL90-2-000, Turlock Irrigation District v. Pacific Gas and Electric Company
Docket No. EL90-3-000, Modesto Irrigation District v. Pacific Gas and Electric Company
Docket No. EL90-5-000, City and County of San Francisco v. Pacific Gas and Electric Company
CAE-11.
Docket No. ER90-298-000, Pennsylvania Power & Light Company

Consent Miscellaneous

CAM-1.
Docket No. RM90-11-000, Streamlining Commission Procedures for Review of Staff Action

Consent Agenda—Gas and Oil

CAG-1.
Docket Nos. TQ90-3-27-002, RP91-10-000 and TA90-1-27-002, North Penn Gas Company
CAG-2.
Docket No. TM91-3-22-000, CNG Transmission Corporation
CAG-3.
Docket No. GT91-5-000, Northwest Pipeline Corporation
CAG-4.
Docket No. RP91-8-000, National Fuel Gas Supply Corporation
CAG-5.
Docket Nos. RP88-259-038, RP89-136-021 and CP89-1227-007, Northern Natural Gas Company
CAG-6.
Docket No. RP89-183-019, Williams Natural Gas Company
CAG-7.
Docket Nos. RP89-161-017, 004 and 014, ANR Pipeline Company
CAG-8.
Docket No. RP90-156-001, Natural Gas Pipeline Company of America
CAG-9.
Docket Nos. RP90-12-005 and CP89-1554-004, Colorado Interstate Gas Company
CAG-10.
Docket No. ST87-1986-001, ONG Transmission Company, a Division of ONEOK, Inc.
CAG-11.
Docket No. PR90-8-000, Magnolia Pipeline Corporation
CAG-12.
Docket No. RP90-155-001, Panhandle Eastern Pipe Line Company
CAG-13.
Docket Nos. RP88-115-015, CP89-31-002, CP88-818-002 and CP89-59-003, Texas Gas Transmission Corporation
CAG-14.
Docket No. RP90-178-000, Panhandle Eastern Pipe Line Company
CAG-15.
Docket Nos. RP89-251-010 and TA90-1-1-010, Alabama-Tennessee Natural Gas Company
CAG-16.
Docket Nos. RP88-259-037, RP89-136-020 and CP89-1227-006, Northern Natural Gas Company, Division of Enron Corp.
CAG-17.
Docket Nos. RP88-227-020, CP90-767-001 and CP78-221-003, Paiute Pipeline Company
Docket No. CP90-849-001, Northwest Pipeline Corporation
CAG-18.

Docket No. TA90-1-9-004, Tennessee Gas Pipeline Company
CAG-19.
Docket No. TM91-2-30-001, Trunkline Gas Company
CAG-20.
Docket No. TQ90-3-43-004, Williams Natural Gas Company
CAG-21.
Docket Nos. RP87-62-003 and RP-86-148-005, Pacific Gas Transmission Company
CAG-22.
Docket Nos. RP86-63-014 and RP86-114-010, Southern Natural Gas Company
CAG-23.
Omitted
CAG-24.
Docket No. RP90-2-001, Williston Basin Interstate Pipeline Company
CAG-25.
Omitted
CAG-26.
Docket Nos. RP90-184-000 and 001, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
CAG-27.
Docket Nos. RP90-164-002 and RP90-165-002, Mid-Louisiana Gas Company
CAG-28.
Docket Nos. CP86-578-031, CP89-1740-005 and RP90-147-001, Northwest Pipeline Corporation
CAG-29.
Docket No. RP85-39-000, Wyoming Interstate Company, Ltd.
CAG-30.
Docket No. RP90-19-000, El Paso Natural Gas Company v. West Texas Gathering Company
CAG-31.
Omitted
CAG-32.
Docket Nos. RP89-86-000 and RP90-128-000, Chandeleur Pipe Line Company
CAG-33.
Docket Nos. TQ89-1-46-000, *et al.*, RP86-165-000, *et al.*, RP86-166-000, *et. al.* and CP90-2135-000, *et al.*, Kentucky West Virginia Gas Company
CAG-34.
Docket No. ST90-3051-000, Louisiana Interstate Gas Corporation
Docket No. ST90-2572-000, Enogex, Inc.
Docket Nos. ST90-2573-000 and ST90-2577-000, TEX/CON Gas Pipeline Company
Docket No. ST90-2574-000, Louisiana Resources Company
Docket No. ST90-2575-000, Midcon Corporation (Arcadian)
Docket No. ST90-2576-000, Transok, Inc.
Docket No. ST90-3390-000, ONG Transmission Company
Docket No. ST90-4264-000, Tekas Corporation
CAG-35.
Docket Nos. CS86-97-001 and 002, Harbert Energy Corporation
CAG-36.
Docket No. CP89-31-001, Graves Drilling Company, Inc.
CAG-37.
Docket No. GP89-8-000, Questar Pipeline Company
CAG-38.
Docket No. CP89-800-001, Panhandle Eastern Pipe Line Company
CAG-39.
Docket No. CP89-93-006, Williams Natural Gas Company
CAG-40.
Docket No. CP89-1540-001, El Paso Natural Gas Company
CAG-41.
Docket No. CP88-136-025, Texas Eastern Transmission Corporation
CAG-42.
Docket No. CP88-212-002, West Texas Gathering Company
CAG-43.
Docket No. CP88-328-005, Transcontinental Gas Pipe Line Corporation
CAG-44.
Omitted
CAG-45.
Docket No. CP91-156-000, Williams Natural Gas Company
CAG-46.
Docket No. CP90-1269-000, El Paso Natural Gas Company
CAG-47.
Docket No. CP90-1281-000, El Paso Natural Gas Company
CAG-48.
Docket No. CP90-1014-000, Panhandle Eastern Pipe Line Company and Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company
CAG-49.
Docket No. CP90-1251-000, Northern Border Pipeline Company
CAG-50.
Docket No. CP90-1292-000, East Tennessee Natural Gas Company
CAG-51.
Docket No. CP90-1661-000, South Georgia Natural Gas Company
CAG-52.
Docket No. CP90-1849-000, The Washington Water Power Company
Docket No. CP90-2158-000, Northwest Pipeline Corporation
CAG-53.
Docket No. CP90-1922-000, East Tennessee Natural Gas Company
Docket No. CP90-2060-000, Chattanooga Gas Company
CAG-54.
Omitted
CAG-55.
Docket No. CP90-909-000, Florida Gas Transmission Company
CAG-56.
Docket No. CP90-132-000, Transcontinental Gas Pipe Line Corporation
CAG-57.
Docket No. CP90-706-000, Wyoming Interstate Company, Ltd.
CAG-58.
Docket Nos. CP89-1571-000 and 001, Niagara Mohawk Power Corporation
CAG-59.
Docket No. CI87-429-002, Vesta Energy Company
CAG-60.
Docket Nos. RP90-187-000 and CP81-168-014, Valero Interstate Transmission Company

Hydro Agenda

H-1.
Project Nos. 618-008 and 016, Alabama Power Company. Order on appeal and on requests for rehearing of denial of stay and for declaratory order.

Electric Agenda

E-1.
Docket No. EF87-2011-005, United States Department of Energy—Bonneville Power Administration. Order on requests for rehearing.
E-2.
Docket No. ER90-164-001, TECO Power Services Corporation and Tampa Electric Company. Order on requests for rehearing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. RP88-259-034, CP89-1227-003, RP89-136-018 and RP90-124-002, Northern Natural Gas Company, Division of Enron Corp. Order on interim gas inventory charge settlement.
PR-2.
Docket No. CP89-1281-000, Natural Gas Pipeline Company of America. Order on gas inventory charge settlement.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1. Docket Nos. CP89-634-000, 001, 002, CP89-815-000 and 001, Iroquois Gas Transmission System, L.P.
Docket Nos. CP89-629-000, 001 and 002, Tennessee Gas Pipeline Company
Docket Nos. CP89-1263-000 and 001, Texas Eastern Transmission Corporation
Docket Nos. CP89-1339-000 and 001, Long Island Lighting Company, The Brooklyn Union Gas Company and Consolidated Edison Company of New York, Inc. Order on applications for certificates, permit, and abandonment authorization, petition for declaratory order, and requests for rehearing and clarification.
PC-2.
Docket No. CP89-2067-001, Southern Natural Gas Company. Order on requests for rehearing and stay concerning service to Air Products.
PC-3.
Docket No. CP89-2174-000, Arkla Energy Resources, a Division of Arkla, Inc. Order on application for certificate.
PC-4.
Docket No. CP90-1391-000, Arcadian Corporation v. Southern Natural Gas Company. Order on complaint.
PC-5.
Docket No. CP90-1478-000, Northern Border Pipeline Company. Order on petition for declaratory order.

Lois D. Cashell,
Secretary.

[FR Doc. 90-26816 Filed 11-8-90; 1:58 pm]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10 a.m., Thursday, November 15, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 29, 1990.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26796 Filed 11-8-90; 9:46 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on November 19, 1990. The meeting will commence at 12 noon.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, 202-628-2100.

STATUS OF MEETING: Open (A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act) (5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR 1622.5 (a), (c), (d), (e), (f), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
   —September 23-24, 1990
3. Election of Chairman and Vice-Chairman.
4. Report from Board Members.
5. President's Report.
6. Legislative Report.
7. Report on the Fiscal Year (FY) 1991 Consolidated Operating Budget.
8. Presentation and Discussion of Proposals for FY 1992 Budget Mark.
9. Report on 1991 Application for Funding.
10. Presentation from Client Members of the Legal Services Community.
11. Report on the Potential for Self-Help within Legal Services, by William Fry of the National Training Center.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: September 12, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-26878 Filed 11-8-90; 8:45 am]

BILLING CODE 7050-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 12, 1990.

A closed meeting will be held on Tuesday, November 13, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 13, 1990, at 2:30 p.m., will be:

Settlement of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

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 Hirsch at (202) 272-2100.

Dated: November 6, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26881 Filed 11-8-90; 4:07 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 219
day, November 13, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Reg. J; Docket No. R-0697]

Funds Transfers Through Fedwire

Correction

In rule document 90-23461 beginning on page 40791 in the issue of Friday, October 5, 1990, make the following corrections:

1. On page 40801, in the first column:

a. In the second line of the authority citation to part 210, insert a closed parenthesis after "342"; and

b. In the table of contents entry for subpart B, add an "s" to "Fund".

§ 210.25 [Corrected]

2. On the same page, in the second column, in § 210.25(b)(3), in the seventh line "transfer" was misspelled.

§ 210.26 [Corrected]

3. On the same page, in the third column, in § 210.26, in the third line of paragraph (e) and the second line of paragraph (f), add an "s" to "Bank" and "account", respectively.

§ 210.29 [Corrected]

4. On page 40802, in the third column, in the second line "offline" should have appeared "off-line".

5. On page 40803, in the second column, under "*Section 210.25—Authority, Purpose, and Scope*", in paragraph (b)(1), in the fifth line, delete the "s" from "supersedes"

6. On page 40804, in the first column, in the second full paragraph, in the second line "obligated" should read "obliged".

7. On the same page, in the second column, in the second paragraph, the first line should read:

(a) *Article 4A.* "Article 4A" means the

8. On the same page, in the third column, under "*Section 210.27—Reliance on Identifying Number*", in paragraph (a), in the 13th line, "sensor" should read "sender".

9. On page 40805, in the second column, in the 15th line of the first full paragraph, "Security" should appear lowercase.

10. In the same column, in paragraph (c), in the fourth line from the end, "Section 210.28(d)" should read "Section 210.28(c)".

11. In the same column, in the next to last line, and in the next column, in the second line, "advises" should read "advices".

12. On page 40806, in the second column, in the 23rd line "apply" was misspelled.

13. On page 40808, in the second column, in the 11th line from the bottom, insert a period between "order" and "The".

14. On page 40811, in the first column, in paragraph (c), in the seventh line, after "by" insert "a particular means, the receiving bank may issue its payment order by".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

Correction

In notice document 90-24122 beginning on page 41611, in the issue of Friday, October 12, 1990, make the following corrections:

1. On page 41611, in the third column, in the 16th line, after "submitted" insert "by".

2. On page 41612, in the first column, "Docket No.: M-88-100-C", in the fifth line, "a" should be deleted.

3. Under the next docket number "M-88-111-C", the next line should read "*FR Notice:* 53 FR 28714".

4. On page 41613, in the first and second columns, "*FR notice:*53" should read "*FR notice:*54" each time it appears, except in the first column, in the seventh line from the bottom, "*FR notice:*53 FR 50602 was published correctly.

5. On page 41614, in the second column, in the eighth line, "30 CFR 75.811" should read "30 CFR 77.811".

6. On page 41616, in the first column, in the sixth line, "contractors" should read "contactors".

7. On page 41617, in the second column, under "Docket No.: M-89-169-C", "44 FR 2426" should read "55 FR 2426".

BILLING CODE 1505-01-D

federal register

Tuesday
November 13, 1990

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, et al.

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

RIN No. 1029-AB36

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing protection of the prevailing hydrologic balance at surface and underground mining operations through the use of best technology currently available (BTCA). Most of the proposed revisions are in response to a court decision and subsequent rule suspension; revisions are also being proposed to a related definitional rule.

The proposed rule, which concerns the use of best technology currently available would:

(1) Require that regulatory authorities submit to OSM for approval specific sediment control practices they plan to allow as alternatives to siltation structures;

(2) Require siltation structures for surface and underground mining operations in those regions receiving more than 26 inches of average annual precipitation; and

(3) Allow either siltation structures or alternative sediment control practices approved by OSM as BTCA for surface and underground mining operations in those regions receiving 26 inches or less of average annual precipitation.

DATES: Written comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 14, 1991.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; in Denver, Colorado; and in Knoxville, Tennessee. Upon request, OSM will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on December 28, 1990. Individuals wishing to attend but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Street NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specific under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, PHG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-1507 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to an address other than those listed above (see "**ADDRESSES**") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time December 28, 1990. If no one has contacted Mr. Growitz to express an interest in participating in hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony to assist OSM in preparing appropriate questions. OSM also requests that persons who plan to testify submit to OSM, at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of the testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements for surface coal mining and the surface impacts of underground coal mining. Environmental protection standards for the control of sediment for surface mining activities using the best technology currently available are found at section 515(b)(10)(B)(i) and section 515(b)(24) of the Act. Section 515(b)(10)(B)(i) requires the operation to minimize the disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas during and after surface coal mining operations and during reclamation by:

> Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law; * * *

Section 515(b)(24) of the Act requires the operator:

> To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve

enhancement of such resources where practicable.

Sections 516(b)(9)(B) and 516(b)(11) require the same protection for underground mining.

The permanent regulatory program for surface coal mining and reclamation operations was initially promulgated on March 13, 1979 (44 FR 15312). Regulations to minimize disturbances to the prevailing hydrologic balance were established at 30 CFR 816.42(a)(1) (44 FR 15398) for surface mining activities and at 30 CFR 817.42(a)(1) (44 FR 15424) for underground mining activities. These regulations required all surface drainage from the disturbed areas and any discharge of water from underground workings that did not meet effluent limitations to be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation pond was defined at 30 CFR 701.5 to be:

"a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water and runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond."

Sedimentation ponds provide a point source discharge. At that time, OSM considered sedimentation ponds, in conjunction with other control measures, to be the best technology currently available for controlling water quality problems (44 FR 15149).

In 1981, OSM proposed changes to the rules (46 FR 34784) in order to conform with effluent limitation guidelines promulgated by the U.S. Environmental Protection Agency (EPA). The rules were proposed at 30 CFR 816.42 and at 30 CFR 817.42. The proposal was to allow the use of alternative sediment control measures in lieu of sedimentation ponds if such alternate measures could meet the applicable State and Federal water quality and effluent standards, disturbances to the hydrologic balance were minimized, and use of such a facility was the BTCA.

On October 22, 1982, OSM published final rules at 30 CFR 816.42 and 817.42 that required discharges of water from areas disturbed by surface mining activities and underground mining activities to be made in compliance with all applicable State and Federal water quality laws and regulations, and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency at 40 CFR part 434 (47 FR 47216).

Further, final rules were promulgated on September 26, 1983 (48 FR 44032) at 30 CFR 816.46(b)(2) for surface mining and at 30 CFR 817.46(b)(2) for underground mining. Both paragraphs required that all surface drainage from the disturbed area be passed through a siltation structure before leaving the permit area. Exceptions could be granted in cases where the disturbed area was small in relation to the total drainage area and where the operator could demonstrate compliance with effluent limitations and applicable State and Federal water quality standards for the receiving waters. The proposed use of alternative sediment control measures was not adopted because OSM believed there was not a sufficient technical basis for using alternatives other than siltation structures. OSM considered siltation structures to be the BTCA.

The term "siltation structure" was defined at §§ 816.46(a)(1) and 817.46(a)(1) to mean "a sedimentation pond, a series of sedimentation ponds or other treatment facility." "Other treatment facilities" was defined at these sections and restricted to chemical treatment such as flocculation or mechanical structures such as clarifiers that result in a point source discharge. These two definitions were added to be more consistent with the wording in the Act and to reflect rule changes which allow certain siltation structures other than sedimentation ponds.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 817.46 was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) (*In Re: Permanent* (II)). The court remanded: (1) Sections 816.46(b)(2) and 817.46(b)(2) on the basis that OSM did not adequately address concerns about negative impacts of siltation structures in the West raised during the public comment period. OSM suspended Paragraphs 816.46(b)(2) and 817.46(b)(2) on November 20, 1986 (51 FR 41952).

III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations, as well as the legislative history of the Act and the opinions of the court, and in light of current technical information on best technology current available practice [1, 2], OSM is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979 and 1983 rules, OSM has not identified any differences between BTCA practices for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed performance standard for surface mining activities at 30 CFR 816.46(b)(2) and the proposed standard for underground mining activities at 30 CFR 817.46(b)(2) are identical.

Section 701.5. Definitions

For the definition of "best technology currently available" OSM is proposing to delete the last sentence of the current definition which provides discretion to the regulatory authority to determine the BTCA on a case-by-case basis. For the reasons explained below, OSM believes it is important to justify the effectiveness of BTCA practices other than siltation structures in meeting the requirements of the Act.

Sections 816.45/817.45. Sediment Control Measures

OSM is proposing to insert language under new paragraph (c) that would provide that regulatory authorities may submit to OSM for approval specific sediment control practices as alternatives to siltation structures as BTCA for those regions receiving 26 inches or less of average annual precipitation. See discussion, standard of differentiation. To obtain approval, regulatory authorities would need to identify and present the technical basis for the use of any sediment control practices they plan to accept as BTCA other than siltation structures in the arid and semi-arid regions of the U.S. Specific sediment control practices other than siltation structures would be authorized through the State program amendment approval process for States and through rulemaking for Federal regulatory programs and measured against the BTCA definition as the standard.

Further, OSM is proposing to insert language under new paragraph (d) that would require BTCA practices other than siltation structures to meet minimum standards for construction, maintenance and reclamation in order to

[1] Alternative Methods of Surface Mining Sediment Control and Measuring Water Quality in Streams. Hinton, J.R. et al. 1985. American Society for Surface Mining and Reclamation.

[2] Evaluation of Alternative Sediment Control Techniques at Surface Mines in the Semiarid West. Peterson, M.R. et at. 1990. Billings Symposium, Planning, Rehabilitation and Treatment of Disturbed Lands.

ensure meeting the requirements of the Act over the life cycle of the specific BTCA practice. For this reason, OSM is proposing that each BTCA practice must conform with the requirements of existing 30 CFR 816.46 (b)(4), (b)(5), (b)(6), except as provided in paragraph (e) of § 816.46 and 817.46 (b)(4), (b)(5), (b)(6), except as provided in paragraph (e) of § 817.46.

Many practices to control sediment have been documented in the literature or identified in response to various environmental statutes and programs, particularly those of the EPA.[3,4] In preparation for this rulemaking, OSM visited specific mining operations in the States of New Mexico and Wyoming and discussed BTCA practices being used at the sites with mining companies and regulatory authorities.[5]

Some practices may be more effective in controlling sediment than other practices and it is for this reason OSM is proposing the definitional change. The effectiveness of specific practices may be restricted to specific areas and be dependent upon variables such as geomorphology, hydrology, climate and engineering design used in the construction.[6] Because of the wide range in the type of sediment control practices and their effectiveness in a given application, OSM believes it is necessary for the regulatory authorities to specify details about specific sediment control practices for which they seek approval to allow operators to use as BTCA instead of siltation structures. Details would include: Circumstances or conditions under which a specific practice would be used, engineering designs related to the construction of a specific sediment control practice, and technical data to support the effectiveness of the practice. The detailed information, including any monitoring data, will be used by OSM to judge the effectiveness of the practice in meeting the standards set forth in the Act.

The detailed support required under the rule to justify BTCA practices other than siltation structures may arguably inhibit the development of new and innovative BTCA practices to control sediment. OSM believes experimental practices authorized by section 711 of the Act could provide an opportunity for the controlled use and evaluation of new and innovative sediment control measures.[7] Indeed, some of the BTCA practices observed in New Mexico were first implemented under the experimental practices program. Further, through research and sediment control as being implemented through the agricultural, construction and silvacultural industries and Federal agencies that oversee these activities, OSM believes ample opportunity exists to identify additional BTCA sediment control practices that will have transfer value for the coal mining industry.[8,9]

Paragraph 816.46(b)(2)/817.46(b)(2). Performance Standards for BTCA Practices

Paragraph 816.46(b)(2) which requires all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area was suspended on November 20, 1986. In effect, the rule defined siltation structures as the only acceptable BTCA practice. OSM is proposing to remove the suspension and propose new language for § 816.46(b)(2) which differentiates regions where siltation structures will be mandatory from those regions where any approved BTCA practice, including siltation structures, can be used. The differentiation will be based on the amount of average annual precipitation the region receives. See discussion, Standard of Differentiation.

The primary purpose of BTCA practices is to control sediment. The Act at section 515(b)(10)(B)(i), in part, states surface coal mining operations shall minimize disturbances to the prevailing hydrologic balance by preventing to the extent possible additional contributions of suspended solids to stream flow or runoff outside the permit area using BTCA. There are many examples of practices that commonly have been used to control suspended sediment.[10,11] These include sediment ponds or siltation structures, contour furrows, porous rock check dams,[12] temporary sediment traps, drainage to the mine pit, straw dikes, mulches, etc. The purpose of these is to reduce flow velocities/ runoff volumes or trap sediment. Sediment control practices other than siltation structures may effectively delay runoff and result in smaller peak flow. Many of these practices reduce the amount of water permanently retained on the site, thereby minimizing impacts to streamflow and downstream water users.

Different sediment control practices are used in the humid versus the arid/ semi-arid regions of the United States and OSM believes there may be sound technical reasons for these differences that should be reflected in the rule. Differences in regional approaches to controlling sediment are determined by many factors such as climate, geomorphology, size of the operation, and the coexistence of several potential water quality problems.[13]

Higher Precipitation or Humid Regions

Higher precipitation or humid regions of the United States, i.e. eastern, central, and northwestern States are characterized in the Act by average annual precipitation that exceeds 26 inches. In most of the humid regions, especially in northern Appalachia, sediment control problems and acid mine drainage problems coexist.[14] Both problems are normally resolved through the use of siltation structures that release water to intermittent and perennial streams. The ponds trap any sediment coming from the disturbed area and also are convenient and economical structures where chemicals are added when needed, to reduce iron and manganese concentrations and raise the pH of the water before it is discharged from the permit area. The geology of the coal and associated rocks of this region i.e., the presence of iron disulfide minerals and lack of natural abundant carbonate minerals which are effective in neutralizing acid waters, and the abundant precipitation uniformly distributed throughout the year create a potential for acid mine drainage.

The size of individual surface mine operations in the eastern and central States is often small and the topography ranges from gently rolling to steep hills and intervening valleys. Together these conditions favor the construction of one

[3] Sediment Ponds vs. Alternative Sediment Control Technologies on Surface Mined Lands of the Semiarid West. Kearney, W.F. and F.W. Bergstrom. 1981. Symposium on Surface Mining Hydrology, Sedimentology and Reclamation.

[4] Assessment of Alternative Sediment Control Technology at Western Surface Mines. Peterson, M.R. et al. 1988. American Society of Agricultural Engineers.

[5] Growitz's Trip Report. February 1990. Albuquerque, NM; Gallup, NM; and Gilette, WY.

[6] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[7] Experimental Practices: *Case Histories*. 1990. Office of Surface Mining Reclamation and Enforcement. Department of the Interior.

[8] Soil and Water Conservation Research and Education Progress and Needs. 1989. Soil Conservation Service. U.S. Department of Agriculture.

[9] Making Our Forests and Rangelands More Productive. 1985 Research Accomplishments. 1986. Forest Service. U.S. Department of Agriculture.

[10] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[11] Small Surface Coal Mine Operators Handbook. J. Toby Tourbier. 1980. Water Resources Center, University of Delaware.

[12] Modeling Check Dam Trap Efficiency. 1983. Warner, R.C. and M.C. Hirschi. American Society of Agricultural Engineers.

[13] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[14] Where We Agree: Report of the National Coal Policy Project, Vol. 2. 1978. F.K. Murray. Westview Press, Inc.

or, in most cases, a few ponds that will collect all the drainage from the disturbed area.

Siltation structures have been used in the humid regions of the United States as the exclusive sediment control practice. OSM believes it is significant that regulatory authorities in the humid regions have continued to require that all drainage from the disturbed area be passed through siltation structures in the face of the 1986 suspension of the rule requiring all surface drainage from the disturbed area to be passed through a siltation structure. This consistent approach to sediment control indicates that regulatory authorities have not accepted other practices to be as effective as siltation structures for BTCA, i.e. no technical findings have been offered or accepted that would support a change.

In summary, OSM believes siltation structures are the BTCA for treating water quality problems common to the disturbed areas of coal mining activities in humid regions of the country.

OSM also wishes to clarify that all drainage from the disturbed areas must be directed through any required siltation structures for a period of time of at least two years following the last augmented seeding of the reclamation area. Other structures which carry drainage from disturbed areas to siltation structures are considered secondary sediment control structures and must also be maintained for the two-year time period unless under § 816.46(e), the regulatory authority authorizes their removal in writing based on meeting the effluent limitations under §§ 816.42/817.42 and applicable State and Federal water quality standards for the receiving waters.

Arid/Semi-Arid Regions

The conditions described above for the humid regions of the country differ significantly from those found in the arid and semi-arid regions that generally comprise the western States. Arid and semi-arid regions are characterized by average precipitation less than or equal to 26 inches.

Acid mine drainage generally is not a problem in the arid and semi-arid western region of the United States. Coal mining operations in these regions are concerned with controlling suspended sediment resulting primarily from severe thunderstorms during the summer seasons. Runoff from disturbed areas often drains into ephemeral streams. Siltation structures are used at some operations only to contain runoff and spills of oil and grease and other chemicals from the facilities portion of the permit area that must be collected and treated, if released outside the permit area. As there are normally many points of discharge possible from the large operations on sloping topography of the arid and semi-arid region, and the fact that discharge points tend to change as the operation expands, siltation structures are not viewed in all cases by operators as practical nor by regulatory authorities as the BTCA. In many cases the environmental harm in constructing siltation structures may exceed their value in controlling sediment because the construction of siltation structures may increased the amount of land disturbed and thereby increase sedimentation to the streams. For example, in the permit application package for the Jim Bridger Mine in Wyoming, the Jim Bridger Coal Company asserted that:

> "The extensive mining area and drainage density would necessitate roughly 200 ponds to control all mining disturbed runoff over the life of the mine. This would entail disturbing over 400 additional acres."

In the arid and semi-arid regions, siltation structures may pose significant environmental problems that may outweigh their effectiveness in controlling sediment from disturbed areas.[15] Release of water from siltation structures may cause excessive downstream erosion and channel deepening because sediment-free water is not in hydrologic balance with natural background conditions.[16] Furthermore, excessive evaporation occurs from the water stored in siltation structures and may constitute "willful waste" in the water-scarce arid and semi-arid regions (48 FR 44036). Furthermore, downstream users may have to authorize impoundments under western water rights doctrine (48 FR 44036). These problems were raised before in response to the proposed rulemaking of 1981. OSM believes the concerns are reasonable. For these reasons as well as the previous explanation of significant differences between eastern and western coal operations, OSM believes siltation structures may not be BTCA in all cases and thus should not be mandatory in arid and semi-arid regions. Rather, the regulatory authority should have the flexibility of approving any BTCA practice that it can demonstrate will be successful in controlling sediment and meeting the requirements of the Act.

Standard of Differentiation

OSM believes the humid versus arid and semi-arid distinction is one appropriate and technically-sound way to distinguish where different kinds of BTCA practices can be allowed under the Act.[17]

The distinction between humid and arid/semi arid is based on the amount of precipitation. More specifically, regions that receive more than 26 inches of annual precipitation are classified as humid while regions that receive 26 inches or less of average annual precipitation are classified as arid or semi arid. As discussed earlier, OSM believes siltation structures are the BTCA for regions that receive more than 26 inches of precipitation. Yet, it is possible that a number of acceptable BTCA practices may be utilized for regions receiving 26 inches or less of annual precipitation. Regulatory authorities would have to submit the technical data to support the use of BTCA practices other than siltation structures. On the basis of the technical supporting data, OSM would approve or disapprove the practice as it would apply to a specific State.

Further, there is an administrative reason for using the 26-inch standard. It is already "built into" the statute and permanent program regulations. Section 515(b)(20) of the Act uses this standard in defining the operators' liability period for revegetation in humid versus arid/semi-arid regions. The House report influential in developing the language of the Act (H.R. 95–218, 1977, at p. 108) states:

> The differential time limits for revegetation responsibility of HR 2 is based on the average annual precipitation isopleth demarcating coalfields in the arid and semi-arid west from those of the more humid areas of the east and northwest. Thus, the standard of 26 inches became the basic measure used in the bill to distinguish between coal mine regions in arid and semi-arid areas and such regions in humid areas.

The 26-inch standard was carried forth to the permanent program regulations at 30 CFR 816.116(c)(2) and at 30 CFR 817.116(c)(2). The use of this standard related to BTCA practices, thus, would not create any additional burden for the regulatory authority.

OSM is interested in receiving comments on the proposed adoption of the 26-inch standard related to BTCA

[15] Impacts of Surface Mining Sediment Control Regulations on the Hydrologic Balance of Dryland Streams. Doehring, D.O. et al. 1985. American Society of Surface Mining Reclamation.

[16] A literature Review Mined-Land Sediment Control and The Dryland Fluvial System. Morris, R.N., F.E. Basil, & D.O. Doehring. 1980. Research Institute of Colorado.

[17] State-Of-The-Art Paper on Sediment Control Technology for the Surface Mining Industry. Simons, D.B., R.M., Li, & P.F. Lagasse. 1981.

practices. Comments should specifically address whether another standard, although not as convenient as the proposed standard, would be more appropriate for technical reasons.

IV. Procedures Matters

Federal Paperwork Reduction Act

These proposed rules do not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Douglas J. Growitz, PHG, Office of Surface Mining Reclamation and Enforcement 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202-343-1507 (Commercial or FTS).

List of Subjects

30 CFR Part 816

Reporting and recordkeeping requirements, Permanent regulatory program.

30 CFR 816

Environmental Protection, Reporting and recordkeeping requirements, Surface Mining.

30 CFR Part 817

Environmental Protection, Reporting and Recordkeeping requirements, Underground mining.

Accordingly it is proposed to amend 30 CFR parts 701, 816 and 817 as set forth below.

Dated: October 1, 1990.

James M. Hughes,

Deputy Assistant Secretary for Land and Mineral Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the last sentence from the definition of *best technology currently available.*

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS-SURFACE MINING ACTIVITIES

3. The authority citation for part 816 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; and Pub. L. 100-34.

4. Section 816.45 is amended by adding paragraphs (c) and (d) to read as follows:

§ 816.45 Hydrologic balance: sediment control measures.

* * * * *

(c) For those regions receiving 26 inches or less of average annual precipitation, a regulatory authority may submit to OSM for approval as a part of its permanent regulatory program, specific sediment control practices as alternatives to siltation structures as the best technology currently available to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

(d) Practices and structures approved as best technology currently available shall be constructed, maintained, and reclaimed in accordance with § 816.46(b)(4), (b)(5), and (b)(6), except as provided in paragraph (e) of § 816.46.

5. The suspension published in the **Federal Register** of November 20, 1986, at 51 FR 41961 is removed for paragraph (b)(2) of § 816.46.

6. Section 816.46 is amended by revising paragraph (b)(2) as follows:

§ 816.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(2)(i) All surface drainage from the disturbed area shall be passed through a siltation structure for regions where the average annual precipitation exceeds 26 inches, except as provided in paragraph (b)(5) or (e) of this section.

(2)(ii) All surface drainage from the disturbed area shall be passed through a siltation structure or be subjected to other sediment control practices approved by OSM under § 816.45(c) for use as the best technology currently available for regions where the average annual precipitation is 26 inches or less, except as provided in paragraph (b)(5) or (e) of this section.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

7. The authority citation for part 817 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98-146, 30 U.S.C. 1257; and Pub. L. 100-34.

8. Section 817.45 is amended by adding paragraphs (c) and (d) to read as follows:

§ 817.45 Hydrologic balance: sediment control measures.

* * * * *

(c) For those regions receiving 26 inches or less of average annual precipitation, a regulatory authority may submit to OSM for approval as part of its permanent regulatory program, specific sediment control practices as alternatives to siltation structures as the best technology currently available to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

(d) Practices and structures approved as best technology currently available shall be constructed, maintained, and reclaimed in accordance with § 817.46 (b)(4), (b)(5), and (b)(6), except as provided in paragraph (e) of § 817.46.

9. The suspension published in the **Federal Register** of November 20, 1986, at 51 FR 41961 is removed for paragraph (b)(2) of § 817.46.

10. Section 817.46 is amended by revising paragraph (b)(2) to read as follows:

§ 817.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(2)(i) All surface drainage from the disturbed area shall be passed through a siltation structure for regions where the average annual precipitation exceeds 26 inches, except as provided in paragraph (b)(5) or (e) of this section.

(2)(ii) All surface drainage from the disturbed area shall be passed through a siltation structure or be subjected to other sediment control practices approved by OSM under § 816.45(e) as the best technology currently available for regions where the average annual precipitation is 26 inches or less, except as provided in paragraph (b)(5) or (e) of this section.

* * * * *

[FR Doc. 90-26665 Filed 11-9-90; 8:45 am]

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federal register

Tuesday,
November 13, 1990

Part III

Department of Education

34 CFR Parts 674, 675 and 676

Perkins Loan Program, et al.; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840-AB22

Perkins Loan Program et al.

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the campus-based programs (Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs). These proposed regulations would modify provisions contained in current regulations. The Secretary takes this action to clarify existing policy and make other necessary changes. Due to the scope of the provisions, these proposed changes will not take effect until July 1, 1991 in order to give institutions sufficient time to prepare to implement them.

DATES: Comments must be received on or before December 28, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Harold McCullough, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (room 4018, ROB-3), Washington, DC 20202-5446. Telephone (202) 708-4690.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Sylvia Ross or Gwendolyn Dockett. Telephone (202) 708-4690.

SUPPLEMENTARY INFORMATION: These proposed amendments revise the existing campus-based program regulations. The campus-based programs are authorized as follows: Perkins Loan—20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429; CWS—42 U.S.C. 2751-2756a; SEOG—20 U.S.C. 1070b-1070b-3. The Secretary is proposing these rules to change the definition of low-income individual to be conceptually consistent with part F (Needs Analysis) of title IV of the Higher Education Act of 1965, as amended (HEA); to reduce collection costs chargeable to the Perkins Loan Fund; to clarify the current waiver provision and to expand the write-off authority in the Perkins Loan Program; to clarify the types of positions that involve student services under the CWS Program; and, to establish overpayment collection consistency between the Pell Grant and SEOG programs.

Perkins Loan Program

Repayment—Low-Income Individual (§ 674.33(c)(2))

Under the current regulations, an institution may extend a repayment period for a "low-income individual." The Secretary proposes to change the definition of the term "low-income individual" under the Perkins Loan Program for Perkins loans, and Direct loans made on or after October 1, 1980, which is used to enable an institution to determine whether to extend the borrower's repayment period up to 10 additional years beyond the normal 10-year maximum repayment period and to establish whether the borrower can continue to be classified as a "low-income individual" during the course of the extended repayment period. If a borrower no longer qualifies as a "low-income individual," the institution must renegotiate a new repayment schedule based on the 10-year maximum repayment period minus the time elapsed under the borrower's original repayment schedule. Any extension to the repayment schedule previously granted on the basis of low-income status is not included in computing the maximum repayment period.

The Secretary believes that the Standard Maintenance Allowance (SMA) contained in the need analysis methodology prescribed in part F of title IV of the HEA used to make awards under the Perkins Loan Program is an appropriate measure of "low-income" that can also be used to determine eligibility for extended repayment periods. Use of the SMA provides a consistent determination of what constitutes low-income at all stages of the student loan process from initial calculation of loan eligibility through repayment.

The family contribution expected of Perkins Loan borrowers is determined according to the procedures prescribed in part F of title IV of the HEA. In this needs analysis, a portion of the family's income that represents a minimum subsistence level of income is not assessed for contribution purposes. This unassessed income, called the Standard Maintenance Allowance (SMA), represents the income level required to meet the costs of basic necessities including food, housing, clothing and personal care, transportation and other similar needs. The SMA is derived from the annual updates of the 1967 Bureau of Labor Statistics (BLS) lower-budget expenditure figures from "Three Standards of Living for an Urban Family of Four Persons" (BLS Bulletin 1570-5. Washington: Bureau of Labor Statistics, 1967).

In establishing the SMA, the BLS statistics are modified to reflect the student's assumed absence from home for the academic year (9 months) resulting in an approximate 10 percent reduction of the BLS lower standard. Amounts representing State and local taxes that were included in the BLS lower standard are also excluded from the SMA since a direct allowance for these taxes is contained in other sections of part F of title IV of the HEA, resulting in an additional 10 percent reduction of the BLS lower standard. The Secretary proposes that an individual with a family size of two or more be permitted to earn up to 125 percent of the appropriate SMA values to be classified as a "low-income individual" and be eligible for an extended repayment period. Use of 125 percent factor recognizes that the SMA represents a minimum level of subsistence and provides an allowance for the differences between the consumption patterns assumed by the SMA, including a family with a student away from home for 9 months of the year, and those assumed by the BLS, which do not reflect a family member's absence from the home. It also recognizes that the amounts that were excluded from the BLS figures in establishing the SMA should be considered.

The SMA charts provide different maintenance amounts for different size families; however, the minimum family size listed on the charts is two family members. Therefore, the 125 percent factor must be modified to address an unmarried borrower with no dependents. The 1967 BLS survey provided consumption costs for a family of four persons (husband, wife and two children) and estimated consumption costs for the family sizes using equivalency rates. The BLS equivalency factors for one person is 36 percent. Therefore, the income threshold for an unmarried borrower with no dependents should be 125 percent of 36 percent of the SMA for a family of four persons, or 45 percent of the SMA for a family of four persons. Institutions should use the SMA chart for a family of four persons when determining whether a single borrower qualifies as a "low-income individual" and use the 45 percent factor rather than the 125 percent factor, as identified above. Institutions should refer to the SMA chart for the applicable number of family members in making a "low-income individual" determination using the column for one family member

in college, regardless of whether any of the family members presently attend college.

In order to determine whether the borrower is a "low-income individual," the institution must obtain a copy of the Notice of Revision of the Need Analysis System for the given academic year, published in the Federal Register, and use the Standard Maintenance Allowance tables. For example:

• John Jones is an unmarried borrower without dependents who earned a total income of $8,600 for the preceding year. The SMA for a family of four with one in college is $13,200. Applying the formula: 45 percent of $13,200 is $5,940. To be considered a "low-income individual," Mr. Jones must have earned $5,940 or less; he does not meet the low-income threshold.

• Mary Smith and her spouse have two dependents. She and her spouse earned $10,000 for the preceding year. The applicable SMA for a family of four with one in college is $13,200. Applying the formula: 125 percent of $13,200 is $16,500. To be considered a "low-income individual," Mary Smith's family income must have been $16,500 or less; she does meet the low-income threshold.

Costs Chargeable to the Fund (§ 674.47)

The proposed regulations clarify § 674.47(d) by amending paragraph (d) and creating paragraphs (d) (1) and (2) to alleviate any confusion experienced by institutions in carrying out the waiver authority for collection costs. Under current regulations, an institution must assess against the borrower the full amount of collection costs incurred in collecting a loan, but may, at its discretion, waive those costs applicable to that portion of the loan balance that the borrower pays within 30 days of the date on which a new repayment agreement is completed. 34 CFR 674.47 (b), (d). The proposed regulations clarify that a written repayment agreement is not involved for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

The waiver option is not intended to confer any right on the borrower, and is entirely at the discretion of the institution. Furthermore, in those cases involving a partial payment of the amount then past-due on a loan, because the waiver is available only pursuant to a new written repayment agreement, the institution is free to include additional conditions and terms in the new agreement that it considers reasonable. The new agreement could include conditions and items such as requiring a down payment, a cosigner, periodic reviews of financial resources with corresponding changes in the amount of installment payments due, execution of a confession of judgment agreement, or, for out-of-State debtors, agreement that a designated institutional official is authorized to accept service of process as agent for the debtor if the debtor again defaults, making litigation necessary.

In addition, the Secretary proposes here to amend limits on the amount of collection costs that may be charged to the Fund. Under current regulations, an institution may spend assets of the Fund to pay certain costs incurred to collect a loan. 34 CFR 674.47(e). In response to the comments on the final rule establishing this provision, the Secretary stated that in the near future, the Department would review and consider modifying the limits on amounts chargeable to the Fund for collection costs. 52 FR 45569, November 30, 1987. The Secretary here proposes the promised revision in order to modify the restrictions on the use of Fund assets to pay collection costs and to clarify the manner in which the restrictions apply to the use of borrower payments.

Current regulations require the institution to first demand that the borrower repay the full amount of various costs incurred by the institution to collect the loan, 34 CFR 674.47(b)(1), unless the institution waives some or all of those costs. 34 CFR 674.47 (c), (d). The regulations then require the institution to apply payments received on a loan in the following order:

(1) Collection costs.
(2) Late charges.
(3) Accrued interest.
(4) Principal.

34 CFR 67433(a)(3), 52 FR 45755, December 1, 1987.

In addressing the use of Fund assets to pay collection costs, §§ 674.33 and 674.47 implicitly distinguish between the payments received from the individual borrower, which may always be used to satisfy collection costs incurred on that particular loan, and all other Fund assets, including payments received on other loan accounts, and restrict the use of only the latter. The Secretary recognizes that some collection actions, including successful address searches, credit bureau reports, and actions taken to oppose bankruptcy discharges, may not result in any recovery from the borrower; the institution may therefore use Fund assets to pay these costs. 34 CFR 674.47(e) (1), (2), (5) (i) and (ii). The Secretary does not propose any change in the amount that can be charged against Fund assets for these costs.

The Secretary proposes to change here only the limits on the amount of other Fund assets that the institution can spend for other collection costs, especially contingent fee collection charges. Because the institution incurs contingent fee charges only the amounts recovered, and because the institution must apply amounts recovered or repaid on a loan first to outstanding collection costs, 34 CFR 674.33(a)(3)(i), the changes proposed here to the limits in § 674.47(e) (3), (4), (5)(iii), and (6) affect only those cases in which the amounts recovered on the individual loan either do not suffice to pay these collection costs or, pursuant to an authorized repayment agreement, cannot be applied to collection costs. Under current regulations, the institution may use Fund assets to pay these costs, in amounts not to exceed 33⅓ percent of the amount of principal, interest and late charges collected in the case of first placements or 50 percent of that amount in the case of litigation and second placements. The Secretary proposes to amend these provisions to reduce the amount of contingent fee costs chargeable to the Fund under these circumstances to 25 percent and 35 percent, respectively, but to allow the charging of actual amounts of court costs.

The institution may charge the Fund for collection costs arising in connection with contingent fee charges in three cases. First, the institution, pursuant to the provisions of § 674.47(d), may have agreed with the borrower to waive enforcement of some of all of these charges; this authority extends only to repayment agreements or lump sum payoffs made before suit is filed. Second, the institution may be legally barred from assessing the full amount of these costs against the borrower, either because the promissory note limits the borrower's liability for contingent fee costs to 25 percent of the amount collected, or because a court gives judgment to the institution for only a portion, or for none, of the litigation costs demanded by the institution in its complaint. Third, the institution may have demanded that the borrower pay these costs, but the amount paid or recovered by the contractor or attorney is not enough to satisfy both the accrued contingent fees and the costs of address searches, credit bureau reports, and required bankruptcy defensive action.

The Secretary proposes to amend § 674.47(e) (3)–(6) to reduce the amount of collection costs, and in particular contingent fees charged by collection contractors or attorneys, that may be paid from other Fund assets, but to permit the institution to use other Fund assets to pay the actual amount of those court costs specified in 28 U.S.C. 1920. These court costs are currently included

in the amount chargeable against the 33⅓ percent and 50 percent limits, and the Secretary therefore expects this reclassification, by excluding these costs from the amounts counted against the proposed limits on contingent fees, to still permit the institution to pay attorney fees at a contingent fee level well within the range commonly charged for accounts receivable litigation. The Secretary, in making this proposal, notes that State and private nonprofit agencies customarily secure litigation services on loans guaranteed under part B of title IV of the HEA at rates within the statutory 30 percent cap on the amount payable out of recoveries.

The Secretary expects that the proposed limitation on the amount chargeable against Fund assets principally affects those cases in which the institution may wish to waive charging the borrower some or all of these collection costs (1) As part of a new repayment agreement or (2) in return for a lump sum payoff of the full loan amount. This waiver is a matter of discretion for the institution and not a matter of right to the borrower; the institution would retain the authority, under the proposed rule, to pass on some or all of these costs to the borrower, and the proposed limits do not directly impose a new financial burden on the institution. Under the proposed rule, the institution could still offer the borrower who makes substantial and prompt payment a substantial reduction in the amount of collection costs otherwise chargeable. The institution could pass on to the borrower the difference between the amount payable from the Fund under the current rule and that allowed under the new rule (8⅓ percent for first placements, 15 percent for second placements and attorney fees); it could satisfy that difference from its own resources; or it could revise its agreements with contractors and attorneys to limit the amount charged on recoveries made within 30 days of the execution of a new repayment agreement to fall within the new limits.

The Secretary considers the new limits, within the context of those current rules addressing application of payments, to offer a reasonable recovery consistent with the risk and effort factors on which a contingent fee charge is based. The contingent fee concept recognizes both the uncertainty of payment, particularly payments to be received over time, and the varying amount of effort needed to effect that recovery. The proposed rule does not affect the institution's ability to negotiate contingent fee agreements at the current level for those amounts paid later than 30 days after the signing of the new repayment agreement. As to these amounts, there is legitimate uncertainty whether the borrower may continue to honor the repayment agreement, and if he or she does not, what costs may be incurred to persuade or coerce the borrower to make further payments. Therefore, the Secretary does not propose to reduce directly or indirectly the amount of fee charged on recoveries outside that 30-day period.

The Secretary recognizes, nevertheless, that the amount charged against the Fund reduces the amount available for new loans, and seeks ways to reduce that amount without unduly hindering recovery actions. Several factors lead the Secretary to believe that such a reduction is warranted in the Perkins Loan Program on these "waived costs" recoveries received within 30 days of the execution of a repayment agreement. First, the Secretary has over the past 10 years negotiated over a dozen major collection contracts on defaulted student loans held by the Department at contingent fee rates that in most instances did not exceed the 35 percent litigation and second placement limit now proposed for institutions. Second, based on years of experience by the Department in collecting these loans, which were typically in advanced stages of delinquency, the Secretary believes that a significant portion of those defaulters who enter repayment do so promptly after initial demand by a new collector and that the substantial payments achieved in these cases come with little of the risk and costs associated with protracted collection cases. The Secretary believes that the proposed reduction in the amount of collection costs that can be waived as to the borrower and paid from Fund assets still provides a fair recovery for the contractor or attorney that adequately offsets risk and expense involved on those accounts on which no payments may ever be realized. At the same time, the reduction lessens the drain to the Fund and increases the amount available for new loans to students.

The Secretary proposes this rule based on this balancing of factors affecting the management of the Fund, and not out of any intent to prescribe a limit on the amount that may be passed on to the borrower. In that regard, these regulations, like the other provisions of subpart C, are intended to set minimum standards of responsibility for the institution and not to create any defense for a nonpaying borrower. The Secretary does not intend that the omission of any step prescribed in this subpart, or the imposition of a collection cost at a rate in excess of that proposed here, be available as defense to a borrower. This same principle applies to collection actions by the Department itself pursuant to standards established under the Federal Claims Collection Standards. 4 CFR 101.8. The reasonableness of any collection cost imposed on a defaulter pursuant to this subpart and section 484A(b) of the HEA is not limited by the standards adopted here to apportion those costs between the Fund and the institution or the borrower, but on whether the institution acted reasonably in incurring the cost, as discussed in the preamble to the final rule of November 30, 1987. 52 FR 45553.

The Secretary also proposes to amend § 674.47(g) to increase the ability of an institution to write off small balance accounts. The November 30, 1987 regulations permit an institution to write off balances of less than $200. However, institutions are precluded from writing off those accounts unless they have completed all the billing and collection steps required in the regulations, including the sequence of contacts immediately after defaults, semiannual attempts to locate "skips," annual dunning contacts, and annual evaluations of accounts for litigation until litigation by the institution to collect the account would be barred by the statute of limitations, now six years unless the State law provides a longer period.

Under the proposed amendments to § 674.47(g), and institution would be permitted to write off accounts of less than $25.00, after complying with only these collections procedures specified in § 674.457(g)(1)(i). Institutions would be permitted to submit defaulted loan accounts, with balances of $25.00 or more, to the Secretary for assignment to the United States in accordance with § 674.50 of the November 30, 1987 regulations.

This proposal is intended to address the concerns of institutions and collection agents that current requirements have caused significant, unanticipated costs as well as processing difficulties while serving no apparent benefit to the program. Because current rules do not permit the write-off of small balances before the expiration of the statute of limitations for a law suit, institutions must attempt collection throughout that limitation period on delinquent accounts with very small balances. The institutions report that the costs of the billing notices and demand letters on these accounts is totally out of proportion to the value to the Fund of the unpaid accounts.

Under current regulations, institutions have two courses of action with regard to defaulted loan accounts on which the first cycle of collection actions described in the regulations (billing, referral to collection firm or in-house collection staff, and litigation) proves unsuccessful. The institution may assign the account to the Secretary or retain the account and attempt to collect the debt by means of semiannual collection efforts throughout the period of limitations applicable to a suit to collect that debt (whether that period is established under the law of the State in which the debtor would be subject to suit, or, in longer, the six-year limitation period established by section 484A(a)(3) of the HEA) and, at the end of that period, if the account was less than $200, write the account off. Current rules therefore tend to encourage the assignment to the Department of accounts over $200, and to encourage that assignment even before the limitation period has run, since the institution need not complete that course of semiannual collection efforts prior to assigning the account.

The proposed rules would increase the incentives for assigning defaulted loans by lowering the minimum amount that qualifies for assignment from $200 to $25 and by removing the authority to write off defaulted accounts with balances of $25 or more. These accounts, if retained by the institution, would therefore remain part of the institution's portfolio and count against its default rate. The Secretary requests comments regarding the cost effectiveness of this provision and other provisions in the regulations.

College Work Program

Institutional Employment (§ 675.21)

A proprietary institution may employ students on campus to work for the institution itself only in positions in which the employee provides direct and personal services to students. The Secretary proposes to codify the definition of student services to include areas where the student employee provides direct and personal services to other students that are incidental to the training or education being offered.

The Secretary recognizes that many institutions have delineated certain areas of their operation to be areas which provide a direct benefit to individual students. These areas may include activities related to campus-life, academic tutoring, peer counseling, and others. These regulations propose to codify those general areas in which CWS employment is authorized, to differentiate between that employment which is of a service nature and is directed at individual students and that employment which is necessary to carry out the operation of the institution itself. Activities in the areas of maintenance, security, purchasing, or public relations, for example, are necessary for the operation of the institution itself and generally do not provide direct and personal services to students, and are not considered student services.

Supplemental Educational Opportunity Grant Program

Overaward (§ 676.14)

The Secretary is seeking assistance from institutions in recovering the Federal share of SEOG overpayments from their students, by proposing that overpayment cases of $25.00 or more be referred to the Department for collection. While cases of $25.00 or less are not required to be referred, the regulations do not prohibit referral on those cases. A similar referral procedure for unrecovered Pell Grant overpayments has been successful and the Secretary believes that a referral procedure would also be effective for the recovery of SEOG overpayments.

The Secretary proposes to implement the referral process with minimal disruption to institutions. Therefore, institutions must make two reasonable attempts over a 30-day period to recover the overpayment before referring cases to the Secretary. The institutions shall consider any objection by a student that an overpayment determination was erroneous and determine whether the objection is warranted prior to referring the case to the Secretary. Referral to the Secretary is required only where the Federal share of the overpayment is $25.00 or more and the student has failed to make repayment arrangements within 90 days of the overpayment. No further recovery efforts are required by the institution. However, if the institution refers an overpayment case to the Secretary, the student becomes ineligible for further title IV student financial assistance for attendance at any institution until a final repayment of the overpayment has been made.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations would be small institutions of higher education participating in the campus-based programs. The only proposed regulations that would have a potential economic impact on small entities would be those contained in the sections governing the Federal share limitations (§§ 675.26 and 676.21). Based on analysis conducted by the Department, the Secretary has determined that these provisions would affect a minimal number of institutions.

Paperwork Reduction Act of 1980

Sections 674.33 and 676.14 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB-3, 7th and D Streets SW., Washington, DC 20202-5447, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Perkins Loan Program, 84.038; College Work-Study Program, 84.033; Supplemental Educational Opportunity Grant Program, 84.007)

Dated: November 5, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.33 is amended by revising paragraph (c)(2) to read as follows:

§ 674.33 Repayment.

* * * * *

(c) * * *

(2) *Low-income individual.* (i) For Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraphs (c)(2)(i)(A) and (B) of this section. The term "low-income individual" means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Standard Maintenance Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family size of two or more, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Standard Maintenance Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Standard Maintenance Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

* * * * *

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92–318)

3. Section 674.47 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive that percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs not paid by the borrower or waived under paragraph (d)(1) or paragraph (d)(2) of this section:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 25 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 35 percent of the amount of principal, interest and late charges collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 35 percent of the total amount of judgment secured on the loan; and

(iv) 35 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or secure the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 35 percent of the amount of principal, interest and late charges collected on the loan, and court costs specified in 28 U.S.C. 1920.

* * * * *

(g) *Write-offs.* (1) An institution may write-off an account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges, if—

(i) The institution has carried out the procedures in §§ 674.43, 674.44, and 674.45 (a), (b), (c), (e), and (f);

(ii)(A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser; or

(iii) The institution has released the borrower from further obligation on a loan pursuant to performance of a repayment agreement under paragraphs (d)(1) and (d)(2) of this section.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. Section 675.2(b) is amended by adding, in alphabetical order, a definition of *student services* to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Student services: Services that are offered directly to individual students incidental to the training or education being offered and that may include, but are not limited to, financial aid, library, peer guidance counseling, social and health services and tutorial services.

* * * * *

(Authority: 42 U.S.C. 2751–2756a)

3. Section 675.21 is amended by revising paragraph (b) introductory text and (b)(2) to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution itself, but only in jobs that—

* * * * *

(2) Involve the provision of student services as defined in § 675.2.

* * * * *

(Authority: 42 U.S.C. 2753)

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

2. Section 676.14 is amended by revising paragraph (c)(3) to read as follows:

§ 676.14 Overawards.

* * * * *

(c) * * *

(3) (i) If the institution makes an overpayment for which it is not liable, it shall promptly attempt to recover the overpayment by sending a written notice to the student requesting payment in full. Failure to make repayment of the overawarded funds renders the student ineligible for further title IV aid.

(ii) If a student does not make payment as requested, the institution shall make a second attempt to recover the overpayment, within 30 days of sending the first notice.

(iii) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted prior to referring it to the Secretary.

(iv) (A) If an institution fails to collect the overpayment after taking the action required by paragraphs (c)(3) (i) and (ii) and, if applicable, (c)(3)(iii), of this section, and the Federal share of the overpayment is $25.00 or more, it shall notify the Secretary within 90 days of the overpayment, identifying the Federal share of the overpayment, the student's name, most recent address, telephone number, and other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts.

(B) If an institution fails in its attempt to collect the overpayment and the Federal share of the overpayment is less than $25.00, the institution need make no further recovery efforts.

* * * * *

(Authority: 20 U.S.C. 1070b–1)

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Part IV

The President

Proclamation 6223—To Designate Nicaragua as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

Presidential Documents

Title 3—

The President

Proclamation 6223 of November 8, 1990

To Designate Nicaragua as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 212 of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702), as amended, authorizes the President to designate the countries, territories, or successor political entities thereto that will be beneficiary countries for the purposes of the CBERA (19 U.S.C. 2701 *et seq.*). Such countries are entitled to duty-free entry of eligible articles imported directly therefrom into the customs territory of the United States. Nicaragua has expressed its desire to be so designated and its intention to take steps to comply with all of the necessary criteria set forth in the CBERA.

2. Pursuant to section 212(b) of the CBERA (19 U.S.C. 2702(b)), I have determined that the designation of Nicaragua as a beneficiary country will be in the national security interest of the United States, and have reported such determination to the Congress with the reasons therefor. In addition, pursuant to section 212(a) of the CBERA (19 U.S.C. 2702(a)), I have notified the House of Representatives and the Senate of my intention to designate Nicaragua as a beneficiary country and have communicated to them the considerations entering into my decision. Accordingly, pursuant to section 212(b) of the CBERA, and after taking into account the factors enumerated in section 212(c) of the CBERA (19 U.S.C. 2702(c)), I hereby designate Nicaragua as a beneficiary country for purposes of the CBERA.

3. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 211 through 213 of the Caribbean Basin Economic Recovery Act, as amended by the Caribbean Basin Economic Recovery Expansion Act of 1990, and section 604 of the Trade Act of 1974, do proclaim that:

(1) In order to designate Nicaragua as a beneficiary country for the purposes of the CBERA, general note 3(c)(v)(A) to the HTS, listing those countries designated as beneficiary countries under the CBERA, is modified by inserting in alphabetical sequence "Nicaragua".

(2) The modifications made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, in the customs territory of the United States on or after the date of publication of this proclamation in the **Federal Register**.

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

George Bush

[FR Doc. 90-26896
Filed 11-9-90; 9:23 am]
Billing code 3195-01-M

Editorial note: For the President's memorandum to the Secretary of State and the President's letters to the Speaker of the House and the President of the Senate, both dated Nov. 7, on the determination, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 45). For a statement by Press Secretary Fitzwater on the determination, see the same issue.

federal register

Tuesday
November 13, 1990

Part V

Office of Management and Budget

Final Sequestration Report for Fiscal Year 1991 to the President and Congress; Notice of Transmittal

OFFICE OF MANAGEMENT AND BUDGET

Transmittal of Final Sequestration Report for Fiscal Year 1991 to the President and Congress

November 9, 1990.

Pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1990, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1991 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 90-26941 Filed 11-9-90; 12:47 pm]

BILLING CODE 3110-01-M

federal register

Tuesday
November 13, 1990

Part VI

The President

Notice of November 9, 1990—
Continuation of Iran Emergency

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

Presidential Documents

Title 3—

The President

Notice of November 9, 1990

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**, most recently on October 30, 1989. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1990. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
November 9, 1990.

[FR Doc. 90-26988
Filed 11-9-90; 5:12 pm]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 388/Pub. L. 101-497
Waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990. (Oct. 31, 1990; 104 Stat. 1205; 2 pages) Price: $1.00

H.R. 4111/Pub. L. 101-498
Strategic and Critical Minerals Act of 1990. (Nov. 2, 1990; 104 Stat. 1207; 2 pages) Price: $1.00

S. 2846/Pub. L. 101-499
To authorize and direct the Secretary of the Interior to conduct a study of the feasibility of establishing a unit of the National Park System to interpret and commemorate the origins, development, and progression of jazz in the United States, and for other purposes. (Nov. 2, 1990; 104 Stat. 1209; 4 pages) Price: $1.00

H.R. 3386/Pub. L. 101-500
Sanitary Food Transportation Act of 1990. (Nov. 3, 1990; 104 Stat. 1213; 9 pages) Price: $1.00

H.R. 4151/Pub. L. 101-501
Augustus F. Hawkins Human Services Reauthorization Act of 1990. (Nov. 3, 1990; 104 Stat. 1222; 63 pages) Price: $1.75

H.R. 4238/Pub. L. 101-502
Vaccine Immunization Amendments of 1990. (Nov. 3, 1990; 104 Stat. 1285; 7 pages) Price: $1.00

H.R. 5367/Pub. L. 101-503
Seneca Nation Settlement Act of 1990. (Nov. 3, 1990; 104 Stat. 1292; 6 pages) Price: $1.00

H.R. 5794/Pub. L. 101-504
Age Discrimination Claims Assistance Amendments of 1990. (Nov. 3, 1990; 104 Stat. 1298; 2 pages) Price: $1.00

H.J. Res. 520/Pub. L. 101-505
Granting the consent of Congress to amendments to the Washington Metropolitan Area Transit Regulation Compact. (Nov. 3, 1990; 104 Stat. 1300; 15 pages) Price: $1.00

H.R. 5268/Pub. L. 101-506
Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1315; 36 pages) Price: $1.25

H.R. 5158/Pub. L. 101-507
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1351; 37 pages) Price: $1.25

H.R. 5835/Pub. L. 101-508
Omnibus Budget Reconciliation Act of 1990. (Nov. 5, 1990; 104 Stat. 1388)

H.R. 5241/Pub. L. 101-509
Treasury, Postal Service and General Government Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1389; 96 pages) Price: $2.75

H.R. 4739/Pub. L. 101-510
National Defense Authorization Act for Fiscal Year 1991. (Nov. 5, 1990; 104 Stat. 1485; 371 pages) Price: $11.00

H.R. 5803/Pub. L. 101-511
Department of Defense Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1856; 59 pages) Price: $1.75

H.R. 5769/Pub. L. 101-512
Department of the Interior and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1915; 64 pages) Price: $1.75

H.R. 5114/Pub. L. 101-513
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1979; 95 pages) Price: $2.75

H.R. 5019/Pub. L. 101-514
Energy and Water Development Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2074; 27 pages) Price: $1.00

H.R. 5021/Pub. L. 101-515
Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2101; 54 pages) Price: $1.50

H.R. 5229/Pub. L. 101-516
Department of Transportation and Related Agencies Approprations Act, 1991. (Nov. 5, 1990; 104 Stat. 2155; 35 pages) Price: $1.25

H.R. 5257/Pub. L. 101-517
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2190; 34 pages) Price: $1.25

H.R. 5311/Pub. L. 101-518
District of Columbia Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2224; 16 pages) Price: $1.00

H.R. 5313/Pub. L. 101-519
Military Construction Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2240; 14 pages) Price: $1.00

H.R. 5399/Pub. L. 101-520
Legislative Branch Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2254; 33 pages) Price: $1.25

H.R. 5759/Pub. L. 101-521
To amend the Age Discrimination in Employment Act of 1967 to clarify the application of such Act to employee group health plans. (Nov. 5, 1990; 104 Stat. 2287; 1 page) Price: $1.00

H.R. 3840/Pub. L. 101-522
To establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes. (Nov. 5, 1990; 104 Stat. 2288; 9 pages) Price: $1.00

H.R. 5144/Pub. L. 101-523
To provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes. (Nov. 5, 1990; 104 Stat. 2297; 4 pages) Price: $1.00

H.R. 2331/Pub. L. 101-524
Deceptive Mailings Prevention Act of 1990. (Nov. 6, 1990; 104 Stat. 2301; 4 pages) Price: $1.00

H.R. 5275/Pub. L. 101-525
Congressional Award Amendments of 1990. (Nov. 6, 1990; 104 Stat. 2305; 4 pages) Price: $1.00

H.R. 5482/Pub. L. 101-526
District of Columbia Revenue Bond Act of 1990. (Nov. 6, 1990; 104 Stat. 2309; 2 pages) Price: $1.00

H.R. 5702/Pub. L. 101-527
Disadvantaged Minority Health Improvement Act of 1990. (Nov. 6, 1990; 104 Stat. 2311; 25 pages) Price: $1.00

H.J. Res. 525/Pub. L. 101-528
Designating November 18 through 24, 1990, "National Family Caregivers Week". (Nov. 6, 1990; 104 Stat. 2336; 1 page) Price: $1.00

H.J. Res. 667/Pub. L. 101-529
To designate November 16, 1990, as "National Federation of the Blind Day". (Nov. 6, 1990; 104 Stat. 2337; 1 page) Price: $1.00

S. 1890/Pub. L. 101-530
To amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes. (Nov. 6, 1990; 104 Stat. 2338; 3 pages) Price: $1.00

S. 3062/Pub. L. 101-531
To transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas. (Nov. 6, 1990; 104 Stat. 2341; 1 page) Price: $1.00

H.J. Res. 669/Pub. L. 101-532
To salute and congratulate the people of Poland as they commemorate the two-hundredth anniversary of the adoption of the Polish Constitution on May 3, 1991. (Nov. 7, 1990; 104 Stat. 2342; 2 pages) Price: $1.00

S. 2516/Pub. L. 101-533
Foreign Direct Investment and International Financial Data Improvements Act of 1990. (Nov. 7, 1990; 104 Stat. 2344; 8 pages) Price: $1.00

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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.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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1910 (§§ 1910.1000 to end)	13.00	July 1, 1989
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[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.

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[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.