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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:
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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.

ATLANTA, GA

WHEN: January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: 1–800–347–1997

WASHINGTON, DC

WHEN: January 24, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 719, 793, 1405, 1413, 1421, 1427, 1497, and 1498

Price Support and Production Adjustment Program

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The regulations at 7 CFR part 1413 set forth provisions which are applicable to Commodity Credit Corporation (CCC) annual wheat, feed grains, cotton, and rice production adjustment programs. The regulations at 7 CFR part 719 set forth the criteria used to determine a "farm" for purposes of administering these programs. The regulations at 7 CFR parts 1497 and 1498 set forth the maximum payment limitation provisions and foreign person provisions which are applicable to these and other CCC programs. On January 17, 1990, an interim rule was issued to clarify existing CCC policy and make minor changes as a result of market conditions which were primarily the result of the 1988 and 1989 droughts. This interim rule also made grammatical corrections and technical changes to 7 CFR parts 793, 1405, 1421, 1497, and 1498. This final rule adopts this interim rule change. In addition, this final rule makes a technical correction to 7 CFR part 1427 to provide that the 1990 specifications for cotton bale package materials published by the Joint Cotton Industry Bale Packaging Committee shall be applicable to 1990 Crop Cotton Price Support Loans.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: H. E. Maynard, Director, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447-7641.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to the final rule since Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

The titles and numbers of the Federal assistance programs to which this final rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065; Feed Grain Production Stabilization—10.055, as found in the Catalog of Federal Domestic Assistance.

Background.

On January 17, 1990, an interim rule was published which amended several parts of title 7 of the Code of Federal Regulations. No comments were received in response to the interim rule. Accordingly this interim rule is adopted as a final rule without change.

A final rule was published in the **Federal Register** on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the **Federal Register** the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR part 51, the specifications approved and published by the JCIBPC for 1982 crop cotton. Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate, by reference, the specifications approved and published by the J CIBPC for 1990 crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR part 1427 are amended as stated herein in order to incorporate, by reference, in accordance with 1 CFR part 51, the packaging specifications approved and published by the JCIBPC for 1990 crop cotton.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects

7 CFR Part 719

Acreage Allotments.

7 CFR Part 793

Price support programs, Loan programs—agriculture, Grant programs—Agriculture.

7 CFR Part 1405

Price support programs, Loan programs—agriculture, Grant programs—Agriculture.

7 CFR Part 1413

Feed grain, rice, upland and extra long staple cotton, and wheat, and related programs.

7 CFR Part 1421

Grains, Loan programs—agriculture, Price support programs, Warehouses.

7 CFR Part 1427

Cotton Loan Programs—agriculture, Incorporation by reference, Packaging and containers—Price Support programs, Reporting and recordkeeping requirements, surety bonds, and Warehouses.

7 CFR Part 1497

Price Support Programs.

7 CFR Part 1498

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Final Rule

Accordingly, chapter XIV of title 7 of the Code of Federal Regulations is amended as follows:

PARTS 719, 793, 1405, 1413, 1421, 1497, AND 1498—[AMENDED]

1. The interim rule, published at 55 FR 1557 on January 17, 1990 amending 7 CFR parts 719, 793, 1405, 1413, 1421, 1497, and 1498, is adopted as a final rule without change.

PART 1427—[AMENDED]

2. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, and 1444–1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99–198.

3. In § 1427.5, paragraph (b)(2)(iii) is revised to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Each bale must be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Cotton Council Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1990 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packing Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. 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.

* * * * *

Signed at Washington, DC, on December 28, 1990.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service; Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–132 Filed 1–4–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1289–90]

RIN 1115–AB 16

Nonimmigrant Classes; Ports of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Charlotte, North Carolina, to the list of ports of entry at 8 CFR 214.2(c)(1) where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States as a direct transit without visa. This change is made because of increased international commerce serving Charlotte.

EFFECTIVE DATE: February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Gottlieb, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 514–2725.

SUPPLEMENTARY INFORMATION: This final rule adds Charlotte, North Carolina, to the lists of ports designated at 8 CFR 214.2(c)(1) as ports, where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Charlotte Douglas International Airport in Charlotte, NC has had added international passenger service, specifically arrivals on USAIR. This carrier wishes to bring aliens to the port of entry pursuant to 8 CFR 212.1(f)(1), and is a signatory line with a currently effective agreement on Form I-426; Immediate and Continuous Transit Agreement.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and visas, Ports of entry, Travel restrictions.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

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

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

§ 214.2 [Amended]

2. As designated in § 214.2, paragraph (c)(1), the listing of ports of entry authorized to accept transit without visa applications is amended by adding "Charlotte, N.C.," in alphabetical sequence after "Buffalo, N.Y."

Dated: September 5, 1990.

James A. Puleo,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 91–151 Filed 1–4–91; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 214

[INS No. 1258–90]

Nonimmigrant Classes Pursuant to the United States-Canada Free-Trade Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR part 214 relating to Canadian-citizen visitors for business seeking classification under section 101(a)(15)(B) of the Immigration and Nationality Act

(Act), and to Canadian citizens seeking temporary entry to engage in activities at a professional level under section 214(e) of the Act. It results from the consultative process called for by Article 1503 of the United States-Canada Free-Trade Agreement (FTA). This change will facilitate temporary entry on a reciprocal basis between the United States and Canada.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536, Telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: On February 26, 1990, at 55 FR 6694, the Immigration and Naturalization Service published a Notice of proposed changes to Annex 1502.1 to chapter 15 of the FTA with request for comments from interested parties by April 27, 1990. The Government of Canada also published the proposed changes in the Canada Gazette. On June 13 and 14, 1990, the United States/Canada working group for Chapter 15 met in Ottawa and exchanged comments received. This final rule reflects the public comments and incorporates the agreed-upon changes to Annex 1502.1 into regulation. As an added feature for easier reading, the occupations in Schedule 2 have been placed in alphabetical order.

The Service received eighteen comments from interested individuals, business entities, and professional and business associations; the Government of Canada received ten comments as a result of the Canada Gazette announcement. All of the comments were reviewed and considered in writing this final rule. The discussion which follows divides the comments into two groups: Those pertaining to the changes to Schedule 1 and those pertaining to the changes to Schedule 2. The discussion also intersperses comments received by the Service and the Government of Canada.

Schedule 1 to Annex 1502.1

The Service received two comments on the proposed amendments to Schedule 1. One commenter supported the addition to the Distribution provision of Schedule 1 of operators of regularly-scheduled motor coaches (allowing for intermediate pick-up and delivery of passengers) on routes which were in operation at the time of entry-into-force of the agreement, and one commenter recommended the specific addition of boilermakers to the After-Sales Service provision. This latter recommendation has been considered by the working group, and the conclusion at this time is that there is no reason to mention a particular type of worker who would engage in after-sales service. The Government of Canada received no comments on the proposed amendments to Schedule 1.

Due to Congressional requests for further consultation on the matter, the Service and the Government of Canada have deferred final publication of the proposed addition to the Distribution provision of Schedule 1 of operators of regularly-scheduled motor coaches (referred to above).

Schedule 2 to Annex 1502.1

The Service received three comments objecting to the proposed removal of journalists from Schedule 2, while the Government of Canada received two such comments. All were from individuals, not from journalistic organizations or associations. Despite the comments to the contrary, the working group agreed that journalists should be removed due to opposition from organizations and associations. Those citizens of Canada admitted to the United States as journalists under Schedule 2 prior to the effective date of this regulation will be allowed to complete their authorized periods of admission and employment. Continued employment as a journalist in the United States beyond this point would be contingent on a new admission in or a change of nonimmigrant status to another nonimmigrant classification carrying employment authorization.

Six commenters on the Service's notice supported the proposed addition of certain medically-allied occupations, i.e., physical therapists, occupational therapists, recreational therapists, and pharmacists. Three recommended that other medically-allied occupations be added to the schedule, including cytologists, ultrasonographers, radiologic technologists, and respiratory care practitioners. These and other medically-allied occupations continue to be under considerations for future addition to the schedule.

Two commenters recommended that the requirement for psychologists be increased to the holding of a doctorate, or a state or provincial license. The Government of Canada received one similar comment. After review of the comments and consultation, the working group agreed that the requirement for psychologists should be either a state or provincial license.

One commenter supported the inclusion of geologists in the schedule, but requested that petroleum land men be included as well. Another commenter recommended that elementary and secondary school teachers be added. These recommendations have been brought to the working group for future consideration.

One commenter asked for consideration for inclusion in Schedule 2 of boilermakers and other types of workers normally considered classifiable under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. This proposal has been considered by the working group, and the inclusion of such occupations was determined to be outside the intent of Schedule 2.

Another commenter noted that mathematicians, hotel managers, scientific technicians/technologists, disaster relief claims adjusters, and management consultants were omitted from the list in the **Federal Register** notice. The reason for this omission was that no changes were proposed to the requirements for these occupations.

Other changes in this regulation reflect comments to the announcement in the Canada Gazette. These include a D.M.V. degree as an alternative to qualify as a veterinarian, a B.C.L. degree as an alternative to qualify as a lawyer, a B.L.S. (for which another baccalaureate degree was a prerequisite) as an alternative to qualify as a librarian, a post-secondary diploma and three years' experience as an alternative for technical publication writers and graphic designers, and a state/provincial license as an alternative for foresters, dietitians, occupational therapists, and physio/physical therapists. One commenter also noted that "dietitian" was incorrectly spelled "dietician." That error has been corrected.

This regulation also contains definitions of the terms "state/provincial license" and "state/provincial/Federal license" as they pertain to Schedule 2.

Finally, a commenter asked that future working group meetings be open to the public. This proposal was discussed by the working group and was dismissed as not being within the scope of the agreement. The working group is always open to written suggestions for changes to chapter 15, as evidenced by public announcements of proposed enhancements with request for public comment.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291,

nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

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

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

2. Section 214.2 is amended by revising paragraph (b) (4) (i) (D) (*1*) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(D) *Sales.* (*1*) Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in Canada/the United States but not delivering goods or providing services.

* * * * *

3. In § 214.6, paragraph (d)(2) (ii) is revised to read as follows:

§ 214.6 Canadian citizens seeking temporary entry to engage in business activities at a professional level.

* * * * *

(d) * * *

(2) * * *

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in Schedule 2 to Annex 1502.1. The professions or occupations in Schedule 2 and the minimum requirements for each are as follows:

Schedule 2 (Annotated)

—Accountant—baccalaureate degree
—Architect—baccalaureate degree or state/provincial license [1]
—Computer Systems Analyst—baccalaureate degree
—Disaster relief claims adjuster—baccalaureate degree or three years' experience in the field of claims adjustment
—Economist—baccalaureate degree
—Engineer—baccalaureate degree or state/provincial license [1]
—Forester—baccalaureate degree or state/provincial license [1]
—Graphic designer—baccalaureate degree, or post-secondary diploma and three years' experience
—Hotel Manager—baccalaureate degree and three years' experience in hotel management
—Land surveyor—baccalaureate degree or state provincial/Federal license [1]
—Landscape architect—baccalaureate degree.
—Lawyer—member of bar in province or state, of L.L.B., J.D., L.L.L., or B.C.L.
—Librarian—M.L.S. or B.L.S. (for which another baccalaureate degree was a prerequisite)
—Management consultant—baccalaureate degree or five years' experience in consulting or related field
—Mathematician—baccalaureate degree
—Medical/Allied Professionals
  —Clinical lab technologist—baccalaureate degree
  —Dentist—D.D.S., D.M.D., or state/provicial license [1]
  —Dietitian—baccalaureate degree or state/provincial licenses [1]
  —Medical technologist—baccalaureate degree
  —Nutritionist—baccalaureate degree
  —Occupational therapist—baccalaureate degree or state/provincial license [1]
  —Pharmacist—baccalaureate degree or state/provincial license [1]
  —Physician (teaching and/or research only)—M.D. or state/provincial license [1]
  —Physio/Physical therapist—baccalaureate degree or state/provincial license [1]
  —Psychologist—State/provinical license [1]
  —Recreational therapist—baccalaureate degree
  —Registered nurse—state/provincial license [1]
—Veterinarian—D.V.M., D.M.V., or state/provincial license [1]
—Range manager (range conservationist)—baccalaureate degree
—Research assistant (working in a post-secondary educational institution)—baccalaureate degree
—Scientific technician/technologist
  —Must work in direct support of professionals in the following disciplines: Chemistry, geology, geophysics, meteorology, physics, astronomy, agricultural sciences, biology, or forestry.
  —Must possess theoretical knowledge of the discipline.
  —Must solve practical problems in the discipline.
  —Must apply principles of the discipline to basic or applied research.
—Scientist
  —Argiculturist (agronomist)—baccalaureate degree
  —Animal breeder—baccalaureate degree
  —Animal scientist—baccalaureate degree
  —Apiculturist—baccalaureate degree
  —Astronomer—baccalaureate degree
  —Biochemist—baccalaureate degree
  —Biologist—baccalaureate degree
  —Chemist—baccalaureate degree
  —Dairy scientist—baccalaureate degree
  —Entomologist—baccalaureate degree
  —Epidemiologist—baccalaureate degree
  —Geneticist—baccalaureate degree
  —Geologist—baccalaureate degree
  —Geophysicist—baccalaureate degree
  —Horticulturist—baccalaureate degree
  —Meteorologist—baccalaureate degree
  —Pharmacologist—baccalaureate degree
  —Physicist—baccalaureate degree
  —Plant breeder—baccalaureate degree
  —Poultry scientist—baccalaureate degree
  —Soil scientist—baccalaureate degree
  —Zoologist—baccalaureate degree
—Social worker—baccalaureate degree
—Sylviculturist (forestry specialist)—baccalaureate degree
—Teacher
  —College—baccalaureate degree
  —Seminary—baccalaureate degree
  —University—baccalaureate degree
—Technical publications writer—baccalaureate degree, or post-secondary diploma and three years' experience
—Urban planner—baccalaureate degree
—Vocational counselor—baccalaureate degree

* * * * *

Dated: December 10, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-152 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-10-M

[1] The terms "state/provincial license" and "state/provincial/Federal license" mean any document issued by a state, provincial, or Federal Government as the case may be, or under its authority, which permits a person to engage in a regulated activity or profession.

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8 CFR Part 264

[INS Number: 1295-90]

Applicant Processing for the Legalization Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 264.1 by requiring those aliens adjusted from temporary resident status to permanent resident status pursuant to section 210(a)(2) of the Act, to submit the Form I-90 to the Director of the Service Center having jurisdiction over their place of residence. This change is necessary to properly process the large volume of one-time applications as a result of section 210(a)(2) of the Act.

EFFECTIVE DATES: This final rule is effective January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Charney, Deputy Assistant Commissioner, Legalization, (202) 514-0106.

SUPPLEMENTARY INFORMATION: On May 16, 1990 a final rule was published in the

Federal Register at 55 FR 20261 amending § 264.1(c) to require Special Agricultural Worker (SAW) temporary residents who automatically adjust their status to that of a permanent resident pursuant to section 210(a)(2) of the Act, to file Form I-90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I-551.

In order to process this one-time large group of applicants, the Service has determined that processing of the applications would be handled in a more efficient manner if adjudicated by the Service Centers. Therefore SAW permanent residents, filing for their first Alien Registration Receipt Card, Form I-551 will be required to file with the Director of the Service Center having jurisdiction over the area where the alien resides. The Service will employ several different methods for advising SAWs concerning these requirements, including outreach efforts with Qualified Designated Entities (QDE's) and farmworker organizations. The Service will also advise, if possible, SAW temporary residents at the time of issuance of the I-688 temporary resident card.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 264

Reporting and recordkeeping requirements.

Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

1. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305; 66 Stat. 173, 191, 223–225; 71 Stat. 641.

§ 264.1 [Amended]

2. In § 264.1, paragraph (c)(2)(iv)(A) is amended by removing the "." at the end of the first sentence and adding the phrase ", except for those applicants filing an I-90 pursuant to § 264.1(c)(2)(i)(I) of this section, who shall file the application with the Director of the Service Center having jurisdiction over his or her place of residence.

Dated: September 28, 1990.

James A. Puleo,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 91-155 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442

[Docket No. 90N-0351]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a revised formulation of an antibiotic dosage form, ceftazidime pentahydrate for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 6, 1991; written comments, notice of participation, and request for hearing by February 6, 1991; data, information, and analyses to justify a hearing by March 8, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a revised formulation of an antibiotic dosage form, ceftazidime pentahydrate for injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 442 (21 CFR part 442) by revising 21 CFR 442.216a (a)(1), (a)(2), (b)(1)(i)(*a*), and (b)(1)(ii)(*a*) to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not is the public interest. This final rule, therefore, becomes effective February 6, 1991. However, interested persons may, on or before February 6, 1991, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 6, 1991, a written notice of participation and request for hearing, and (2) on or before March 8, 1991, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact

precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) of 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.216a is amended by revising paragraphs (a)(1), (a)(2), (b)(1)(i)(*a*), and (b)(1)(ii)(*a*) to read as follows:

§ 442.216a Ceftazidime pentahydrate for injection.

(a) *Requirements of certification*—(1) *Standards of identity, strength, and purity.* Ceftazidime pentahydrate for injection is a dry mixture of ceftazidime pentahydrate and sodium carbonate or *L*-arginine. Its ceftazidime potency is satisfactory if each milligram of ceftazidime pentahydrate for injection contains not less than 900 micrograms and not more than 1,050 micrograms of ceftazidime activity when corrected for both loss on drying and its sodium carbonate or *L*-arginine content, as appropriate for the formulation. Its ceftazidime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of ceftazidime that it is represented to contain. It is sterile. It is nonpyrogenic. Its loss on drying is not more than 13.5 percent. The pH of its aqueous solution is not less than 5.0 and not more than 7.5. Its pyridine content is not more than 0.4 percent, except that for the issuance of a certificate for each batch, the pyridine content is not more than 0.12 percent. The ceftazidime pentahydrate conforms to the standards prescribed by § 442.16a(a)(1).

(2) *Labeling.* In addition to the requirements of § 432.5 of this chapter, each package of the *L*-arginine formulation shall bear on its outside wrapper or container and on the immediate container the statement "For Patients 12 years and Older".

* * * * *

(b) * * *

(1) * * *

(i) * * *

(*a*) *Ceftazidime potency (micrograms of ceftazidime per milligram).* Accurately weigh and dissolve approximately 350 milligrams of ceftazidime sample in distilled water and dilute to volume in a 250-milliliter volumetric flask to obtain a stock solution containing approximately 1,000 micrograms of ceftazidime per milliliter. Mix well. Immediately prior to chromatography, further dilute 5 milliliters of stock solution to 50 milliliters with water to obtain a solution containing 100 micrograms of ceftazidime activity per milliliter (estimated).

* * * * *

(ii) *Calculations*—(*a*) *Ceftazidime potency (micrograms per milligram).* Calculate the micrograms of ceftazidime per milligram as follows:

Micrograms of ceftazidime per milligram =

$$\frac{A_u \times P_s \times 100}{A_s \times C_u \times (100 - m - S - A)}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution;

m = Percent loss on drying (determined as directed in § 436.200(g) of this chapter);

S = Percent sodium carbonate content of the sample (determined as directed in § 436.357 of this chapter); and

A = Percent *L*-arginine content of the sample (determined as directed in § 455.204 of this chapter, except use ceftazidime instead of aztreonam in the working standard solution and use water instead of mobile phase. Prepare the sample solution by diluting an accurately weighted portion of the contents of a vial with water to 0.2 milligram per milliliter (estimated). The resolution between the ceftazidime peak and the arginine peak is not less than 6.0, the asymmetry factor for the arginine peak is not more than 2.5).

* * * * *

Dated: December 20, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-232 Filed 1-4-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8329]

RIN 1545-AN91

Methods of Accounting—Limitation on the Use of the Cash Receipts and Disbursements Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to the temporary regulations under section 448 of the Internal Revenue Code of 1986 (the "Code"), relating to the limitation on the use of the cash receipts and disbursements method of accounting ("cash method"). Specifically, the regulations provide guidance to taxpayers that fail to change from the cash method in accordance with the provisions of section 448 and the regulations thereunder. The text of the amendments set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: James A. Orefice, 202-566-3637, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The amendments are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information requirements contained in this document have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget ("OMB") under control number 1545–1147. The estimated annual burden per respondent or recordkeeper varies from 30 minutes to 90 minutes.

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

For further information concerning these collections of information, where to submit comments on these collections of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains amendments to the Temporary Income Tax Regulations (26 CFR part 1) under section 448 of the Code. These amendments would conform the regulations to section 801(a) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2345) and are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Notice of Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code.

Explanation of Provisions

Section 448 of the Code generally prohibits the use of the cash method by C corporations, partnerships with a C corporation partner, and tax shelters. In general, section 448 is effective for taxable years beginning after December 31, 1986.

The Internal Revenue Service has received numerous inquiries from taxpayers that failed to comply with the effective data provisions of section 448. To provide guidance for these taxpayers, § 1.448–1T of the temporary regulations is amended to provide rules under section 448 for voluntary changes in methods of accounting. Generally, the regulations allow such a taxpayer to comply with the provisions of section 448 by amending its federal income tax return for the first taxable year the taxpayer is subject to section 448 (and any subsequent years) if the amended return (or returns) is filed on or before July 8, 1991. Filing an amended return under these regulations does not extend the time prescribed under the Code for filing an amended return.

The regulations further provide that, if such a taxpayer does not amend its return (or returns) on or before July 8, 1991 the taxpayer must comply with the provisions of section 448 pursuant to the general method change requirements of § 1.446–1 (e)(3) (including any applicable administrative procedure that is prescribed under the authority of § 1.446–1(e)(3) after January 7, 1991, specifically for purposes of complying with section 448). Thus, for example, a taxpayer may not use Rev. Proc. 85–36, 1985–2 C.B. 434, or Rev. Proc. 85–37, 1985–2 C.B. 438, to change its method of accounting to comply with the provisions of section 448. Absent issuance of an administrative procedure that is prescribed under § 1.446–1(e)(3) after January 7, 1991, specifically to comply with section 448, a taxpayer must request a change under § 1.446–1(e)(3) subject to any terms and conditions (including the year of change) as may be imposed by the Commissioner. A taxpayer to whom section 448 applies that changes from the cash method by filing Form 3115 after January 7, 1991, will generally be subject to terms and conditions designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with section 448. A taxpayer to whom section 448 applies that changes from the cash method by filing Form 3115 on or before January 7, 1991. (for a taxable year after the first taxable year the taxpayer is subject to section 448) will be subject to the terms and conditions prescribed by Rev. Proc. 84–74, 1984–2 C.B. 736.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these amendments to the temporary regulations is James A. Orefice of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.441–1—1.483–2

Accounting, Deferred compensation plans, Income taxes.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—[AMENDED]

Paragraph 1. The authority for part 1, continues to read in part:

Authority: 26 U.S.C. 7805. * * *.

Par. 2. Section 1.448–1T is amended as follows:

1. Paragraph (g)(1) is revised to read as set forth below.
2. Paragraph (g)(2)(i) is revised to read as set forth below.
3. Paragraph (g)(2)(ii)(A) is revised to read as set forth below.
4. A new paragraph (g)(2)(iii) is added to read as set forth below.
5. Paragraph (g)(3)(ii) is revised to read as set forth below.
6. Paragraph (h)(2) is revised to read as set forth below.
7. Paragraph (h)(3)(i) is revised to read as set forth below.
8. A new paragraph (h)(4) is added to read as set forth below.

§ 1.448–1T Limitation on the use of the cash receipts and disbursements method of accounting (temporary).

* * * * *

(g) *Treatment of accounting method change and timing rules for section 481(a) adjustment*—(1) *Treatment of*

change in accounting method. Notwithstanding any other procedure published prior to January 7, 1991, concerning changes from the cash method, any taxpayer to whom section 448 applies must change its method of accounting in accordance with the provisions of this paragraph (g) and paragraph (h) of this section. In the case of any taxpayer required by this section to change its method of accounting for any taxable year, the change shall be treated as a change initiated by the taxpayer. The adjustments required under section 481(a) with respect to the change in method of accounting of such a taxpayer shall not be reduced by amounts attributable to taxable years preceding the Internal Revenue Code of 1954. Paragraph (h)(2) of this section provides procedures under which a taxpayer may change to an overall accrual method of accounting for the first taxable year the taxpayer is subject to this section ("first section 448 year"). If the taxpayer complies with the provisions of paragraph (h)(2) of this section for its first section 448 year, the change shall be treated as made with the consent of the Commissioner. Paragraph (h)(3) of this section provides procedures under which a taxpayer may change to other than an overall accrual method of accounting for its first section 448 year. Unless the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year, the taxpayer must comply with the provisions of paragraph (h)(4) of this section. See paragraph (h) of this section for rules to effect a change in method of accounting.

(2) *Timing rules for section 481(a) adjustment*—(i) *In general.* Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the section 481(a) adjustment into account ratably (beginning with the year of change) over the shorter of—

(A) The number of taxable years the taxpayer used the cash method, or

(B) 4 taxable years,

provided the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

(ii) *Hospital timing rules*—(A) *In general.* In the case of a hospital that is required by this section to change from the cash method, the section 481(a) adjustment shall be taken into account ratably (beginning with the year of change) over 10 years, provided the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

* * * * *

(iii) *Untimely change in method of accounting to comply with this section.* Unless a taxpayer (including a hospital and a cooperative) required by this section to change from the cash method complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year within the time prescribed by those paragraphs, the taxpayer must take the section 481 (a) adjustment into account under the provisions of any applicable administrative procedure that is prescribed by the Commissioner after January 7, 1991, specifically for purposes of complying with this section. Absent such an administrative procedure, a taxpayer must request a change under § 1.466–1(e)(3) and shall be subject to any terms and conditions (including the year of change) as may be imposed by the Commissioner. A taxpayer to whom section 448 applies that changes from the cash method by filing Form 3115 after January 7, 1991, will generally be subject to terms and conditions designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with this section.

(3) * * *

(ii) *Cooperatives.* Notwithstanding paragraph (g)(2)(i) of this section, in the case of a cooperative (within the meaning of section 1381(a)) that is required by this section to change from the cash method, the entire section 481(a) adjustment may, at the cooperative's option, be taken into account in the year of change, provided the cooperative complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

* * *

((h) * * *

(2) *Automatic rule for changes to an overall accrual method*—(i) *Timely changes in method of accounting.* Notwithstanding any other available procedures to change to the accrual method of accounting, a taxpayer to whom paragraph (h) of this section applies who desires to make a change to an overall accrual method for its first section 448 year must make that change under the provisions of this paragraph (h)(2). A taxpayer changing to an overall accrual method under this paragraph (h)(2) must file a current Form 3115 by the time prescribed in paragraph (h)(2)(ii). In addition, the taxpayer must set forth on a statement accompanying the Form 3115 the period over which the section 481(a) adjustment will be taken into account and the basis for such conclusion. Moreover, the taxpayer must type or legibly print the following statement at the top of page 1 of the Form 3115: "Automatic Change to Accrual Method—Section 448." The consent of the Commissioner to the change in method of accounting is granted to taxpayers who change to an overall accrual method under this paragraph (h)(2). See paragraph (g)(2)(i), (g)(2)(ii), or (g)(3) of this section, whichever is applicable, for rules to account for the section 481(a) adjustment.

(ii) *Time and manner for filing Form 3115*—(A) *In general.* Except as provided in paragraph (h)(2)(ii)(B) of this section, the Form 3115 required by paragraph (h)(2)(i) must be filed no later than the due date (determined with regard to extensions) of the taxpayer's federal income tax return for the first section 448 year and must be attached to that return.

(B) *Extension of filing deadline.* Notwithstanding paragraph (h)(2)(ii)(A) of this section, the filing of the Form 3115 required by paragraph (h)(2)(i) shall not be considered late if such Form 3115 is attached to a timely filed amended income tax return for the first section 448 year, provided that—

(*1*) The taxpayer's first section 448 year is a taxable year that begins (or, pursuant to § 1.441–2T (b)(1), is deemed to begin) in 1987, 1988, 1989, or 1990,

(*2*) The taxpayer has not been contacted for examination, is not before appeals, and is not before a federal court with respect to an income tax issue (each as defined in applicable administrative pronouncements), unless the taxpayer also complies with any requirements for approval in those applicable administrative pronouncements, and

(*3*) Any amended return required by this paragraph (h)(2)(ii)(B) is filed on or before July 8, 1991.

Filing an amended return under this paragraph (h)(2)(ii)(B) does not extend the time for making any other election. Thus, for example, taxpayers that comply with this section by filing an amended return pursuant to this paragraph (h)(2)(ii)(B) may not elect out of section 448 pursuant to paragraph (i)(2) of this section.

(3) *Changes to a method other than overall accrual method*—(i) *In general.* A taxpayer to whom paragraph (h) of this section applies who desires to change to a special method of accounting must make that change under the provisions of this paragraph (h)(3), except to the extent other special procedures have been promulgated

regarding the special method of accounting. Such a taxpayer includes taxpayers who change to both an accrual method of accounting and a special method of accounting such as a long-term contract method. In order to change an accounting method under this paragraph (h)(3), a taxpayer must submit an application for change in accounting method under the applicable administrative procedures in effect at the time of change, including the applicable procedures regarding the time and place of filing the application for change in method. Moreover, a taxpayer who changes an accounting method under this paragraph (h)(3) must type or legibly print the following statement on the top of page 1 of Form 3115: "Change to a Special Method of Accounting—Section 448." The filing of a Form 3115 by any taxpayer requesting a change of method of accounting under this paragraph (h)(3) for its taxable year beginning in 1987 will not be considered late if the form is filed with the appropriate office of the Internal Revenue Service on or before the later of: the date that is the 180th day of the taxable year of change; or September 14, 1987. If the Commissioner approves the taxpayer's application for change in method of accounting, the timing of the adjustment required under section 481 (a), if applicable, will be determined under the provisions of paragraph (g)(2)(i), (g)(2)(ii), or (g)(3) of this section, whichever is applicable. If the Commissioner denies the taxpayer's application for change in accounting method, or if the taxpayer's application is untimely, the taxpayer must change to an overall accrual method of accounting under the provisions of either paragraph (h)(2) or (h)(4) of this section, whichever is applicable.

* * * * *

(4) *Untimely change in method of accounting to comply with this section.* Unless a taxpayer to whom paragraph (h) of this section applies complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year, the taxpayer must comply with the requirements of § 1.446–1 (e)(3) (including any applicable administrative procedure that is prescribed thereunder after January 7, 1991 specifically for purposes of complying with this section) in order to secure the consent of the Commissioner to change to a method of accounting that is in compliance with the provisions of this section. The taxpayer shall be subject to any terms and conditions (including the year of change) as may be imposed by the Commissioner. A taxpayer to whom section 448 applies that changes from the cash method by filing Form 3115 after January 7, 1991, will generally be subject to terms and conditions designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with this section.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding to the table in the appropriate place "§ 1.448–1T * * * 1545–1147".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 4, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–46 Filed 1–4–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–90–22]

Drawbridge Operation Regulations; Colorado River, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Texas Department of Highways and Public Transportation, the Coast Guard is changing the regulation governing the operation of the bascule span bridge on FM 521 across the Colorado River, mile 10.7, about 5 miles southwest of Wadsworth, Texas, to require at least forty-eight hours advance notice for an opening of the draw on weekdays only between 8 a.m. and 5 p.m. only. At all other times the draw will remain closed. This action will provide relief to the bridge owner, since the bridge must be opened by winch trucks, and also allow for advance coordination with vehicular traffic that becomes congested during bridge openings. At the same time, this regulation will provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On October 19, 1990, the Coast Guard published a proposed rule (55 FR 42408) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated November 2, 1990. In each notice interested parties were given until December 3, 1990, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

One letter was received in response to Public Notice No. CGD8–17–90 issued 2 November 1990. The lone commenter questioned the purpose of the application for the proposed rule. The purpose was addressed in both the **Federal Register** and the Public Notice. After careful consideration of this comment and all other factors involved, the Coast Guard has concluded that the final rule will remain unchanged from the proposed rule.

Federalism Implications

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

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing this bridge, as evidenced by the bridge openings from January 1987 through August 1990, is minimal. These few vessels can reasonably give advance notice for a bridge opening by placing a collect call to the bridge owner at (409) 863–7834 at any time. Mariners requiring the bridge openings are repeat users of the waterway and giving the advance notice and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast

Guard certifies that it will not have significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.963 is revised to read as follows:

§ 117.963 Colorado River.

The draw of the highway bridge, mile 10.7 at Wadsworth need open on signal Monday through Friday only, and then only from 8 a.m. to 5 p.m. At least 48 hours notice is required.

Dated: December 27, 1990.

T.D. Fisher,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.

[FR Doc. 91–198 Filed 1–4–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Charleston, SC Regulation 90–130]

Safety/Security Zone Regulations; Cooper River, Ordnance Reach and Port Terminal Reach, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combined safety and security zone in the Cooper River in the vicinity of Ordnance Reach and Port Terminal Reach from Buoy 63 to Daymarker 58. The zone extends across the entire width of the Cooper River. The zone is needed to safeguard personnel, vessels, facilities, and the environment against injury destruction or loss from sabotage or other subversive acts, accidents or other causes of a similar nature, and protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense cargo loading operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATE: This regulation becomes effective at approximately 12 o'clock p.m. Eastern Standard Time (EST), December 15, 1990. It terminates at the conclusion of vessel loading operations, at approximately 4 o'clock p.m. EST, January 30, 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Steven J. Boyle, (803) 724–7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days 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 safeguard personnel, vessels, waterfront facilities, and the environment against injury, loss, or destruction.

Drafting Information

The drafters of this regulation are LT Steven J. Boyle, project officer for the Captain of the Port, and LT Genelle Tanos, project attorney, Seventh Coast Guard District.

Discussion of Regulation

The incident requiring this regulation will occur on December 15, 1990 through January 30, 1991 when military cargo will be loaded at the Army T.C. Dock and the State Ports Authority North Charleston Terminal. The protection of vital United States assets as well as the safety of unwary boaters and onlookers necessitates the establishment of both a safety and security zone. Coast Guard and other security vessels will patrol and enforce the zone and manage vessel traffic as necessary. Other vessels will not be permitted to enter, transit, or loiter in the safety/security zone without the permission of the Captain of the Port or his on-scene representatives. Only minor delays to mariners are foreseen.

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

Federalism

The action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking 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, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new section number 165.T07130 is added to read as follows:

§ 165.T07130 Safety/Security Zone: Establishment of Temporary Safety and Security Zone, Cooper River, Ordnance Reach and Port Terminal Reach, Buoy 63 to Daymarker 58, Charleston, South Carolina.

(a) *Location.* The following area is a safety/security zone zone: An area encompassing the entire width of the Cooper River, between buoy 63 and daymarker 58.

(b) *Effective date.* This regulation becomes effective on December 15, 1990 at approximately 12 o'clock p.m. est. It terminates at the conclusion of vessel loading operations, approximately 4 o'clock p.m. est, on January 30, 1991 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) The COTP Charleston will activate this zone or specific portions thereof by means of locally promulgated broadcast notice to mariners. Once implemented, all vessels and persons are prohibited from entering unless authorized by the Captain of the Port, Charleston, SC.

(2) The general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 apply.

Dated: December 12, 1990.

Robert L. Storch, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 91–200 Filed 1–4–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

49 CFR Part 396

[FHWA Docket No. MC-89-3]

RIN 2125-AC25

Inspection, Repair and Maintenance; Brake Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending part 396, Inspection, Repair and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs) to require motor carriers to ensure that brakes and brake systems of commercial motor vehicles (CMVs) are properly maintained and inspected by appropriate employees. This action is required by section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (the Act). These regulations establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems. This rule will ensure that brakes on CMVs are properly inspected and maintained.

DATES: *Effective date:* January 1, 1991. Motor carriers must implement this rule by January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1988, the President signed the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B, of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, 4531). Section 9110 of the Act requires the Secretary, not later than December 31, 1990, to "issue regulations for the purpose of adopting improved standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. At a minimum, such regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems."

On February 3, 1989, the FHWA published an advance notice of proposed rulemaking (ANPRM) (54 FR 5518) concerning the development and implementation of Federal standards or methods to ensure that the brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. After careful review of the comments received in response to the ANPRM, the FHWA published a notice of proposed rulemaking (NPRM) on July 25, 1990 (54 FR 30254).

The FHWA proposed in the July 25, 1990 NPRM that motor carriers be held responsible for ensuring that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles are properly performed. To accomplish this, the proposed rule required motor carriers to ensure that their employees who are responsible for inspecting, repairing, maintaining or adjusting the brakes on commercial motor vehicles be sufficiently trained to understand and undertake such tasks.

The NPRM included standards for experience or training that would meet the requirements of the rule. The training requirement could be satisfied by successfully completing an apprenticeship or training program sponsored or approved by a State, Canadian Province, or Federal agency; or a labor union apprenticeship program. Training programs sponsored by brake or vehicle manufacturers or similar commercial programs would also meet the training requirements. Individuals would meet the standard if they had one year of experience performing brake maintenance or inspection, similar to the assigned brake service or inspection task, in a motor carrier maintenance program or at a commercial garage, fleet leasing company, or similar facility.

Furthermore, the proposed rule included a requirement that evidence of the qualifications required under this section for each person responsible for the service or inspection of brakes be maintained by the motor carrier at its principal place of business.

Comments Submitted to the Docket

The FHWA received seventeen comments to the NPRM. The commenters included industry associations, one trailer manufacturer, one equipment manufacturer, one safety and compliance consultant, two motor carriers, one State department of transportation and one testing institute.

One of the major concerns of the commenters was the proposal to limit the applicability of the regulation to employees of motor carriers. Ten commenters emphasized that many motor carriers use commercial garages or similar facilities for brake system repairs and maintenance, and the employees of those garages should meet the same requirements as the mechanics employed by motor carriers. One commenter recommended expanding the qualification requirements to cover anyone who inspects, repairs, or maintains brakes on CMV's, including government inspectors. One commenter recommended the proposed regulations should apply only to employees of motor carriers.

As stated in the ANPRM and reiterated in the NPRM, the FHWA believes section 9110 applies only to persons who are employees of motor carriers. The FHWA believes Congress did not intend to include under Section 9110 and the implementing regulations persons who are not employees of motor carriers, even if they inspect or maintain the brakes or brake systems of commercial motor vehicles.

The FHWA also believes this section does not apply to governmental inspectors at any level of government because the definitions of "employee" and "employer" in section 204 of the Motor Carrier Safety Act of 1984 (MCSA of 1984) (49 U.S.C. App. 2501-2520) specifically exclude governmental employees. Section 9110 of the Act amended the MCSA of 1984, but did not change its definitions of "employee" or "employer".

Another concern of the commenters was the requirement that the evidence of the brake mechanics or inspectors' qualifications be kept at the motor carrier's principal place of business. Five commenters—the Truck Renting and Leasing Association (TRALA), the American Trucking Associations (ATA), the National Private Truck Council (NPTC), the American Petroleum Institute (API) and the Phillips Petroleum Company—recommended motor carriers be given the option of keeping the evidence of the brake mechanics or inspectors' qualifications at the location where the vehicle is housed or maintained. The FHWA proposed the documentation be maintained at the motor carrier's principal place of business. The ATA stated "It would be a tremendous paperwork burden to require that all fleets, which presently maintain mechanic's records at local shops, now must create, and then maintain, duplicate records at the corporate headquarters."

Based on these comments, the FHWA has concluded motor carriers should be allowed to keep evidence of the brake

mechanic or inspectors' qualifications at locations other than the principal place of business. However, the FHWA believes that maintaining the evidence of qualifications at the location at which the vehicle is housed or maintained will complicate enforcement of the rule, because brakes are sometimes repaired at a terminal where the vehicle is not housed or maintained. We believe the commenters' intent was to allow motor carriers the option of maintaining the person's records at the location or terminal where the person is employed. Such an option would give motor carriers added flexibility, without compromising the enforceability of the rule.

Section 396.25(c) of the NPRM required motor carriers to retain evidence of the "responsible" person's qualifications. This requirement mandates that proof or evidence be available for inspection upon demand by any authorized Federal, State or local official. Governmental reviews of motor carriers are normally conducted at the motor carriers' principal place of business. If the qualification records are maintained in a location other than the principal place of business, the NPRM would have made the motor carrier responsible for sending the records to the principal place of business for review. In response to comments to the NPRM, the FHWA has changed the final rule to allow motor carriers the option of maintaining the evidence of the brake inspector's qualifications at the motor carrier's principal place of business or the location at which the inspector is employed.

The FHWA anticipates that some motor carries will opt to use the same individuals who perform the periodic inspections to perform inspections and maintenance of the brakes on their commercial motor vehicles. After the implementation date of this rule (January 1, 1992), those motor carrier employees who are responsible for the inspection of the brakes of CMV's in order to comply with the periodic inspection requirements, must also meet the requirement of this final rule.

It is important to note that only motor carrier emplyees are subject to this rule. Therefore if a CMV is inspected under the periodic inspection rule by a person other than an employee of a motor carrier, (i.e., commercial garage mechanics or a State inspector) then the requirements of this final rule do not apply.

The Illinois Farm Bureau and the American Farm Bureau Federation believe that the requirements of this rule would place a burden on farmers. Both associations contend that farmers and owner-operators who perform their own maintenance will be required to "take time away from their major livelihood (farming) in order to spend time and money for brake maintenance certification programs." The American Farm Bureau Federation stated "The proposed regulations should be modified or amended to recognize the limitations and actual practices of owner-operator carriers including farmers and ranchers. If truck owners choose not to perform their own brake service work, they should be permitted to rely on a garage mechanic to perform the task."

The FHWA is aware that many owner-operators perform their own brake maintenance. The rule requires that motor carriers, regardless of the number of employees or vehicles, must ensure that each employee who is responsible for servicing or inspecting brakes is qualified to do so. If an owner-operator meets the minimum qualifications of Section 396.25, and maintains evidence of those qualifications, the requirements of the rule will be satisfied. This rule does not require or prohibit motor carriers the use of commercial garages, fleet leasing companies, or similar facilities for brake service or inspection. In these situations documentation is not required.

In the NPRM, the FHWA indicated that the person actually performing the brake maintenance and inspection functions need not be the responsible person who ensures that the task is properly performed. The responsible person could be the supervisor, shop foreman, or other person who is responsible to ensure the quality of the work performed. It is the motor carrier's responsibility to ensure that the task is either performed by a qualified person, or that a qualified person is responsible for ensuring the proper performance of the task. In order to clarify this distinction, we have adopted the term "brake inspector" and defined that person as the employee who is responsible for ensuring that service or inspections meet this rule.

Several commenters suggested the training standards include certification as a brake mechanic or completion of an apprenticeship program certified by a training institution such as the National Institute for Automotive Service Excellence (NIASE), or a community college. The FHWA does not consider it necessary to make special provision for training institutions or community colleges. However, certification from those institutions which actually train and certify commercial motor vehicle brake mechanics would be satisfactory evidence of a person's qualifications.

The ATA and the National School Transportation Association (NSTA) argued that passing the CDL air brake tests might qualify a driver to inspect the brake system, but passing these tests should not be considered proof the tested individual is qualified to perform brake adjustments. One commenter recommended that the FHWA develop an air brake test to certify mechanics and inspectors.

In response to the concerns expressed by the ATA and NSTA, § 396.25(d)(3)(i) is revised to allow passage of the Commercial Driver's License (CDL) air brake tests to serve as proof of a driver's qualifications to inspect brakes, but will not serve as proof of qualification to perform brake adjustments. The FHWA has taken this position as the CDL air brake tests do not require that the driver demonstrate the knowledge and skills required to properly adjust brakes. The FHWA does not intend to develop an air brake test or examination for the sole purpose of certifying brake inspectors or mechanics.

Discussion of Final Rule

Upon review of the comments submitted in response to the NPRM, an analysis of the final rule is provided as follows:

Section 396.25 Qualifications of Brake Inspectors

Section 396.25(a) makes the motor carrier responsible for ensuring that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles are properly performed.

Section 396.25(b) defines a "brake inspector" as any employee of the motor carrier who is responsible for ensuring that inspections, maintenance, repairs or service to the brakes of the motor carrier's CMV's meet the applicable safety standards.

Section 396.25(c) places the responsibility upon the motor carrier to assign only qualified persons as brake inspectors and responsible for the proper inspections, repairs, or service to the CMV's brakes.

Section 396.25(d) makes the motor carrier responsible for ensuring that brake inspectors are sufficiently trained to understand and undertake the brake tasks assigned. Consistent with the FHWA's interpretation of section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988, the qualification requirements would not apply to persons who are not employed by a motor carrier.

The FHWA believes that there are similarities between the qualifications

for an individual performing the annual inspection and the brake inspection. There is one major difference between the two sets of qualifications. Under § 396.19, those who actually perform periodic inspections for the motor carrier must meet the qualifications. On the other hand, it is not necessary for the person performing the brake repair, adjustments, inspections or service to meet the requirements of § 396.25, if the brake inspector who is responsible for the work, e.g., shop foreman or supervisor, meets those minimum standards.

Section 396.25(d) establishes specific training or experience qualifications for brake inspectors who are to be responsible for the various brake maintenance or inspection tasks. These requirements can be met by completing an apprenticeship or a training program approved by a State, a Canadian Province, or the Federal government or by being certified by a State or a Canadian Province as qualified to perform the assigned brake task(s). Another way that a person may qualify is to have training or experience, or a combination thereof, that totals one year. This training or experience can be obtained in several ways, e.g., on-the-job training at a motor carrier's facility; a training program sponsored by a brake systems manufacturer; completing an apprentice program sponsored by a labor union; experience gained from performing brake related tasks; or any combination of these methods of obtaining the necessary expertise.

Section 396.25(e) clearly requires motor carriers to maintain evidence of each brake inspector's qualifications at its principal place of business or at the location at which the brake inspector is employed and to use only those employees as inspectors who have the required documentation on file by the motor carrier. This evidence must be maintained for the period during which the brake inspector is employed in that capacity for the motor carrier and for one year thereafter. In addition this section permits the use of those drivers who have passed the CDL air brake proficiency test to be responsible for inspecting air brake equipped vehicles without any additional proof of their qualifications.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant action under the Department of Transportation's regulatory policies and procedures. This rulemaking was initiated in order to implement provisions mandated by the Truck and Bus Safety and Regulatory Reform Act of 1988. A regulatory evaluation is not required because of the ministerial nature of this action. To the extent that any economic impacts would occur, they would be positive in that safety benefits would outweigh any additional costs for implementation. Implementation costs will be minimal in the case of most motor carriers, in that implementation will consist of documenting the qualifications of persons already employed and responsible for vehicle maintenance, including brakes and brake systems.

The benefits to be derived from implementation will be an increased emphasis on proper brake maintenance and an anticipated reduction in accidents resulting from defective brakes and from commercial motor vehicles being placed out of service because of defective brakes.

For this reason and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB No. 2125–0037).

Federalism Impact

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

This regulation amends part 396 of the FMCSRs pertaining to vehicle inspection, repair, and maintenance, as required by the Truck and Bus Safety and Regulatory Reform Act of 1988. Nothing in this document directly preempts any State law or regulation.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 31, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 396 as follows:

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

1. The authority citation for 49 CFR part 396 continues to read as follows:

Authority: Section 210 of Pub. L. 98–554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

2. Part 396 is amended by adding § 396.25 to read as follows:

§ 396.25 Qualifications of brake inspectors.

(a) The motor carrier shall ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, "brake inspector" means any employee of a motor carrier who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's control, meet the applicable Federal standards.

(c) No motor carrier shall require or permit any employee who does not meet the minimum brake inspector qualifications of § 396.25(d) to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier shall ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province

which qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier shall employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section is maintained by the motor carrier at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

[FR Doc. 91-165 Filed 1-4-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 900244-0317]

RIN 0648-AC80

Foreign Fishing; Groundfish of the Gulf of Alaska, Bering Sea, and Aleutian Islands

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

ACTION: Final rule.

SUMMARY: NOAA issues final rules to implement (1) Amendment 14 to the Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish (Bering FMP), and (2) Amendment 19 to the Fishery Management Plan for Gulf of Alaska Groundfish Fishery (Gulf FMP). These amendments prohibit the stripping of roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing and require issuance of regulations limiting this practice to the maximum extent practicable. The Magnuson Fishery Conservation and Management Act (Magnuson Act), as recently amended by the Fishery Conservation Amendments of 1990 (Pub. L. 101-627), prohibits the stripping of pollock of its roe and discarding the flesh of pollock. These implementing regulations (1) limit to the maximum extent practicable the practice of roe stripping and (2) seasonally allocate the total allowable catch (TAC) of pollock in commercial fisheries for groundfish in the U.S. Exclusive Economic Zone (EEZ) adjacent to Alaska. This action is necessary to reduce wastage of the pollock resource, prevent possible adverse effects on the marine ecosystem and reproductive potential of pollock, and provide for an equitable distribution of the pollock resource among its users. The intended effect of this action is to promote the conservation and management objectives of the FMPs.

EFFECTIVE DATE: January 1, 1991.

ADDRESSES: Copies of Amendments 14 and 19 to the FMPs, and the environmental assessment, regulatory impact review, and final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ off Alaska are managed in accordance with the Gulf and Bering FMPs. Both FMPs were developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Act. The Gulf FMP is implemented by regulations appearing at 50 CFR 611.92 and part 672, and the Bering FMP by regulations appearing at 50 CFR 611.93 and part 675.

The Council adopted Amendment 14 to the Bering FMP and Amendment 19 to the Gulf FMP at its meeting of June 26-30, 1990, for Secretarial review, approval, and implementation under sections 304(a) and 305(c) of the Magnuson Act. The official receipt date of Amendments 14 and 19 from the Council was August 12, 1990 (five days after the Council transmitted the Amendments). The Secretary immediately began a review to determine whether the Amendments were consistent with the Magnuson Act and other applicable law. The Director, Alaska Region, NMFS (Regional Director), made a preliminary determination that the Amendments were consistent with the Magnuson Act and other applicable law. A notice of availability and request for public comment on Amendments 14 and 19 was published on August 17, 1990 (55 FR 33737).

Public comment on the Amendments was invited until October 24, 1990. Proposed implementing rules were published on September 14, 1990 (55 FR 37907, correction at 55 FR 39352, September 26, 1990) and invited comments until October 29, 1990. The corrected notice of proposed rulemaking changed the date for comments to October 26, 1990. Because of potential confusion concerning the dates for comment, all comments received through October 29, 1990, were considered.

Seven letters commenting on the Amendments and their proposed implementing rules were received. After careful consideration of all comments, the Secretary chose to make no changes in the final rule in response to comments; however, some minor changes were made for clarification and technical reasons. A summary of and response to all comments appears later in this preamble.

On November 15, 1990, the Assistant Administrator for Fisheries, NOAA, concurred with the Regional Director in the approval of Amendments 14 and 19. On November 28, 1990, the President signed the Fishery Conservation Amendments of 1990 (Pub. L. 101-627), which amend the Magnuson Act to prohibit stripping pollock of its roe and discarding the flesh of pollock. This final rule limits this practice to the maximum extent practicable.

The fisheries for walleye pollock (*Theragra chalcogramma*) off Alaska are described in the EA/RIR/FRFA and in the preamble to the proposed rule (55 FR 37907, September 14, 1990). The following describes the purposes of Amendments 14 and 19, and how this action will achieve these purposes.

Description

The Council recommended Amendments 14 and 19 to the Secretary for the following reasons:

(a) Roe stripping is a wasteful use of the pollock resource;

(b) Roe stripping causes an inappropriate and unintended allocation of the pollock TAC among seasons and between industry sectors (i.e., at-sea versus shore-based processing);

(c) Roe stripping may adversely affect the ecosystem; and

(d) Roe stripping may adversely affect the future productivity of pollock stocks.

In addition to these reasons, the rapid pace at which pollock may be harvested increases the difficulty of accurately monitoring the pollock TAC. High rates of harvest also increase the risk of exceeding the TAC possibly the risk of overfishing. This problem is exacerbated at low levels of TAC, such as those in the Gulf of Alaska (GOA) in recent years.

A discussion of these fishery conservation and management problems and an analysis of the effects of various alternative management measures considered by the Council to resolve these problems are contained in the EA/RIR/FRFA, which is available from the Council at the above address.

In approving Amendments 14 and 19, the Secretary recognizes these problems. Hence, this action is an attempt to resolve these problems and comply with the statutory prohibition of stripping roe and discarding the flesh of pollock. Two management measures are taken: (1) Pollock TAC is seasonally allocated, and (2) to the maximum extent practicable, the prohibition on the practice of roe stripping is regulated by setting standards for the amount of pollock product that must be processed.

1. Seasonal Allocation of TAC

For fisheries in the GOA, the pollock TAC for the Central and Western Regulatory Areas will be divided into four equal seasons. Each allowance will be available for harvest during each quarterly reporting period. These quarterly allowances will be specified during the annual groundfish TAC specification process, which involves prior public notice and comment (§ 672.20(a)). Attainment of a quarterly allowance of pollock before the end of a quarterly reporting period would cause the Secretary to prohibit directed fishing for pollock until the beginning of the next quarterly reporting period. Authority is provided to prohibit directed fishing for pollock prior to complete attainment of a quarterly allowance if pollock are likely to be taken incidental to catch of other species of groundfish. In this event, the bycatch of pollock could be retained up to prescribed limits (§ 672.20(g)(3)).

If a quarterly allowance of pollock in the GOA is exceeded, the regulations would provide for the deduction of the excess equally from the remaining quarters of a fishing year. Likewise, the regulations would provide for any uncaught quarterly allowance to be added equally to the remaining quarters of a fishing year. However, the deduction of over-harvests or the addition of under-harvests in the fourth quarter of one fishing year from or to the first quarter of the following fishing year will not be allowed.

For fisheries in the Bering Sea and Aleutian Islands (BSAI) management area, the reserve is subtracted from pollock TAC for each subarea (see § 675.20(a)(3)), and the remainder is divided into separate allowances for the roe season and non-roe season. The amount of pollock specified for each allowance will be determined during the annual groundfish TAC specification process, which involves prior public notice and comment (§ 675.20(a)(7)).

In the BSAI Management area, the roe-season allowance will be available for harvest from January 1 through April 15, and the non-roe-season allowance will be available from June 1 through the end of the fishing year. Attainment of an allowance before the end of a season will cause the Secretary to prohibit directed fishing for pollock until the beginning of the following season. As in the GOA, authority is provided to phohibit directed fishing for pollock in the BSAI Management area before complete attainment of a seasonal allowance if pollock are likely to be taken incidentally in fisheries for other species of groundfish. In this event, the bycatch of pollock could be retained up to prescribed limits (§ 675.20(h)(1)).

If the roe-season allowance of pollock is exceeded, the excess amount will be deducted from the non-roe season of the same fishing year. Likewise, any uncaught roe-season allowance will be added to the non-roe-season allowance of the same fishing year. However, the subtraction of over-harvests or the addition of under-harvests in the non-roe season of one fishing year from or to the roe season of the following fishing year will not be allowed.

The purpose of seasonal allocations of the pollock TAC in the BSAI Management area is to ensure that the fishery will not exhaust the pollock TAC during the roe season when it has its highest value. This could happen when a limited amount of pollock is harvested annually by a virtually unlimited amount of fishing effort. The seasonal allowance preserves a predetermined amount of the pollock TAC for those operations that do not intend to fish for or process pollock early in the fishing year. By itself, a seasonal allocation of the pollock TAC does not prevent roe stripping but will prevent a disproportionate harvest of the pollock TAC during the roe season.

The purpose of the quarterly allocation of pollock TAC in the GOA is primarily the same as that stated in the inseason adjustment notice issued early in 1990 (55 FR 3223, January 31, 1990); that is, to prevent excessive harvesting of pollock in the first quarter. The quarterly allocation also is expected to slow the pollock fishery, attract fewer participants, and thus enable NMFS to monitor harvests more accurately than otherwise would be possible and thereby reduce the risk of over-harvesting the pollock TAC. Valuable biological data also are expected since harvested fish can be sampled over a broader time period than otherwise would occur. Quarterly allocations of the pollock TAC may preclude a roe fishery if the TAC is low and fishing effort is high because the first quarter allocation could be harvested before the roe becomes most valuable.

2. Standard Limit for Pollock Roe

This rule limits the amount of pollock roe, relative to other products, that can be retained onboard a vessel during a fishing trip. Basically, this rule establishes a standard that, if exceeded, would constitute roe stripping. In addition, it ensures that products other than roe will be produced from pollock thereby reducing the likely amount of discard. The product-recovery rates (PRRs) and standard limit are the same for the GOA and the BSAI management area.

The limit for pollock roe product is 10 percent of the total round-weight equivalent of pollock and other pollock products onboard a vessel at any time during a fishing trip. A vessel with more roe product onboard than 10 percent of the calculated round-weight equivalent would be in violation of the roe limit and could be cited for roe stripping. This roe limit is higher than the 7-percent limit used in an emergency interim rule to control roes stripping early in 1990 (55 FR 6396, February 23, 1990). That rate approximated an overall average recovery rate based on foreign fisheries observer data from 1983 through 1985. Also, it assumed that the sex ratio of pollock was 1:1. Roe-recovery rates are highly variable and may range from 3 percent to 17 percent, depending on the sex ratio of the catch, size and maturity of fish, area, time of year, hydration of roe sac, and size of catch. Lastly, the 7-percent limit proved to be too restrictive and resulted in some pollock roe being discarded, which was not the intent of the emergency interim rule. For these

reasons, a 10-percent roe limit is used in this rule, a limit that should restrict roe stripping but not result in discard of roe.

The PRRs that will be used to extrapolate round-weight equivalents from product weights are as follows:

Pollock product type	PRR (percent)
Fillet	18
Surimi	15
Mince	17
Meal	17
Headed and gutted	50

Except for the PRR for pollock meal, all these PRRs are lower than those used in the emergency rule. The rates in this rule are based on more recent data from the domestic processor fleet; however, these PRRs may differ from average annual recovery rates for the same products because flesh quality varies with season. If pollock are processed into primary products other than those listed above, extrapolated round-weight equivalents will be deemed to equal or exceed the PRR for pollock surimi. Additional data on the PRRs will be collected by observers on domestic processor vessels. These data will contribute to possible future refinements in the management of roe stripping according to PRRs.

Examples of the procedure that would be used to derive allowable pollock-roe retention during roe-season fisheries follow.

Allowable Pollock Roe in a Pollock Surimi Operation

If the total amount of pollock surimi on board is 200 metric tons (mt), then the round-weight equivalent is 200 mt divided by the surimi PRR of 0.15, or 1,333.3 mt. The allowable roe retention is then calculated as 1,333 mt times 0.10, or 133.3 mt of pollock roe.

Allowable Pollock Roe in a Pollock Mince or Meal Operation

If the total amount of pollock mince or meal product on board is 200 mt, then the round-weight equivalent is 200 mt divided by the mince or meal PRR of 0.17, or 1,176.5 mt. The allowable roe retention is then calculated as 1,176.5 mt times 0.10, or 117.6 mt of pollock roe.

Allowable Pollock Roe in an Operation Producing Headed-and-Gutted (H&G) Pollock

If the total amount of pollock H&G product on board is 200 mt, then the round-weight equivalent is 200 mt divided by the PRR for H&G of 0.50, or 400 mt. The allowable roe retention is then calculated as 400 mt times 0.10, or 40 mt of pollock roe.

Allowable Pollock Roe in an Operation Producing More Than One Primary Pollock Product

If the more than one primary product is produced from pollock, fillets from large fish and meal from small fish, for example, then the total round-weight equivalent would be calculated separately for each product, and the round-weight equivalents added. The sum of the round-weight equivalents then would be multiplied by the maximum roe-recovery rate (0.10) to determine the amount of roe that could be retained onboard.

If more than one product is produced from the same pollock, for example, surimi from the muscle tissue and meal from bones and viscera, then the maximum roe-recovery rate would be based on primary pollock product, which in this case is surimi. Ancillary products include, but are not limited to, meal, heads, internal organs, pectoral girdles, or any other product that is made from the same fish from which the primary product is made.

3. Enforcement of the Roe-Stripping Prohibition

Enforcement of this roe-stripping prohibition relies on pollock product information recorded in the mandatory daily cumulative production logbooks, weekly production reports that provide cumulative weekly production information from the logbooks, product transfer logs, and on-site inspection of product inventory. The mandatory logbook program implemented under Amendments 13 to the Bering FMP and 18 to the Gulf FMP (54 FR 50386, December 6, 1989) requires that species product types and product weights be recorded on a daily basis and that primary and ancillary products from the same fish be identified.

Specific Changes from the Proposed Rule in the Final Rule

No substantive changes were made in the final rule as a result of comments on the proposed rule. However, five minor wording changes were made in the final regulatory text for clarification and technical purposes.

The first change clarifies the proposed rule text at §§ 672.20(i) and 675.20(j), which in the proposed rules read, "Pollock roe must equal no more than 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product, retained onboard a vessel at any time during a fishing trip." NOAA considered this language potentially confusing because it did not specifically describe the accounting of retained pollock or pollock products. NOAA's intention is to measure the amount of pollock roe onboard a vessel during a fishing trip against the amount of other pollock products produced during the same fishing trip. The technique for making this measure remains unchanged. The round-weight equivalent will be calculated from the primary pollock products, and pollock roe must not exceed 10 percent of the total round-weight equivalent. The changed language clarifies that the pollock roe and other pollock-product amounts used in this calculation are to be only those amounts produced during the same fishing trip. Hence, non-roe pollock products from a previous fishing trip cannot be used for calculating the permissible amount of pollock roe that may be onboard a vessel during a later fishing trip.

The second change is related to the first by improving the definition of "fishing trip." The proposed rule stated that a fishing trip begins "when commencing fishing." The Magnuson Act defines fishing as operations at sea in support of catching or attempting to catch fish. Therefore, NOAA clarifies the beginning of a "fishing trip" in the final rule as " commencing or resuming harvesting, receiving, or processing of pollock." The end of a fishing trip, defined in the final rule as in the proposed rule, is the time when any pollock or pollock product is transferred or offloaded, or the time when the vessel leaves the reporting area where fishing activity commenced, whichever comes first.

These changes are intended to clarify that, for purposes of these rules, accounting of pollock roe onboard a vessel at any time will be based on a fishing trip. The vessel will begin a fishing trip when it first harvests pollock, or when it first receives pollock from another vessel, or starts to process pollock within a reporting area. Pollock roe onboard the vessel during the fishing trip must not exceed the standard limit based on other pollock products produced during the same trip. A fishing trip will end when any pollock or pollock product is transferred or offloaded, or when the vessel leaves the reporting area, whichever comes first. When the fishing trip ends, the amount of non-roe pollock onboard becomes zero for roe accounting purposes, regardless of the actual amount of non-roe product that may remain onboard from trip to trip. Operators of vessels that do not actually fish for pollock but process or transport pollock products

under a Federal fishing permit have the same obligation to comply with these rules as these vessels that fish for pollock.

The third change is necessary for technical reasons. At about the same time that the Council submitted Amendments 14 and 19 for Secretarial review, it also submitted Amendments 16 and 21 to the same FMPs. The proposed rules for Amendments 16 and 21 were published on September 18, 1990 (55 FR 38347). The implementation schedule for the approved parts of Amendments 16 and 21 requires filing of the final rules for these amendments with the **Federal Register** before filing of the final rules for Amendments 14 and 19.

Since Amendments 16/21 and Amendments 14/19 will make different changes to the same regulatory text and will be effective on the same day, the final rule for Amendments 16/21 must be integrated into the final rule for Amendment 14/19. Hence, NOAA is changing the rule for Amendment 14/19 at §§ 672.20(c) and 675.20(a)(7) in the final rule to integrate the earlier changes made to these paragraphs by the final rule implementing Amendments 16/21. These changes are entirely editorial and do not make substantive changes to either Amendments 16/21 or Amendments 14/19.

The fourth change substitutes the term "quarterly reporting periods" for the term "calendar quarter" at § 672.20(a)(2)(ii). This change is made because a "quarterly reporting period" is a specific period of time defined at § 672.2 and "calendar quarter" is a generic term. In addition, the use of "quarter" and "quarterly" in the final rule text of § 672.20 (a) and (c) means the same as "quarterly reporting period."

Finally, editorial changes are made to the final rule text at §§ 672.20(c) and 675.20(a)(7) to delete unnecessary verbiage. The term "after October 1 of each year" is deleted in each section because the preceding phrase "as soon as practicable" is sufficient to require the Secretary to publish the proposed specifications without delay after consulting with the Council. This deletion also allows the consultation to be scheduled at any time without constraining publication of the proposed specifications to occur "after October 1."

A similar editorial change in both sections is the deletion of text requiring the specification of DAP and JVP as "the amounts harvested during the previous year plus any additional amounts * * *." This text, reflecting the Magnuson Act provisions for domestic harvesting and processing preference, originally served the interests of growing JVP and DAP fisheries at the expense of foreign fisheries. Domestic fisheries now have completely replaced the earlier foreign fisheries in the GOA and BSAI Management area, yet the text implied the potential for unlimited growth in the DAP and JVP catch limits. Understanding the basis for the specifications is improved by deleting this anachronistic text while not prohibiting the potential for foreign and JVP fisheries based on "projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year."

Among the specifications in the proposed rule at § 675.20(a)(7) is the "reserve." This term is deleted from the final rule because the reserve is not species specific. The term "initial TAC" is substituted for "reserve" to indicate the establishment of the reserve, as provided under § 675.20(a)(3), by subtracting 15 percent of the TAC of each species category. The initial TAC also is routinely published in the proposed and final specifications.

A new paragraph (j)(5) is added to § 675.20 in the final rule text to describe the calculation of retainable pollock roe by example. The same paragraph was used in the proposed rule at § 672.20(i)(5), but was omitted from the proposed rule at § 675.20 by oversight. Additional editorial changes were made in this description at §§ 672.20(i)(5) and 675.20(j)(5) to clarify that the accounting of permissible amounts of pollock roe onboard will be done on the basis of a fishing trip, which is defined in the respective paragraphs. The description was changed also to emphasize that only one primary product, other than roe, can be used to calculate the round-weight equivalent from multiple products made from the same fish, but that multiple primary products may be used for this calculation if they are produced from different fish.

Comments Received

The Regional Director received seven letters of comment on the proposed rule. Issues and concerns raised by these comments are summarized and responded to below.

Comment 1: This comment has four parts. (a) The starting date for the roe season should be flexible. The pollock biomass, annual TAC, percent of the TAC allocated to the roe fishery, timing of roe maturity, and harvesting/processing capacity of the fleet are all dynamic variables. Unless there is flexibility to adjust the beginning of the roe fishery, Amendments 14/19 could produce unnecessarily low economic benefits from the pollock resource. For example, a low percentage of the TAC allocated to the roe fishery beginning on January 1 could be nearly harvested, given the substantial domestic harvesting capacity that exists, before the period of maximum value occurs. Historically, the highest value for pollock roe from the Bering Sea occurs during the mid-January to mid-February period when the fish are in their pre-spawning condition. Pollock in the GOA usually mature later. As an alternative, the Regional Director should have authority to increase the roe pollock allocation to a level necessary to sustain the fishery through mid-February in the BSAI Management area and through the prime pollock roe season in the GOA.

(b) The allocation of pollock TAC between roe and non-roe seasons should not be left undecided until the December Council meeting. Uncertainty to industry not knowing how much pollock TAC will be available for harvest until 3 weeks before the start of the roe season will disrupt the market and the domestic fishery. Buyers and sellers of pollock products negotiate agreements for supply and distribution. Negotiated prices are partially based on a reasonable anticipation of total product supply. The proposed rule will allow participants less than a month to make contractual arrangements for U.S. supplied product. As a consequence, markets available to U.S. producers will seek alternative sources of whitefish. For maximum benefit from this fishery, more predictability and stability in allocating harvest quota is required than is proposed. The roe-season percentage should be established no later than September of the preceding year.

(c) Actual PRRs should be used instead of the standard roe limit. Processing operations should be allowed to establish their actual PRRs during the fishing season as a measure of roe retention. The proposed rule will cause vessels with a higher PRR for roe than the standard to discard the overage of roe. The proposed rule, which is attempting to prevent waste, could ultimately require wastage of the most valuable of all pollock products. Actual PRRs will be highly variable. Omitted from consideration in the proposed rule notice was variance due to efficiency of machinery, skill among processors, and knowledge among fishermen in targeting larger pollock. Instead, observers could check to ensure that unused pollock are not being discarded, and thus allow efficient operators full benefit from the roe produced in a given operation. The waste problem will be compounded if

the proposed PRRs are used for quota-management purposes. Quotas should be monitored through observers and the established data-collection system currently employed. Finally, the amendment proposal assumes that any new pollock products should conform to a PRR equal to pollock surimi. It is impossible to predict PRRs of future products. The proposed rule dictates product forms by limiting options. Using actual PRRs that prevent wasteful discards is the best way to avoid limitation of product options.

(d) The Regulatory Impact Review (RIR) wrongly concludes that disruptions to the fishery, if the rule is adopted as proposed, are not likely to exceed $100 million. The RIR assumes away potential negative impacts on domestic pollock operations. If an arbitrarily low roe-fishery allocation (i.e., 25 percent of the TAC) is made, the current option of producing surimi, fillets, and blocks together with pollock roe will be prohibited. Also, the proposed management could cost $130 million in forgone pollock roe product if the TAC allocation to the toe fishery is 25 percent instead of 50 percent.

Response: (a) NOAA agrees that there are a large number of variables that will affect the overall value of pollock harvested during the roe-season fishery. However, increased flexibility in setting opening dates for the roe-season fishery presents more technical and allocative problems that can be solved with current experience in managing roe fisheries. Although a January 1 opening may result in closure of the roe-season fishery before the period of prime value for pollock roe, waiting too late to start the roe-season fishery may also result in loss of value because the roe becomes too mature. NOAA does not now know the magnitude of all variables and how they will interact. Conducting a test fishery to determine product quality, as in the Alaska herring-roe fisheries, is impractical given the large area over which fecund pollock occur off Alaska. Changing the opening date of the roe season in the Bering Sea also may have unintended allocation effects if it is not coordinated with the opening of the roe-season fishery in the GOA. If these opening dates are not concurrent, resolution of the allocation problem listed above would be undermined. Selecting an alternative opening date for the roe-season fishery may be possible in the future with more date and experience with the performance of the roe-season fishery.

(b) NOAA appreciates the planning and logistical problems that the September-to-December specification process causes for the fishing industry. Disapproval of the seasonal allocation part of Amendments 14 and 19 would not entirely solve these problems. These problems are caused by the late availability of scientific information on which the Council must base TAC and apportionment decisions. Redefinition of the fishing year should be explored as a possible solution.

(c) NOAA understands that actual PRRs are highly variable. The purpose of the PRRs in this action is to determine if and when a pollock processor conducts roe stripping. For this purpose a roe limit is set that, if exceeded, will indicate the possibility of roe stripping. The overall average recovery rate for pollock roe is about 7 percent, assuming an equal mix of male and female fish. The roe stripping standard allows up to 10 percent recovery of pollock roe. In adopting this more liberal standard, NOAA is attempting to accommodate the higher recovery rate anticipated during the peak of the roe season so that little or no legitimate roe harvest needs to be discarded. If experience with this standard indicates that it is too high or too low, it could be changed by regulatory amendment. For now, the limit and PRRs provide a reasonable balance between production of roe and other pollock products and the prevention of roe stripping. Observer information will be helpful in refining this standard, but the principal purpose of observers is to collect biological and fishery performance date (to monitor quotas), not to collect fish processing data.

(d) Some of the forgone revenue to the pollock fishery due to limitations on the amount of roe that can be harvested under this rule is likely to be offset by increased revenue from pollock fishing during the non-roe season. NOAA has reviewed the RIR and found its conclusions to be defensible. Based on the RIR, NOAA expects a negative revenue impact on the pollock fishery of about $15 million because of foregone opportunity to harvest roe. This cost could be offset by the benefits of increased protection of the ecosystem and the future productivity of pollock stocks.

Comment 2: The proposed PRRs, especially for surimi, are too high and could cause an inaccurate assessment of the amount of pollock actually harvested. Pollock should be weighed prior to processing to assess accurately the amounted harvested.

Response: The purpose of the PRRs implemented by this action is to regulate the production of pollock roe and limit roe stripping. These PRRs will be used only to determine if the amount of pollock roe onboard at any time during a fishing trip is within the roe stripping standard, rather than determine the total amount of pollock harvested for quota monitoring purposes. Although actual recovery rates for a particular product may vary from its published PRR, using PRRs generally as a means of estimating the round-weight equivalent of harvested fish is reasonably accurate overall and has the added advantage of allowing tracking of product forms for enforcement purposes.

Comment 3: The seasonal allowance provision of Amendment 14 to the Bering FMP should be disapproved because it places too great of a burden on the fishing industry. The decision process for determining the proportion of the pollock TAC to be allocated for roe-season harvesting provides too short notice to allow industry preparation. Months, not weeks, are needed to schedule vessel operations; contract for crews; order and transport supplies; arrange for fuel, reprovisioning, and storage; and find and commit to markets for finished products. The publication of preliminary specifications for public comment does not help because preliminary figures have no real meaning.

The allowable retention of pollock roe should be based on actual PRRs, not a standard limit. Actual PPRs vary widely between vessels and on an individual vessel from day to day and area to area. There should be a provision to substitute the actual recovery rates of an individual vessel for the standard rates when the vessel can substantiate those rates. This would result in more accurate estimates of harvest and would preclude wastage of valuable roe at certain times. The proposed roe limit is liberal over the entire season. Roe recovery is less than 10 percent except during the peak of the season when roe recovery may exceed 10 percent. In this event, the roe onboard should be allowed to exceed 10 percent if a higher rate can be substantiated.

Response: NOAA appreciates the planning and logistical problems that the September-to-December specification process causes for the fishing industry. Disapproval of the seasonal allocation part of Amendments 14 and 19 would not entirely solve these problems. These problems are cause by the brief period of time (about 7 weeks) between the availability of scientific information on which the Council must base TAC and apportionment decisions and the beginning of a new fishing year on January 1. Redefinition of the fishing

year should be explored as a possible solution.

NOAA understands the high variability of actual recovery rates in different processing operations and in different times and places. However, the standard roe limit and PRRs in this action provide a practical definition of roe stripping that is to be avoided. The alternative, not having these standards, places enforcement officers in the position of deciding, on a case-by-case basis, whether roe stripping occurred. This would be impractical and unfair to processing operations as each case-by-case decision would be arbitrary. However, processing operations should carefully document their actual recovery rates, especially if they are higher than the 10-percent standard rate. With more experience and data on actual roe-recovery rates, NOAA may propose revisions to the standard.

Comment 4: Prohibiting pollock trawling during the pollock roe-bearing season is the best way to conserve pollock stocks and to provide for the viability of predatory species, such as the Steller sea lions, other marine mammals, and sea birds. Roe-bearing pollock are a protein-rich and high energy-content prey for pregnant sea lions and weaned pups. The proposed rule with multiple season allowances would be more costly, complex, and ineffective than a single non-roe season. The decline in the population of Steller sea lions, leading to its protection under the Endangered Species Act, may be linked with declines in availability of pollock. Localized declines in pollock populations could cause nutritional stress on pregnant females, young pups, and juveniles during winter months. The Steller sea lion is only one of numerous marine mammal and bird species that prey on pollock, and the decline in sea lion populations could be one indication of the potential adverse impacts of a large roe fishery on the North Pacific marine ecosystem.

Response: Shifting fishing effort to later quarters may reduce competition for pollock between the fishery and Steller sea lions whose populations have been declining in recent years. A hypothesis that pollock roe fisheries and other pollock fisheries may be contributing to these declines has not been tested, and current data are insufficient to link sea lion population declines with declines in prey availability. However, in consideration of the recent listing of Steller sea lions as "threatened" under the Endangered Species Act, as conservative course of action is prudent.

Limiting the amount of pollock that may be harvested during the roe season is a conservative course of action. In taking this action, NOAA is balancing competing uses of the pollock resource. While shifting the pollock fishery to later in the fishing year may be beneficial to Steller sea lions and other prey species, this shift also may increase bycatches of crabs, halibut, herring, and other species of commercial and ecosystem importance. Pollock harvested during the roe season usually are taken with mid-water trawl gear that has low bycatch rates of these other species. Later in the year, pollock are more likely to be harvested with trawl gear that operates near the bottom and typically has higher bycatch rates. Prohibiting pollock fishing during the roe season also would have much more severe economic impacts on the pollock fishery than will occur under this action.

Comment 5: The proposed rule does not go far enough to assure a year-round supply of pollock products. The proposed two-season allocation of TAC in the BSAI Management area will help spread effort over the year but, given the rate of harvest in 1990 plus additional harvesting and processing vessels entering the fishery, early closure of the seasons appears likely. Division of the BSAI pollock TAC into smaller temporal units, such as calendar quarters or even months, would assure a constant supply of raw materials from the fishery.

Response: NOAA agrees that the pollock fishery in the BSAI Management area probably will be closed before the April 15 end of the roe season or the December 31 end of the non-roe season. Early closures result from a limited TAC and an increasing amount of fishing effort. Spreading the harvest over the year is not an objective of seasonal allocations in the BSAI Management area as it is in the GOA where the pollock TAC is apportioned quarterly. If spreading the harvest over the year becomes an objective in managing the pollock fishery in the BSAI Management area, the Bering FMP may be amended again. Although this objective may be desirable to fish wholesalers and consumers, frequent opening and closing of a fishery during the year can be costly to the fishing industry. Alternatively, controlling the amount of fishing effort (i.e., limiting entry to the fishery) to that needed to fish for pollock year round may not be effective because fishing effort would focus on the time period that yields the greatest economic value, in this case, the roe season.

Comment 6: The seasonal allocation portions of Amendment 14 and 19 should be disapproved, and only the constraints on roe stripping should be implemented. The purpose of seasonal allocations is to address concerns of onshore processors resulting from competition with the at-sea processors. Onshore processors are using the Amendments for economic protection by precluding participation of the at-sea processors. In the GOA, the seasonal allocation will reduce the value of the harvest because it reduces the roe-season fishery. This year, the roe fishery was practically nonexistent because most of the fish taken in the first quarter were harvested before the roe was of prime quality. In the BSAI Management area, the split season will increase costs of at-sea processors because they will have to discontinue operations two times a year, after the roe season and after the non-roe season.

The EA/RIR/FRFA analysis does not provide a basis for the premise that fishing during the roe season has a negative impact on pollock stocks. The analysis fails to identify the results of the one-time experiment for data collection purposes to conduct the GOA pollock fishery with quarterly allocations. In addition, the analysis fails to evaluate the costs and benefits of the alternatives on different user groups, in particular, the costs to the at-sea fleet resulting from the split season and that the split season favors onshore processors.

The Amendments violate Magnuson Act National Standard 4 because their implementation is not fair and equitable to at-sea processors and is not reasonably calculated to promote conservation. The Amendments violate National Standards 5 and 7 because their implementation does not minimize costs and avoid unnecessary duplication.

Response: The purpose of seasonal allocations is only partly to address the issue of competition between onshore and offshore processing. In the GOA, quarterly allowances of the pollock TAC also limit the amount of pollock that can be harvested during the roe-bearing period and spread the fishery over the year. Biological data from a fishery operating over a broad time period reveal better information about the stock structure of the species being harvested than data from a short, intensive fishery. These data are especially important for the GOA pollock fishery, given the relatively low biomass of pollock in the GOA and the rate at which it could be harvested without seasonal controls. Limits on the amount of pollock that can be harvested during the roe season are a reasonable way to limit roe stripping. Of course, these limitations will impose costs in terms of forgone revenues from a fishery that would have occurred only during

the roe season. The Council and the Secretary reviewed these costs and concluded that they were justified when weighed against the benefits being sought. The analysis does not conclusively find that a roe-season fishery will have harmful effects on the pollock resource. It describes a variety of possible circumstances that could increase the risk of biological harm and overfishing. Assessing potential negative biological impacts on the pollock resource was not the only subject of the analysis. The analysis also discussed potential effects on the ecosystem of fishing effort focused on the roe season. The analysis did not consider data from the 1990 quarterly allocation of pollock in the GOA because those data were incomplete when the analysis was being written.

One objective of Amendments 14 and 19 is to prevent the unintended full harvest of the GOA pollock TAC by one segment of the fishing industry (i.e., at-sea catcher/processors). Quarterly allowances of the pollock TAC in the GOA are designed, in part, to achieve this objective. To this end, this management measure is clearly allocative; however, the shore-based industry is as limited in its potential production of pollock roe by this measure as the at-sea industry. NOAA finds that this allocation measure does not violate National Standard 4 because: (a) It does not discriminate between residents of different states, (b) it equitably distributes the regulatory burden to all pollock fishermen, (c) it is reasonably calculated to promote conservation of pollock and other living marine resources, and (d) it can be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the harvesting privileges.

With respect to National Standards 5 and 7, NOAA finds that the Amendments will promote efficient use of the pollock resource by severely limiting the discard of usable pollock flesh that occurs during roe stripping. If the roe season were not limited, greater economic revenues to the pollock fishery may be realized possibly at a cost to other pollock users, such as marine mammals and producers of pollock flesh products, and at an increased potential risk of over-harvesting the pollock TAC. Although the Amendments will be implemented at a cost in forgone revenues from potential pollock roe, these costs are minimized by allowing the harvest of pollock roe yet providing a practical standard by which roe stripping is determined. More costly ways of limiting roe stripping were considered in the analysis. Finally, the management in Amendments 14 and 19 are not redundant with any other state or Federal regulations, hence, duplication is avoided.

Comment 7: It is not clear in the proposed rule language at § 675.20(i) [sic, reference is to paragraph (j)] how "retained onboard a vessel" would be interpreted for a vessel that does not have fish meal processing capabilities but is tied up at sea to a vessel that does have that capability. This paragraph should be revised to read "caught and retained on board the same vessel at any time during a fishing trip."

Response: The suggested alternative wording would prevent a mothership operation, which receives whole fish from a catcher vessel, from producing pollock roe and other products. The phrase, "retained onboard" with respect to pollock roe in §§ 672.20(i) and 675.20(j), will be interpreted in the context of a fishing trip. For purposes of this action, fishing trip is defined at §§ 672.20(i)(4) and 675.20(j)(4) as ending when any pollock or pollock product is transferred or offloaded. In the example of a sister vessel producing fish meal or other products from pollock caught by another vessel, the vessel offloading pollock to the sister vessel would end its fishing trip (and the sister vessel would begin its fishing trip) by that activity. Any pollock roe or other pollock retained onboard the catcher vessel would not count for purposes of determining whether the roe stripping standard was exceeded. When the catcher vessel resumed fishing, it would begin a new fishing trip for purposes of pollock roe accounting and compliance with these rules.

Classification

The Regional Director determined that Bering FMP Amendment 14 and Gulf FMP Amendment 19 are necessary for the conservation and management of the groundfish fisheries in the BSAI management area and the GOA, respectively, and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis (RIR) under Executive Order 12291. This determination is based on the EA/RIR/final regulatory flexibility analysis (FRFA) prepared by the Council. A copy of the RIR may be obtained from the Council at the previously cited address.

The Assistant Administrator concludes that this rule will have significant effects on a substantial number of small entities. Thus, an FRFA has been prepared. A copy of the FRFA may be obtained from the Council at the previously cited address.

The Assistant Administrator determined that this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator determined that this rule is not likely to adversely affect endangered or threatened marine mammals. Reduced pollock harvest during the winter-spring season could increase the local availability of prey to Stellar sea lions (a "threatened species" under the Endangered Species Act) and thus may be beneficial to Steller sea lions. Since pollock is only a minor component of the endangered cetaceans' diets, adoption of this rule is not likely to affect these species.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the Federally approved coastal zone management program of Alaska. This determination was submitted to the responsible State agencies for review under section 307 of the Coastal Zone Management Act. The State declined to comment on the consistency determination within the statutory time period, and consistency is presumed.

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

This rule must be effective no later than January 1, 1991, to achieve orderly management of the groundfish fishery off Alaska for the 1991 fishing season and to derive meaningful conservation benefits from this rule. A later effective date would be contrary to the public interest; consequently, the Assistant Administrator, pursuant to section 553(d)(3) of the Administrative Procedure Act, finds that good cause exists for making this rule effective January 1, 1991, prior to 30 days after the date of publication.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries, Foreign fishing, Reporting and recordkeeping requirements.

Dated: December 31, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611, 672 and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

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

2. In § 611.92, paragraph (c)(3) is added to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(3) *Allowable retention of pollock roe.* See 50 CFR 672.20(i) for procedures used to determine the allowable amount of pollock roe that can be retained onboard a foreign processor vessel at any time during a fishing trip.

* * * * *

3. In § 611.93, paragraph (c)(6) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(6) *Allowable retention of pollock roe.* See 50 CFR 675.20(j) for procedures used to determine the allowable amount of pollock roe that can be retained onboard a foreign processor vessel at any time during a fishing trip.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

4. The authority citation for part 672 continues to read as follows:

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

5. In § 672.7, a new paragraph (e) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(e) Retain pollock roe onboard a vessel in violation of paragraph 672.20(i) of this part.

6. In § 672.20, the text of paragraph (a)(2) is redesignated (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).*

* * *

(ii) The TAC of pollock for the Central and Western regulatory areas will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of a quarterly allowance will be added in equal proportions to the quarterly allowances of the following quarters. Within any fishing year, harvests in excess of a quarterly allowance will be deducted in equal proportions from the quarterly allowances of the following quarters of that fishing year.

* * * * *

7. In § 672.20, paragraphs (c) (1) and (2) are revised, and new paragraph (i) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(c) *Notices.*

(1) *Notice of proposed specifications and interim harvest limits.*

(i) As soon as practicable after consultation with the Council, the Secretary will publish a notice in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC amounts for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves; halibut prohibited species catch amounts; and quarterly allowances of pollock. This notice also will include the dates that directed fishing may commence for each quarterly allowance of pollock. The preliminary specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock) and one-fourth of the halibut prohibited species catch amounts will be in effect on January 1 on an interim basis and will remain in effect until superseded by a **Federal Register** notice of final specifications.

(ii) *Notice of final specifications.* The Secretary will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final halibut prohibited species catch amounts, and final quarterly allowances of pollock. These final specifications will supersede the interim specifications.

(2) *Notices prohibiting directed fishing.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is the amount in Table 1 or, if applicable, Table 2, as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, he will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

(i) *Allowable retention of pollock roe.* Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph. Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. No person may include pollock or pollock products from previous fishing trips that are retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

(1) For purposes of this paragraph, only one primary product per fish, other than roe, may be used to calculate the round-weight equivalent. The primary product must be distinguished from ancillary products in the daily cumulative production logbook required under § 672.5 of this part. Ancillary products are those, such as meal, heads, internal organs, pectoral girdles or any other product which may be made from the same fish as the primary product.

(2) *Product-recovery rates used to extrapolate round-weight equivalents.* The following product-recovery rates will be used to calculate round weight equivalents of primary pollock products:

(i) Pollock surimi—15 percent;

(ii) Pollock fillets—18 percent;

(iii) Pollock minced product—17 percent;

(iv) Pollock meal—17 percent; and

(v) Pollock headed and gutted—50 percent.

(3) *Other product-recovery rates.* Recovery rates for products not listed under paragraph (i)(2) of this section must equal or exceed the product-recovery rate established for pollock surimi.

(4) *Fishing trip.* For purposes of this paragraph, a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the regulatory area where fishing activity commenced, whichever comes first.

(5) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product-recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.10. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph. If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.10 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

8. The authority citation for part 675 continues to read as follows:

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

9. In § 675.7, a new paragraph (f) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(f) Retain pollock roe onboard a vessel in violation of paragraph 675.20(j) of this part.

10. In § 675.20, the text of paragraph (a)(2) is redesignated as (a)(2)(ii), a new paragraph (a)(2)(i) is added, the newly designated paragraph (a)(2)(ii) is revised, paragraphs (a)(7) and (a)(8) are revised, and new paragraph (j) is added to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) *Total Allowable Catch (TAC).*

* * *

(i) The TAC of pollock in each subarea will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from January 1 until noon, Alaska local time (A.l.t.), April 15. The second allowance will be available for directed fishing from noon, A.l.t., June 1 through the end of the fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

(ii) The annual determination of the TAC for each target species and the "other species" category, the division of the pollock TAC into seasonal allowances, the exceeding of these species' TACs through the apportionment of reserves, and the reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based on and be consistent with two types of information:

* * * * *

(7) *Notices.*

(i) *Notice of proposed specifications and interim harvest amounts.* As soon as practicable after consultation with the Council, the Secretary will publish a notice in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC and initial TAC amounts for each target species and "other species" category and apportionments thereof among DAP, JVP, and TALFF; prohibited species catch allowances established under § 675.21(b) of this part; and seasonal allowances of pollock. The initial TAC for each target species and the "other species" category will be 85 percent of the TAC as provided under paragraph (a)(3) of this section. The proposed specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year. The Secretary will accept public comment on the proposed specifications for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of each proposed initial TAC and apportionment thereof, one-fourth of each prohibited species catch allowance established under § 675.21(b) of this part, and the first seasonal allowance of pollock will be in effect on January 1 on an interim basis and will remain in effect until superseded by a **Federal Register** notice of final specifications.

(ii) *Notice of final specifications.* The Secretary will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch allowances established under § 675.21(b) of this part, and final seasonal allowances of pollock. These final specifications will supersede the interim specifications.

(8) If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or a seasonal allowance of pollock, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount annually specified under paragraph (a)(7) of this section, as revised by in-season adjustments, for that species or species group, or seasonal allowance of pollock as identified by subarea and as further identified according to any allocation for TALFF, the apportionment for JVP, the apportionment for DAP and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same subarea. If the

Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the fishing season, he will prohibit directed fishing for that species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

(j) *Allowable retention of pollock roe.* Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph. Determination of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. No person may include pollock or pollock products from previous fishing trips that is retained onboard a vessel in determining the allowable retention of pollock roe for that vessel.

(1) For purposes of this paragraph, only one primary product per fish, other than roe, may be used to calculate the round-weight equivalent. The primary product must be distinguished from ancillary products in the daily cumulative production logbook required under § 675.5 of this part. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product which may be made from the same fish as the primary product.

(2) *Product-recovery rates used to extrapolate round-weight equivalents.* The following product-recovery rates will be used to calculate round-weight equivalents of primary pollock products:

(i) Pollock surimi—15 percent;

(ii) Pollock fillets—18 percent;

(iii) Pollock minced product—17 percent;

(iv) Pollock meal—17 percent; and

(v) Pollock headed and gutted—50 percent.

(3) *Other product-recovery rates.* Recovery rates for products not listed under paragraph (j)(2) of this section must equal or exceed the product-recovery rate established for pollock surimi.

(4) *Fishing trip.* For purposes of this paragraph, a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the subarea where fishing activity commenced, whichever comes first.

(5) *Calculation of the amount of retainable pollock roe.* To calculate the amount of pollock roe that can be retained onboard during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product onboard by the appropriate product-recovery rate. To determine the amount of pollock roe that can be retained during the same fishing trip, multiply the round-weight equivalent by 0.10. The result is the maximum amount of pollock roe that can be retained onboard during that fishing trip. Pollock roe retained onboard from previous fishing trips will not be counted, for purposes of this paragraph. If two or more products, other than roe, are made from different fish, then round-weight equivalents are calculated separately for each product. Round-weight equivalents are then added together, and the sum multiplied by 0.10 to determine the maximum amount of pollock roe that can be retained onboard a vessel during a fishing trip. However, if two or more products, other than roe, are made from the same fish, then the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

[FR Doc. 90-30639 Filed 12-31-90; 3:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 4
Monday, January 7, 1991

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 JUSTICE

Immigration and Naturalization Service

[INS No. 1296-90]

RIN 1115-AB50

8 CFR Part 214

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations relating to employment authorization for the accompanying spouse and dependents of a J-1 exchange visitor by requiring the use of a standardized application form. The requirement that a J-2 spouse or dependent seeking employment authorization use a standardized application, Form I-765, will move the Service closer to the establishment of a uniform employment authorization document. The proposed rule will not only clarify the guidelines for adjudication, but bring the J-2 employment regulation in line with the implementation regulations of the Immigration Reform and Control Act of 1986 (IRCA).

DATES: Written comments must be received on or before February 6, 1991.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514-3240.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service proposes to amend the regulations relating to J-2 employment authorization to establish guidelines for adjudication and to reflect the requirements imposed by IRCA. The employer sanctions provisions of IRCA require that employers verify the identity and employment eligibility of persons they hire. For these IRCA provisions to be effective, it is essential that the Service issue a uniform employment authorization document that facilitates document recognition by the employer.

Title 8 of the Code of Federal Regulations, § 214.2(j) provides that the accompanying spouse and minor children (J-2) of a J-1 exchange alien may accept employment with authorization by the Immigration and Naturalization Service (INS). The current regulation permits a J-2 dependent to submit a request to INS for employment authorization either verbally or in writing. The Service usually approves such a request if it is evident that the employment is not for the support of the J-1 exchange alien, and the approval is noted on the J-2 dependent's Arrival and Departure Record, Form I-94. In the absence of a standardized procedure, each INS field office is left to set its own procedural requirements, and it has resulted in varied decisions on requests for permission to work. By requiring the use of the standardized employment authorization application, Form I-765, the Service can not only clarify the guidelines for adjudication, but bring the J-2 employment authorization process in line with the objective of standardizing employment authorization documents.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, part 214 of chapter I of title 8 Code of Federal Regulations will be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

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

2. Section 214.2 is amended by revising paragraph (j)(1)(v) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) * * *

(1) * * *

(v) *Employment.* (A) The accompanying spouse and minor children of a J-1 exchange visitor may accept employment only with authorization by the Immigration and Naturalization Service. A request for employment authorization mut be made on Form I-765 with fee, as required by 8 CFR 274a.12(c)(5), to the district director having jurisdiction over the J-1 exchange visitor's temporary residence in the United States. Income from the J-2 spouse's or dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment shall not be authorized, however, if this income is needed to support the J-1 principal alien.

(B) J-2 employment may be authorized at one year intervals during the J-1 principal's authorized stay. The employment authorization is valid only if the J-1 is maintaining status. Where a J-2 spouse or dependent child has filed a timely application for extension of stay, only upon approval of the request for extension of stay may he or she apply for a renewal of the employment authorization on Form I-765 with fee.

* * * * *

Dated: October 26, 1990.

James A. Puleo,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 91-154 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 89-025P]

RIN 0583-AA43

Additional Methods for Destroying Trichinae in Dry-Cured Ham and Dry Sausage

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to provide additional methods for processing dry sausage and dry-cured ham to destroy trichinae (*Trichinella spiralis* larvae) which may be encysted in pork. FSIS has been petitioned to add one trichina destruction method for two size ranges of dry sausages and two trichina destruction methods for dry cured ham. FSIS is proposing to add these three methods to the Federal meat inspection regulations as additional methods accepted for use in the destruction of trichinae in dry sausage and dry-cured hams. Additionally, FSIS is proposing to add a statement to the current regulations to warn that trichina destruction methods only destroy trichinae and may not destroy all pathogenic bacteria that may be present.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Written comments may be mailed to: Policy Office, Attn: Linda Carey, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

FSIS has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Effect on Small Entities

The Administrator has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Approximately 480 establishments are producing dry sausage and/or dry-cured hams, a majority of which are small businesses. The Federal meat inspection regulations require that processed pork products be treated to destroy trichinae by one of several prescribed methods. This proposal would provide additional methods of treatment to destroy trichinae in certain cured pork products and, thus, gives pork producers increased flexibility in choosing a destruction method. Use of one of these additional methods in lieu of one of the methods currently prescribed in the regulations is voluntary. However, FSIS has determined that a substantial number of small entities will be affected in that additional methods will be provided for use if desired by establishments. FSIS has made an initial determination that any effect resulting from the addition of these new methods would not significantly affect small establishments.

Paperwork Requirements

The proposed rule would require that dry-cured ham manufacturers wishing to utilize proposed methods 5 and 6 monitor the internal brine concentration of the hams. The monitoring process would be approved by FSIS prior to use. As part of the monitoring process, manufacturers would be required to have an FSIS accredited laboratory, under the provisions of 9 CFR 318.21, conduct analyses for salt and water content for each lot of production.

The manufacturer would then be required to use these laboratory results to perform a calculation to ensure that the internal brine concentration, amount of salt in the product, is at least 6 percent. FSIS has determined that a minimum internal brine concentration of 6 percent provides enough salt to destroy any trichinae present in the product. The laboratory results and the results of the calculations would be on file at the establishment and available for review by program employees. These recordkeeping requirements will be submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501).

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office at the address shown above and should refer to docket number 89-025P. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 and 4 p.m., Monday through Friday.

Background

Trichinella spiralis or "trichina" is a parasitic worm that causes the disease trichinosis in virtually all warm-blooded animals. The most common way for humans to acquire trichinosis is by ingesting undercooked pork or bear meat infected with trichinae cysts. Trichinae exist in these meats as larval cysts. If a person or animal eats this infected meat, the larvae leave the digested cysts, mature into adults in the intestinal system of the person or animal and mate. The females then produce live larvae that travel through the circulatory system, invade the victim's muscles, and form cysts. As encysted larvae, they survive until the cyst becomes calcified or the host dies. People with trichinosis suffer from diarrhea, shortness of breath, fever, and swelling.

Trichinosis resulting from pork consumption is far less prevalent today than in the past, in part because USDA requires that all pork in ready-to-eat products be either tested for trichinae or treated to destroy or inactivate trichinae. Improved swine husbandry practices also have reduced trichinosis in swine herds thus reducing consumer risk. Additionally, consumers are better educated about the need to cook meats thoroughly. However, in spite of the public emphasis on education, most recent cases of trichinosis were still caused by consumption of undercooked pork.

Since the early part of this century, USDA has required manufacturers of ready-to-eat pork products to treat them with one of several prescribed methods

to assure the destruction of trichinae. Trichina cysts are relatively easy to kill. They are less resistant to heat than most bacteria and they can also be killed by extensive freezing, drying, salting, and aging. Although most ready-to-eat pork products on the market are cooked, there remain many that are made safe to eat by a prescribed curing method, consisting of a combination of salting, heating, and drying; Genoa salami, prosciutto, capocollo, and pepperoni are examples of uncooked ready-to-eat pork products.

FSIS requires that dry-cured hams and dry sausages undergo treatment for trichina destruction and currently there are three approved methods for dry-cured ham and six approved methods for dry sausage (9 CFR 318.10). Over the past several decades, scientists have investigated the effects of several aspects of curing pork on the killing of trichina larval cysts in pork. In the early part of this century, USDA scientists Ransom and Schwarts [1] investigated whether trichina destruction was caused by some traditional pork curing processes for dry sausages, hams and pork shoulders. They showed that the processes destroyed the trichinae if the process included certain minimum amounts of salt, a minimum salt contact time, and a minimum drying time and temperature. The results of their investigations are the basis of the early prescribed curing methods in 9 CFR 318.10(c)(3), specifically, those in paragraph (i), Methods Nos. 1–4 for dry sausage, paragraphs (ii) and (iii) for boneless pork shoulder, and paragraph (iv), Methods Nos. 1 and 2 for hams and pork shoulders.

Later, other scientists showed that exposure to only salt, drying, or warm temperature could be lethal to trichinae. They also showed that other combinations of salt, time and temperature were lethal. These later investigations led to a better understanding of how the various curing factors affected encysted trichinae and were the basis for Sausage Method No. 6 (9 CFR 318.10(c)(3)) and Ham Method No. 3 (9 CFR 318.10(c)(3)(iv)).

A USDA-supported study on dry-cured country hams was conducted at Texas A&M in 1988.[2] The Texas A&M dry-cured country ham study investigated the factors of time, temperature, salt content, water activity, and water content by measuring different muscles, in different sized hams, at three drying temperatures. That study showed that drying time and temperature were the major factors in killing encysted trichina larvae. At the drying temperature of 50 °F., brine concentration (the amount of salt in the water phase of the food) was a critical factor but time and temperature remained the most significant lethality factors.

The Texas A&M study also showed that the prescribed drying time in Ham Method No. 3 (9 CFR 318.10(c)(3)(iv)) of 90 days at 50 °F. was unsafe, if the inner muscle brine concentration was low. FSIS thus proposed an amendment to Method 3 published in the April 20, 1989, issue of the **Federal Register** (54 FR 15946) eliminating drying temperatures below 75 °F. because of that hazard and because some manufacturers of dry-cured hams wanted to use less salt.

The Texas A&M study did not fully determine the mechanism of how curing kills encysted trichina larvae but it did contribute to a better understanding of that mechanism. Although how curing kills trichinae is not fully understood, several factors are known to contribute to the lethal effect. Time and temperature are the most significant factors.

High temperatures, those significantly above that of the host's normal body temperature are probably lethal by two mechanisms: Metabolic processes are sped up leading to exhaustion and nonperformance of some life-dependent process of the trichina larva, and, at higher temperatures, denaturation of critical enzymes in essential metabolic cycles lead to rapid death of the larva.

Brine concentration is another factor; if it is high enough and in contact with the larval cysts long enough, it dehydrates the larvae and kills them. Salt and warm temperatures also act complimentarily; warm temperatures increase the diffusion of salt through the food, and perhaps through the cyst wall, and salt is also reported to sensitize the larval cyst to the effect of warm temperature. These factors of salt, time, and temperature have been the basis of all prescribed curing methods and research on curing methods.

Understanding the present theories on the mechanisms of killing trichinae is important for developing and monitoring a safe treatment as well as for evaluating this proposed rule. However, until a more complete understanding of how these factors interact to kill trichinae, FSIS must still rely on empirical data that shows that a given treatment kills all larvae present and that the treatment contains some margin of safety, for example, additional time at several steps, to assure safety.

FSIS has been petitioned by Swift-Eckrich, Incorporated, to add one additional trichina destruction method for two different size ranges of dry sausage. Additionally, FSIS has been petitioned by two prosciutto manufacturers, Citterio USA Corporation and Carando, Incorporated, to add two additional trichina destruction methods for dry-cured hams. Along with the proposed addition of these trichina destruction methods, FSIS is proposing to add to the regulations a statement that trichina destruction methods do not destroy other pathogenic bacteria that may be present in pork products.

Trichina Destruction Method for Dry-Sausage

Swift-Eckrich, Inc., has developed and patented a process combining curing, high drying room temperature, and drying for trichina destruction in sausages not exceeding 105 millimeter (mm) in diameter. This method requires considerably less heat treatment time to destroy trichinae than that presently prescribed for the six methods for trichina destruction in § 318.10(3)(i) of the Federal meat inspection regulations (9 CFR 318.10(3)(i)). This method is proposed to be Method No. 7 for dry sausage. The process requires that establishments use meat particles reduced in size to no more than ¼ inch in diameter and a curing mixture containing no less than 2.7 pounds of salt per hundred pounds of meat to be mixed uniformly throughout the product.

Sausages in casings not exceeding 105 mm in diameter, at the time of stuffing, would be subjected to a holding time, the period of time where the curing salts equilibrate, desired chemical reactions occur, and the fermentation culture acidifies the sausage, of not less than 12 hours at a minimum temperature of 50° F. Next, the establishment would subject the sausages to each of the following minimum chamber temperatures and time periods in the descending order set forth in the table below.

[1] A copy of the mentioned study is available free of charge from the Office of the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Copies of the mentioned study reports are available free of charge from the Office of the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

TREATMENT SCHEDULE, FOR SAUSAGE 105 MILLIMETERS (4⅛ INCHES) or Less in Diameter

Minimum chamber temperature (°F)	Minimum time (hours)
90	1
100	1
110	1
125	1
125	7

Following the treatment in the descending order of the temperature/time intervals set forth in the table, the establishment would dry the sausages at a temperature not lower than 50° F for not less than 7 days.

Additionally, because smaller sausages do not require as long a heat treatment as large sausages, the petitioner developed a faster heat treatment for sausages not exceeding 55 mm in diameter. This faster heat treatment may be used as an alternative to the heat treatment for sausages not exceeding 105 mm if the sausages do not exceed 55 mm in diameter.

Sausages in casings not exceeding 55 mm in diameter, at the time of stuffing, would be subjected to a holding time of not less than 12 hours at a minimum temperature of 50° F. Next, the establishment would subject the sausages to each of the following minimum chamber temperatures and time periods in the descending order set forth in the table below.

TREATMENT SCHEDULE, FOR SAUSAGES 55 MILLIMETERS (2⅛ INCHES) or Less in Diameter

Minimum chamber temperature (°F)	Minimum time (hours)
100	1
125	6

Following the treatment in the descending order of the temperature/time intervals set forth in the table, the establishment would dry the sausages at a temperature not lower than 50° F. for not less than 4 days.

To validate the effectiveness of the process, the petitioner conducted experiments in conjunction with Iowa State University, a private laboratory, the Illinois State Laboratory, and their own facilities.[3] FSIS has reviewed these experiments and has concluded the petitioner's requested method for trichina destruction in dry sausage is effective in destroying trichinae, except that FSIS is proposing that the method include a holding time longer than requested in the petition.

All six current sausage treatment methods in 9 CFR 318.10(c)(3)(i) require a holding time of 2 to 8 days, the period of time where the curing salts equilibrate, desired chemical reactions occur, and the fermentation culture acidifies the sausage, except that Method No. 5 requires a 65-day holding time prior to the heat treatment. (Method No. 6 permits splitting the 2-day holding time so that part of the holdimg time is fulfilled before the drying period and part of the holding time after the drying period.) FSIS believes some holding time to be necessary to produce a trichina-safe product using any of these methods. However, the petitioner contended that holdng times were unnecessary if their trichina destruction method is used.

The petitioner conducted tests to determine whether dry sausages processed with a holding time of a minimum of 12 hours at a minimum temperature of 50° F. were as trichina-safe as dry sausages processed without a holding time. They contend that their results show no significant difference existed between the two groups of sausages. FSIS, however, does not believe the data are sufficient to support removal of all holding time from these methods. FSIS believes that the minimum holding time of 12 hours at a minimum temperature of 50° F., which the petitioners used in their experimentation, to be necessary for thorough trichina destruction. Therefore, FSIS has determined that the minimum holding time of 12 hours at a minimum temperature of 50° F. will be required for both size ranges of sausage.

Two Trichina Destruction Methods for Dry-Cured Ham

Citterio USA Corporation and Carando, Inc., jolintly developed processes that permit reduction of the time that hams must be in contact with salt for trichina destruction. They petitioned FSIS to approve a trichina destruction method, proposed herein as Method No. 5, that is a low temperature, extended time treatment. They also petitioned FSIS to approve another trichina destruction method, proposed herein as Method No. 6, that is a high temperature, short time treatment time.[4]

FSIS has reviewed the petitions and their supporting data and has concluded that the petitioners' methods for trichinae destruction are effective. These trichina destruction methods are as follows: Method No. 5, for dry-cured ham, would require a minimum internal brine concentration of at least 6 percent, and a 150-day drying time at a minimum temperature of 55° F. An additional requirement is that the total time of drying plus curing, that is the time from which curing salts are applied to the ham until the completion of the process, must be at least 206 days. Method No. 6 would require a minimum internal brine concentration of 6 percent, and a 4-day drying time at a minimum temperature of 110° F. Additionally, the total time of drying plus curing would be at least 34 days.

The petitioners had research conducted at the Pennsylvania State University to validate the effectiveness of these methods in the destruction of trichinae.[5] FSIS reviewed and accepted the experimental protocol and final results, but had some concerns with the length of the drying times for each method and how the establishment would ensure a minimum brine concentration.

To account for normal variances in research results, provide a greater safety margin and ensure thorough trichina destruction, FSIS concluded that the drying times in the petitioner's requests should be increased. FSIS has increased the required drying times by approximately on third for Method No. 5 and one day longer for Method No. 6. Therefore, Method No. 5 would receive a 150-day drying time at a minimum temperature of 55° F. and Method No. 6 a 4-day drying time at a minimum temperature of 110° F.

All the currently approved methods for trichina destruction prescribe a specific amount of salt to be added to dry-cured hams, but the petitioners wanted the freedom to vary and lessen the amount of salt used in their products. ESIS determined that prescribing the specific amount of salt to be added to dry-cured hams is not necessary if the internal brine

[3] The proposed methods are numbered 5 and 6 because a proposed Method 4 was published in 1989 (54 FR 15926–15951). It is anticipated that rulemaking Method 4 will be completed no later than rulemaking on the methods now being proposed.

[4] A copy of this report is available free of charge from the Office of the FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[5] A copy of this report is available free of charge from the Office of the FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

concentration is at least 6 percent. FSIS reviewed the experimental data and has determined that achieving a minimum internal brine concentration of 6 percent will destroy trichinae present in the product. Therefore, for Methods Nos. 5 and 6 FSIS will not prescribe the amount of salt added to the dry-cured hams, but will require that the products have a 6 percent minimum internal brine concentration.

Internal brine concentration is not an instantly measurable quantity and requires laboratory analysis for salt and water. To establish compliance, the establishment would take product samples from the first 12 lots of production as follows: From each lot, (1) one sample would be taken from each of 5 or more hams; (2) each sample would be taken from the biceps femoris. As an alternative to the use of the biceps femoris, the Agency would consider other method(s) of sampling the dry-cured hams to determine the minimum internal brine concentration, as long as the establishments proposes it and submits data and other information to establish its sufficiency to the Director of the Processed Products Inspection Division; (3) each sample would weigh no less than 100 grams; (4) the samples would be combined as one composite sample and sealed in a water vapor proof container; (5) the composite sample would be submitted to an accredited laboratory under the provisions of § 318.21 of the Federal meat inspection regulations to be analyzed for salt and water content using a method prescribed by the Association of Official Analytical Chemists, (AOAC).[6] If the time between sampling and submittal of the composite sample to the accredited laboratory will exceed 8 hours, then the establishment would freeze the composite sample immediately after the samples are combined; (6) once the laboratory results for the composite sample are received, the manufacturer would calculate the internal brine concentration by multiplying the salt concentration by 100 and then dividing that figure by the sum of the salt and water concentrations. Compliance is established when the samples from the first 12 lost of production have a minimum internal brine concetration of 6 percent. Lots being tested to establish compliance would be held until the internal brine concentration has been determined and found to be at least 6 percent. If the minimum internal brine concentration is less than 6 percent, the lot being tested would be held until the establishment brings the lot into compliance by further processing.

To maintain compliance, the establishment would take samples, have the samples analyzed, and perform the brine calculations as set forth above from one lot every 13 weeks. Lots being tested to maintain compliance would not be held. If the minimum internal brine concentration is less than 6 percent in a lot being tested to maintain compliance, the establishment would develop and propose steps acceptable to FSIS to ensure that the process is corrected. Accredited laboratory results and the brine calculations would be on file at the establishment and available to Program employees for review.

Addition of a Caution Statement

Because trichinae are more easily killed than bacteria, the prescribed methods for trichina destruction may not destroy pathogenic bacteria than may be present in or on the pork products. Also, some of the prescribed treatments could permit the adulteration of the product by toxigenic bacteria unless the manufacturer also uses techniques to inhibit such pathogens; such inhibitory techniques include additional acidification, fermentation, salting or drying.

Adulteration of trichina treated pork products by pathogenic bacteria has occurred several times in the past. In the 1970's, sausage manufacturers accidently permitted the growth of toxigenic *Staphylococcus aureus* during the process. In the past few years, FSIS laboratories found surviving *Salmonella* in an unfermented dry sausage and *Listeria monocytogenes* in a fully treated dry-cured ham.

These incidents indicate that some manufacturers may not recognize that the trichina treatment does not preclude adulteration by bacterial pathogens. It is proposed to clarify this fact in the regulations as a reminder to maufacturers of their responsibility for destroying pathogens other than trichinae.

Therefore, FSIS is proposing to add a statement to the regulations at § 318.10 which would state that treatments prescribed in § 318.10 have been determined only to destroy trichina cysts in pork; they may not detroy pathogenic bacteria as may be required to produce an unadulterated food product. The establishment may need to use additional heating, acidification, fermetation, drying or salting to inhibit and destroy pathogen bacteria.

Therfore, for the reasons discussed in the preamble, FSIS is proposing to amend part 318 of the Federal meat inspection regulations as set forth below.

Proposed Rule

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Section 318.10 would be amended by revising the introductory text paragraph (c) to read as follows:

§ 318.10 Prescribed treatment of pork and products containing pork to destroy trichinae.

* * * * *

(c) The treatment shall consist of heating, freezing, or curing as prescribed in one of the following paragraphs.

Caution: The treatment prescribed in the following paragraphs have been determined to destroy trichinae cysts in pork; however, they may not destroy pathogenic bacteria. The establishment may need to use additional heating, acidification, fermentation, salting, or drying to inhibit and destroy pathogenic bacteria.

* * * * *

§ 318.10 [Amended]

3. Paragraph (c)(3)(i) of § 318.10 would be revised by adding a new Method No. 7 to read as follows:

(c) * * *

(3) * * *

(i) * * *

Method No. 7-Dry Sausage. (A) *General requirements:* The establishment shall use meat particles reduced in size to no more than ¼ an inch in diameter. The establishment shall add a curing mixture containing no less than 2.7 pounds of salt per hundred pounds of meat and mix in uniformly throughout the product. The establishment shall hold, heat and dry the product according to paragraphs (c)(3)(i) (B) or (C) of this section.

(B) *Heating, and drying treatment, large sausages:* Except as permitted in paragraph (c)(3)(i)(C) of this section, for sausages in casings not exceeding 105 mm in diameter, at the time of stuffing, the establishment shall, first, subject them to a holding time of not less than 12 hours at a minimum temperature of 50° F. Next, the establishment shall subject the sausages to each of the following minimum chamber

[6] Analyses shall be conducted in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 15th edition, 1989, §§§ 983.18 (page 931) 935.47 (page 933), 971.19 (page 933), which are incorporated by reference.

temperatures and time periods in the descending order set forth in the table below.

TREATMENT SCHEDULE, FOR SAUSAGE 105 MILLIMETERS (4⅛ INCHES) OR LESS IN DIAMETER

Minimum chamber temperature (°F)	Minimum time (hours)
90	1
100	1
110	1
120	1
125	7

Following the treatment in the descending order of the temperature/time intervals set forth in the table, the establishment shall dry the sausages at a temperature not lower than 50° F. for not less than 7 days.

(c) *Heating and drying treatment, small sausages:* As an alternative to paragraph (c)(3)(i) (B) of this section, for sausages not exceeding 55 mm in diameter, at the time of stuffing, the estalishment shall first subject them to a holding time of not less than 12 hours at a minimum temperature of 50° F. Next, the establishment shall subject the sausages to each of the following minimum chamber temperatures and time periods in the descending order set forth in the table below.

TREATMENT SCHEDULE, FOR SAUSAGES 55 MILLIMETERS (2⅛ INCHES) OR LESS IN DIAMETER

Minimum chamber temperature (°F)	Minimum time (hours)
100	1
125	6

Following the treatment in the descending order of the temperature/time intervals set forth in the table, the establishment shall dry the sausages at a temperature not lower the 50° F. for not less than 4 days.

* * * * *

§ 318.10 [Amended]

4. Paragraph (c)(3)(iv) of § 318.10 would be amended by adding two new Method Nos. 5 and 6 to read as follows:

* * * * *

(c) * * *

(3) * * *

(iv) * * *

Method No. 5—Dry Cured Hams.

(A) *Curing:* The establishment shall process the ham to a minimum internal brine concentration of 6 percent by the end of the drying period. Brine concentration is calculated as 100 times the salt concentration divided by the sum of the salt and water concentrations.

Percent brine = 100 × [salt]/([salt] + [moisture])

(B) *Drying and total process times:* The establishment shall dry the cured ham by placing it in a drying chamber at a minimum temperature of 55° f. (13° C.) for at least 150 days. The total process time, beginning from the addition of salt, shall be at least 206 days.

(C) *Ensuring An Acceptable Internal Brine Concentration:*

(*1*) To establish compliance, the establishment shall take product samples from the first 12 lots of production as follows: From each lot,

(*i*) One sample shall be taken for each of 5 or more hams;

(*ii*) Each sample shall be taken from the biceps femoris. As an alternative to the use of the biceps femoris, the Agency shall consider other method(s) of sampling the dry-cured hams to determine the minimum internal brine concentration, as long as the establishment proposes it and submits data and other information to establish its sufficiency to the Director of the Processed Products Inspection Division;

(*iii*) Each sample shall weigh no less than 100 grams;

(*iv*) The samples shall be combined as one composite sample and sealed in a water vapor proof container;

(*v*) The composite sample shall be submitted to an accredited laboratory under the provisions of § 318.21 of the Federal meat inspection regulations to be analyzed for salt and water content using a method prescribed by the Association of Official Analytical Chemists.[1]

If the time between sampling and submittal of the composite small to the accredited laboratory will exceed 8 hours, then the establishment shall freeze the composite sample immediately after the samples are combined;

(*vi*) Once the laboratory results for the composite sample are received, the manufacturer shall calculate the internal brine concentration by multiplying the salt concentration by 100 and then dividing that figure by the sum of the salt and water concentrations;

(*vii*) Compliance is established when the samples from the first 12 lots of production have a minimum internal brine concentration of 6 percent. Lots being tested to establish compliance shall be held until the internal brine concentration has been determined and found to be at least 6 percent. If the minimum internal brine concentration is less than 6 percent, the lot being tested shall be held until the establishment brings the lot into compliance by further processing.

(*2*) To maintain compliance, the establishment shall take samples, have the samples analyzed, and perform the brine calculations as set forth above from one lot every 13 weeks. Lots being tested to maintain compliance shall not be held. If the minimum internal brine concentration is less than 6 percent in a lot being tested to maintain compliance, the establishment shall develop and propose steps acceptable to FSIS to ensure that the process is corrected.

(*3*) Accredited laboratory results and the brine calculations shall be on file at the establishment and available to Program employees for review.

Method No. 6—Dry-Cured Hams.

(A) *Curing:* The establishment shall process the ham to a minimum internal brine concentration of 6 percent by the end of the drying period. Brine concentration is calculated as 100 times the salt concentration divided by the sum of the salt and water concentrations.

Percent brine = 100 × [salt]/([salt] + [water])

(B) *Drying and total process times:* The establishment shall dry the cured ham by placing it in a drying chamber at a minimum temperature of 100 °F. (41 °C.) for at least 4 days. The total process time from the addition of salt to the removal from the drying chamber shall be at least 34 days.

(C) *Ensuring an acceptable internal brine concentration:*

(*1*) To establish compliance, the establishment shall take product samples from the first 12 lots of production as follows: From each lot,

(*i*) One sample shall be taken from each of 5 or more hams;

(*ii*) Each sample shall be taken from the biceps femoris. As an alternative to the use of the biceps femoris, the Agency shall consider other method(s) of sampling the dry-cured hams to determine the minimum internal brine concentration, as long as the establishment proposes it and submits data and other information to establish its sufficiency to the Director of the Processed Products Inspection Division;

(*iii*) Each sample shall weigh no less than 100 grams;

(*iv*) The samples shall be combined as one composite sample and sealed in a water vapor proof container;

[1] Analyses shall be conducted in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 15th edition, 1989, §§ 983.18 (page 931) 935.47 (page 933), 971.19 (page 933), which are incorporated by reference.

(*v*) The composite sample shall be submitted to an accredited laboratory under the provisions of § 318.21 of the Federal meat inspection regulations to be analyzed for salt and water content using a method prescribed by the Association of Official Analytical Chemists.[2] If the time between sampling and submittal of the composite sample to the accredited laboratory will exceed 8 hours, then the establishment shall freeze the composite sample immediately after the samples are combined;

(*vi*) Once the laboratory results for the composite sample are received, the manufacturer shall calculate the internal brine concentration by multiplying the salt concentration by 100 and then dividing that figure by the sum of the salt and water concentrations;

(*vii*) Compliance is established when the samples from the first 12 lots of production have a minimum internal brine concentration of 6 percent. Lots being tested to establish compliance shall be held until the internal brine concentration has been determined and found to be at least 6 percent. If the minimum internal brine concentration is less than 6 percent, the lot being tested shall be held until the establishment brings the lot into compliance by further processing.

(*2*) To maintain compliance, the establishment shall take samples, have the samples analyzed, and perform the brine calculations as set forth above from one lot every 13 weeks. Lots being tested to maintain compliance shall not be held. If the minimum internal brine concentration is less than 6 percent in a lot being tested to maintain compliance, the establishment shall develop and propose steps acceptable to FSIS to ensure that the process is corrected.

(*3*) Accredited laboratory results and the brine calculations shall be on file at the establishment and available to Program employees for review.

* * * * *

Done at Washington, DC, on December 3, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-190 Filed 1-4-91; 8:45 am]

BILLING CODE 3410-DM-M

[2] Analyses shall be conducted in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 15th edition, 1989, §§ 983.18 (page 931), 935.47 (page 933), 971.19 (page 933), which are incorporated by reference.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-52-89]

RIN 1545-AO65

Methods of Accounting—Limitation on the Use of the Cash Receipts and Disbursements Method of Accounting

AGENCY: Internal Revenue Services, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing a proposed regulatory amendment to provide rules to taxpayers that fail to change from the cash receipts and disbursements method of accounting ("cash method") in accordance with the provisions of section 448 and the regulations thereunder. The text of the amendments also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by March 8, 1991. The amendments are proposed to apply to taxable years beginning after December 31, 1986.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP: T:R (IA-52-89), room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: James A. Orefice, 202-566-3637, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545-1147), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T: FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.448-1T (h) (2) (ii) (B). This information is required by the Internal Revenue Service in order for the Commissioner to monitor the change from the cash method as required by section 448. The information will be used to verify that no duplication or omission of items of income or expense resulted from such change and that taxpayers are adhering to the terms and conditions that the Commissioner has imposed on the taxpayer in order to effectuate such change. The likely respondents are large corporations, large partnerships with a C corporation partner, and tax shelters.

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

Estimated total annual reporting and recordkeeping burden: 100 hours.

The estimated annual burden per respondent and/or recordkeeper varies from 30 minutes to 90 minutes, depending on individual circumstances, with an estimated average of 60 minutes.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency or responses: One-time.

Background

This document contains a proposed amendment to the Temporary Income Tax Regulations (26 CFR part 1) under section 448 of the Internal Revenue Code of 1986 (the "Code"). These amendments would conform the regulations to section 801(a) of the Tax Reform Act of 1986 (Pub. L. 90-514, 100 Stat. 2345) and are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Provisions

Section 448 of the Code generally prohibits the use of the cash method by C corporations, partnerships with a C corporation partner, and tax shelters. In general, section 448 is effective for taxable years beginning after December 31, 1986.

The Internal Revenue Service has received numerous inquiries from taxpayers that failed to comply with the effective date provisions of section 448. To provide guidance for these taxpayers, § 1.448-1T of the temporary regulations is amended to provide rules under section 448 for voluntary changes in methods of accounting.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a

Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these amendments to the temporary regulations is James A. Orefice, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-47 Filed 1-4-91; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 56, No. 4
Monday, January 7, 1991

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

Meat Import Limitations; First Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.3060, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1991 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1991 is 1,198.6 million pounds.

2. The first quarterly estimate of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1991 is 1,220 million pounds.

Done at Washington, DC this 31st day of December, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 91–186 File 1–4–91; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Solicitation of Proposals Concerning Milk Inventory Management Program

AGENCY: Agricultural Stabilization and Conservation Service, Agriculture.

ACTION: Solicitation of proposals.

SUMMARY: Section 204(e) of the Agriculture Act of 1949 (the "1949 Act"), as amended, requires that the Secretary of Agriculture prepare and submit before August 1, 1991, a report on various milk inventory management programs to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition, and Forestry of the Senate. The Secretary is directed to study two inventory management programs specified in section 204(e), and to request proposals from the public on alternative programs for study. The Secretary is prohibited from studying any program that includes a milk production termination program similar to the Diary Termination Program implemented pursuant to the Food Security Act of 1985 or any program that contains support price reductions below the levels established in the 1949 Act. This notice solicits proposals for the Secretary's study and sets out the statutory criteria for evaluating proposals.

DUE DATE FOR PROPOSALS: In order to assure consideration, proposals submitted in response to this notice must be received by February 6, 1991.

ADDRESSES: Proposals should be mailed to Dr. Charles Shaw, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Shaw, Group Leader, Dairy and Sweeteners Group, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, room 3756, South Agriculture Building; telephone (202) 447–7601.

FORM OF PROPOSAL: No specific format is required, but proposals must contain sufficient detail to permit analysis and evaluation consistent with the statutory criteria enumerated in the Supplementary Information section which follows.

SUPPLEMENTARY INFORMATION: Section 101(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 amended the Agriculture Act of 1949 by adding section 204. Section 204(e) directs the Secretary of Agriculture to study programs and to prepare and submit a report and recommendations on various milk inventory management programs to the Committee on Agriculture of the House of Representatives and Committee on Agriculture, Nutrition, and Forestry of the Senate

The Secretary is required to study: (i) A program which would establish an alternative classification of milk contained in section 8c(5) of the Agricultural Marketing Agreement Act of 1937; and (ii) a program which would support the income of milk producers through a system of established prices and deficiency payments.

The Secretary also is required to study, after consulting with Congress, other programs proposed by the public which the Secretary deems appropriate.

The Secretary is prohibited from studying any milk inventory management program that (i) includes any milk production termination program that is similar to the program established under section 201(d)(3) of the Agricultural Act of 1949, as amended, or (ii) reduces the support price below the levels established by the Agriculture Act of 1949, as amended.

The Secretary is directed by section 204(e) to consider the following criteria in evaluating inventory management programs:

(i) The ability of the program to limit Government purchases of milk products to 6,000,000,000 pounds (milk equivalent,

total milk solids basis) in a calendar year:

(ii) The speed and effectiveness of the program in reducing excess milk production;

(iii) The program's effectiveness in sustaining reduced milk production for at least a 5-year period with and without the continuation of the program;

(iv) The regional impact of the program of milk prices, producer revenue, and milk supplies;

(v) The impact of the program on national producer income and Government expenditures;

(vi) The impact of the program on the rural economy and on maintaining family farms;

(vii) The impact of the program on the availability of wholesome dairy products for domestic and foreign nutrition and food assistance programs;

(viii) Technological innovations;

(ix) The effectiveness of the program in reducing butterfat production and increasing protein content in milk;

(x) The impact of the program on temporary increases and decreases of milk production;

(xi) The impact of the program on the United States livestock industry; and

(xii) All other issues the Secretary considers appropriate.

After analyzing the alternative inventory management programs, the Secretary, must, no later than June 1, 1991, provide for public notification and comment on the program studied. Because of the short time period for conducting the study and for asking for comment on the programs actually studied, it has been determined that it is necessary to limit to 30 days the period in which proposals for programs for study may be assured of consideration.

Solicitation of Proposals for Study of Milk Inventory Management Programs

Accordingly, the public is hereby requested to submit proposals for a milk inventory management program to be studied by the Secretary of Agriculture pursuant to section 204(e) of the 1949 Act. Proposals should address the criteria upon which programs must be evaluated by the Secretary, and persons submitting proposals should take into account that certain types of programs, as indicated above, cannot be studied for purposes of meeting the requirements of that section.

Signed At Washington, DC this 31 day of December 1990.

Keith D. Bjerke,

Administrator, Agriculture Stabilization and Conservation Service.

[FR Doc. 91-168 Filed 1-4-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 900961-0341]

Foreign Availability Determination: Pyrolytic Boron Nitride (PBN)

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of positive determination.

SUMMARY: On November 30, 1990, under the authority of the Export Administration Act of 1979, as amended (EAA) and the Export Administration Regulations (EAR), the Department of Commerce determined that foreign availability of pyrolytic boron nitride (PBN) controlled under the Note to paragraph (b)(1) of ECCN 1355A of the Commodity Control List (CCL) (15 CFR 799.1 Supp. 1) exists to controlled countries. The Commerce Department has initiated action to amend the CCL and to submit the determination for multilateral review.

FOR FURTHER INFORMATION CONTACT: Anatoli Welihozkiy, Acting Deputy Director, Office of Foreign Availability, room SB-097, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3074.

SUPPLEMENTARY INFORMATION

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the authority provided by the EAA and the Export Administration regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR establishes the procedures and criteria for determining the foreign availability of items controlled for national security purposes. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

On July 30, 1990, OFA initiated a foreign availability assessment of PBN to controlled countries. These items are controlled under the Note to paragraph (b)(1) of ECCN 1355A of the CCL. The Department published a notice of the initiation of this assessment in the **Federal Register** (55 FR 42747) on October 23, 1990.

OFA provided its assessment and recommendations to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability of PBN to controlled countries exists within the meaning of section 5 of the EAA and section 791 of the EAR. All interested government agencies including the Departments of State and Defense, here provided an opportunity to review and comment on the assessment and determination.

The Department of Commerce will soon publish regulations in the **Federal Register** amending the national security export controls on PBN. Initially, the Department intends to remove national security based validated licensing requirements to all non-controlled destinations. Following multilateral review by the Coordinating Committee for Multilateral Export Controls (COCOM), the Department will make appropriate changes to the licensing requirements for exports to controlled countries and will publish them in the **Federal Register.** Until such time, current export controls will remain in effect.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: December 31, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-176 Filed 1-4-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to

whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90–00017." A summary of the application follows.

Summary of the Application

Applicant: Brass and Bronze Ingot Manufacturers (BBIM) 300 West Washington Street, suite 1500, Chicago, Illinois 60606.

Contact: Phillip B. Bowman, Executive Director, Telephone: (312) 236–2715.

Application No.: 90–00017.

Date Deemed Submitted: December 21, 1990.

Members (in addition to applicant): W.J. Bullock, Inc., Fairfield, AL; Colonial Metals, Co., Columbia, PA; The Federal Metal Company, Bedford, OH; National Metals, Inc., Leeds, AL; The River Smelting & Refining Co., Cleveland, OH; I. Schumann & Company, Bedford, OH; and Sipi Metals Corporation, Chicago, IL.

Export Trade:

Products

Brass and bronze alloys, slag, drosses, skimmings, sludges, and particulates produced in the production of brass and bronze alloys and copper and copper-based scrap.

Services

Design, consulting, testing, and training with respect to Products and related manufacturing processes; and licensing of Technology Rights concerning Products and related processes.

Technology Rights

Patents, trademarks, servicemarks, copyrights, trade secrets, and know-how.

Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology Rights) Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets:

The Export Markets include all parts of the world, except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), and (b) Canada.

Export Trade Activities and Methods of Operation:

1. BBIM, on behalf of its Members, may:

(a) Act as a clearinghouse in receiving sales leads and orders for Products and Services in the Export Markets;

(b) Aid in the preparation of bids and contracts in the Export Markets, including making arrangements for barter trade;

(c) Assist Member companies in setting up joint bids for export projects by making distribution to Member companies of bid requirements, bidding dates, and purchase specifications as received from the export Markets; and

(d) Provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Services to the Export Markets. This may be accomplished by BBIM itself or by agreement with its Members or other parties.

2. BBIM and/or one or more of its Members may:

(a) Engage in joint negotiation, joint offering or bidding, or other joint selling arrangements, including barter arrangements, for Products and Services in the Export Markets and allocate sales resulting from such arrangements among the Members;

(b) Establish export prices and terms of sale for sales of Products and Services by the Members in the Export Markets, and allocate export markets and/or export customers among themselves;

(c) Discuss and reach agreements relating to specifications and standardization of Products and Services for the export Markets;

(d) Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

(e) Solicit and negotiate with non-member Suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activities of BBIM and/or its Members;

(f) Negotiate for and purchase Products and Services or raw materials for making Products for export from either Member or non-member Suppliers for sale or resale in the Export Markets;

(g) Jointly establish or arrange to have BBIM, or one or more of its Members or Suppliers, act as exclusive or non-exclusive Export Intermediaries in the Export Markets. Any such exclusive Export Intermediary may agree not to represent any other Supplier in the relevant market, and Members may agree that they will not export independently, either directly or through any other Export Intermediary or other party;

(h) Agree that they will export for sale in one or more of the Export Markets only directly, through other Members, and/or through designated Export Intermediaries;

(i) Cooperate in responding to attempted boycotts, refusals to deal, or other unfair trade practices by buyers of Products or Services in the Export Markets against any Member, including cooperation in seeking relief before the U.S. Departments of Commerce and Justice, the Federal Trade Commission, the Office of the United States Trade Representative, and/or the courts and administrative agencies of other countries; and

(j) Bring together from time to time groups of Members to plan and discuss how to fulfill the Product and Service

requirements of specific export customers of Export Markets.

3. BBIM, and/or one or more of its Members, may meet to exchange and discuss the following types of information:

(a) Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products and Services in the Export Markets, selling strategies for the Export Markets, pricing in the Export Markets, projected demands in the Export Markets, customary terms of sale in the Export Markets, prices and availability of Products and Services from competitors for sales in the Export Markets, and specifications for Products and Services by customers in the Export Markets;

(b) Information about the export prices, terms, quality, quantity, source and delivery dates of Products and Services available from Members for export or from non-members for use in barter transactions;

(c) Information about terms and conditions or contracts for sales (including barter transactions) in the Export Markets to be considered and/or bid on by BBIM and its Members;

(d) Information about joint bidding, selling, or servicing arrangements for the Export Markets and allocation of sales resulting from such arrangements among the Members;

(e) Information about expenses specific to exporting to and within the Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

(f) Information about U.S. and foreign legislation and regulations affecting sales in the Export Markets; and

(g) Information about BBIM's or its Members' export operations, including, without limitation, sales and distribution networks established by BBIM or its Members in the Export Markets, and prior export sales by Members (including export price information).

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product, Service, Technology Right, and/or Export Trade Facilitation Service, whether a Member or nonmember.

Dated: December 31, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-158 Filed 1-4-91; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the Exclusive Economic Zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Send comments on applications to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910.

or, to the appropriate Regional Fishery Management Council (RFMC) reviewing applications, as listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366.

Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, suite 1108, Hato Rey, PR 00918 809/753-6910.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center suite 881, 5401 West Kennedy Blvd. Tampa, Fl 33609, 813/228-2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/326-6352.

Clarence Pautzke, Executive Director, North Pacific Fishery Management Council P.O. Box 103136, Anchorage, AK 99510, 907/271-2809.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Robert A. Dickinson [(301) 427-2337].

Dated: December 31, 1990.

David S. Crestin,

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

Fishery codes and RFMC's which review applications for individual fisheries are as follows:

Code	Fishery	Regional Fishery Management Council
ABS	Atlantic Billfish and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Island Groundfish	North Pacific.
GOA	Gulf of Alaska Groundfish	North Pacific.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SNA	Snail (Bering Sea)	North Pacific.
WOC	Pacific Coast Groundfish (Washington, Oregon and California)	Pacific.
PBS	Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahi-mahi	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code

1. —Catching, processing, transshipping (TALFF)
2. —Processing, transshipping, supporting (TALFF)
3. —Transshipping, scouting, supporting (TALFF)
4. —Processing, transshipping, supporting (JVP)
5. —Transshipping, scouting, supporting (JVP)

6. —Transshipping, scouting, supporting (DAH)
7. —Processing, transshipping, supporting (SEAWARD OF EEZ)
8. —Transshipping, supporting (NON-EEZ)
9. —Supporting (ALL)

Additional information on foreign fishing activity codes may be found at 50 CFR 611.3(c). Joint venture (JV) and directed fishing requests are summarized below, followed by a vessel list indicating requested fisheries and activities.

China (CH)

The Government of the People's Republic of China proposed a JV in the BSA to purchase 25,000 metric tons (mt) of yellowfin sole; 5,000 mt of rock sole; 5,000 mt of Pacific cod, and 10,000 mt of other flatfish. A GAO JV was proposed to purchase 5,000 mt of yellowfin sole.

Japan (JA)

The Government of Japan proposed JV's in the BSA to purchase 83,000 mt of yellowfin sole, rock sole and other flatfishes. Joint ventures were proposed for unspecified quantities of flatfish and other species in the GAO. A WOC JV was proposed to purchase 79,000 mt of Pacific whiting.

Korea (KS)

The Government of the Republic of Korea proposed JV's in the BSA to purchase 149,700 mt of yellowfin sole; 31,950 mt of other flatfish; 43,200 mt of pollock; 12,500 mt of Pacific cod; 6,200 mt of atka mackerel, and 5,300 mt of unspecified species.

The Netherlands (NL)

The Government of the Kingdom of the Netherlands applied to fish in the NWA for 27,000 mt of Atlantic mackerel and proposed to purchase 9,000 mt of JV mackerel. Information on Dutch foreign fishing applications was reported at 55 FR 53033 on December 26, 1990, and is repeated here for the convenience of readers.

Poland (PL)

The Government of the Polish People's Republic proposed JV's in the BSA to purchase 15,000 mt of yellowfin sole and/or other flatfish. Joint ventures in the WOC were proposed to purchase 60,000 mt of Pacific whiting.

USSR (UR)

The Government of the Union of Soviet Socialist Republics proposed a JV in the NWA to purchase 54,000 mt of Atlantic mackerel. Information on Soviet foreign fishing applications for the NWA was published previously at 55 FR 53033 on December 26, 1990, and is repeated here in part for the convenience of readers. However, it should be noted that the information reported here differs from that published previously because in the interim the Soviets withdrew a foreign fishing application requesting the direct harvesting of 18,000 mt of Atlantic mackerel and the purchase of 6,000 mt of JV mackerel.

This notice also advises of the receipt of applications to transship in the EEZ fish production from outside the EEZ (e.g., production from the "donut hole" seaward of the Bering Sea management area). A notice regarding such applications (for activity code 8) was published at 55 FR 38376 on September 18, 1990, for a 45-day comment period.

The "TYPE' column of the following vessel list denotes vessel types as follows:

Type	Description
10	Factory Ship.
11	Cargo Transport.
12	Tanker Fuel/Water.
15	Large Stern Trawler.
20	Medium Stern Trawler.
25	Small Stern Trawler.

FEDERAL REGISTER REPORT

Permit No.	Vessel name	Type	Fishery-activity
CH-91-0001	GENG HAI	15	BSA-4-8 GOA-5-8 WOC-4-8
CH-91-0002	YAN YUAN 1	15	BSA-4-8 GOA-5-8 WOC-4-8
CH-91-0003	KAI CHUANG	15	BSA-4-8 GOA-5-8 WOC-4-8
CH-91-0006	YAN YUAN NO. 2	10	BSA-4-8 GOA-5-8 WOC-4-8
CH-91-0007	YUN HAI	10	BSA-4-8 GOA-5-8 WOC-4-8
CH-91-0008	HAI FENG 301	11	BSA-8-5 GOA-8-5 WOC-8-5
CH-91-0009	HAI FA	11	BSA-8-5 GOA-8-5 WOC-8-5
CH-91-0010	KAI TUO	15	BSA-8-4 GOA-8-5 WOC-8-4
CH-91-0011	YAN YUAN NO. 3	15	BSA-8-4 GOA-5-8 WOC-4-8
CH-91-0012	BAI LING HAI	15	BSA-8-4 GOA-5-8 WOC-4-8
DA-91-0011	NEW ZEALAND REEFER	11	BSA-8-5 GOA-5-8 NWA-8-3-5 WOC-5-8
DA-91-0012	NIPPON REEFER	11	BSA-5-8 GOA-5-8 NWA-8-5-3 WOC-8-5
JA-91-0018	YAYOI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0019	KASHIWAGI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0024	STARLING	11	BSA-5 GOA-5 WOC-5
JA-91-0025	MIYOSHIMA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0027	RISHIRI	11	BSA-5 GOA-5
JA-91-0028	SHOUTOKU MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0029	TAKUYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0034	SEAGULL	11	BSA-5 GOA-5 WOC-5
JA-91-0046	SHINTAKARA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0047	SHINBUNGO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0056	TOSHIN MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0074	SHINYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0075	HIYOSHI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0076	YOHTEI MARU	11	BSA-5 GOA-5
JA-91-0085	TAISEI MARU NO. 3	11	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-0086	ENYOH MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0087	YOKO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0088	KAIYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0089	ETSUYOH MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0096	AKISHIO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0098	PALOMA	11	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-0099	BANYO MARU	11	BSA-5-9 GOA-9-5 WOC-9-5
JA-91-0102	KEIYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0103	KINYO MARU	11	BSA-9-5 GOA-9-5 WOC-9-5
JA-91-0104	ANYO MARU NO. 15	25	BSA-4 GOA-4

FEDERAL REGISTER REPORT—Continued

Permit No.	Vessel name	Type	Fishery-activity
JA-91-0109	EIYO MARU (B)	11	BSA-9-5 GOA-5-9 WOC-5-9
JA-91-0136	SHUNYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0137	SHINWA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0138	HOKUSHIN MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0139	KOMEI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0142	HIKARI MARU NO. 8	11	BSA-9-5 GOA-9-5 WOC-9-5
JA-91-0143	KAZU MARU NO. 8	11	BSA-5-9 GOA-5-9 WOC-9-5
JA-91-0146	SAGAMI MARU	11	BSA-9-5 GOA-5-9 WOC-9-5
JA-91-0147	HANAZONO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0148	SALTLAKE	11	BSA-5 GOA-5 WOC-5
JA-91-0157	AKEBONO MARU NO. 77	15	BSA-4 GOA-5 WOC-4
JA-91-0158	OHYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0179	SHIDAKA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0180	CHITOSE MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0184	ORIENTAL CRANE	12	BSA-9-5 GOA-5-9 WOC-5-9
JA-91-0192	KOSHIN MARU NO. 3	20	BSA-4 GOA-5
JA-91-0193	TAISETSU MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0194	HOZAN MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0195	ATAGO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0196	HEKIFU	11	BSA-5 GOA-5
JA-91-0197	CHIYO MARU	15	BSA-4 GOA-4 WOC-4
JA-91-0198	TOMI MARU NO. 87	20	BSA-4 GOA-4
JA-91-0199	CHIKUZEN MARU	15	BSA-4 GOA-4 WOC-4
JA-91-0205	TAISEI MARU NO. 15	11	BSA-9-5 GOA-5-9 WOC-5-9
JA-91-0206	POHAH	11	BSA-5 GOA-5
JA-91-0207	SHINMEI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0222	TOMI MARU NO. 86	20	BSA-4 GOA-4
JA-91-0223	KAMUI MARU	11	BSA-5 GOA-5
JA-91-0225	KOSHIN MARU NO. 1	20	BSA-4 GOA-5
JA-91-0227	WASHINGTON MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0228	DAIAN MARU NO. 158	20	BSA-4 GOA-5 WOC-4
JA-91-0229	YOSHI MARU NO. 38	25	BSA-4 GOA-4
JA-91-0231	ZUIHOO MARU NO. 88	20	BSA-4 GOA-5 WOC-4
JA-91-0232	MATENA LUMO	11	BSA-5 GOA-5 WOC-5
JA-91-0233	ARIZONA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0234	OREGON MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0236	KAIHO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0237	MIYABI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0239	ORIENTAL EAGLE	12	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-0306	AKEBONO MARU NO. 31	20	BSA-4 GOA-5 WOC-4
JA-91-0332	TENYO MARU NO. 2	15	BSA-4 GOA-4 WOC-4
JA-91-0333	TENYO MARU NO. 3	15	BSA-4 GOA-4 WOC-4
JA-91-0336	CHIKUBU MARU	15	BSA-4 GOA-4 WOC-5
JA-91-0337	TSUDA MARU	15	BSA-4 GOA-5 WOC-4
JA-91-0340	RIKUZEN MARU	15	BSA-4 GOA-4 WOC-4
JA-91-0343	KOYO MARU NO. 3	15	BSA-4 GOA-4 WOC-4
JA-91-0352	TENYO MARU	15	BSA-4 GOA-4 WOC-4
JA-91-0359	TOKACHI MARU (B)	11	BSA-5 GOA-5 WOC-5
JA-91-0383	KOYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0553	DAIAN MARU NO. 188	20	BSA-4 GOA-5 WOC-4
JA-91-0563	SHINNICHI MARU NO. 38	20	BSA-4 GOA-5 WOC-4
JA-91-0564	SHUNYOO MARU NO. 118	20	BSA-4 GOA-5 WOC-4
JA-91-0565	ZUIHOO MARU NO. 28	20	BSA-4 GOA-5 WOC-4
JA-91-0570	HAKUYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0572	KEIFU MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0574	CHOYOH MARU	11	BSA-5 GOA-5
JA-91-0575	SUIYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0576	SUNBIRD	11	BSA-5 GOA-5
JA-91-0581	YAGISHIRI	11	BSA-5 GOA-5
JA-91-0583	SEIYOH MARU	11	BSA-5 GOA-5
JA-91-0586	SINGAPORE FONTAINE	11	BSA-9-5 GOA-9-5 WOC-9-5
JA-91-0587	HAKKO FONTAINE	11	BSA-5-9 GOA-9-5 WOC-9-5
JA-91-0588	WORLD FONTAINE	11	BSA-9-5 GOA-9-5 WOC-9-5
JA-91-0589	EBISU FONTAINE	11	BSA-5-9 GOA-5-9 WOC-9-5
JA-91-0593	TOKUKO MARU	11	BSA-5 GOA-5
JA-91-0594	FUJISHIO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0598	BIYO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0631	TOKIWA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0640	SHINSHO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0641	KOHFU MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0642	ORION	11	BSA-5 GOA-5 WOC-5
JA-91-0643	TOMI MARU NO. 58	20	BSA-4 GOA-4
JA-91-0647	SAKAE MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0881	HAKKO BOOMERANG	11	BSA-5-9 GOA-9-5 WOC-9-5
JA-91-0893	FLORIDA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-0929	KISARAGI MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1053	TAISEI MARU NO. 87	11	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-1054	TAISEI MARU NO. 98	11	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-1055	TAISEI MARU NO. 52	11	BSA-5-9 GOA-5-9 WOC-5-9
JA-91-1096	NOJIMA MARU	11	BSA-5 GOA-5 WOC-5

FEDERAL REGISTER REPORT—Continued

Permit No.	Vessel name	Type	Fishery-activity
JA-91-1135	TOKYO REEFER	11	BSA-5 GOA-5 WOC-5
JA-91-1144	TAISEI MARU NO. 101	11	BSA-5-9 GOA-9-5 WOC-9-5
JA-91-1145	REEFER BEAVER	11	BSA-5 GOA-5
JA-91-1148	SEKI REX	11	BSA-5 GOA-5 WOC-5
JA-91-1153	KAIYO MARU NO. 115	20	BSA-4 GOA-5 WOC-4
JA-91-1156	AKASHIA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1161	KYOKUSHIN MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1167	NICHIYO MARU	11	BSA-5 GOA-5
JA-91-1170	TOMI MARU NO. 83	20	BSA-4 GOA-4
JA-91-1171	TOMI MARU NO. 55	20	BSA-4 GOA-4
JA-91-1175	ANYO MARU NO. 18	20	BSA-4 GOA-4
JA-91-1192	TOMI MARU NO. 81	25	BSA-4 GOA-4
JA-91-1193	TOMI MARU NO. 82	25	BSA-4 GOA-4
JA-91-1196	SHINEI MARU NO. 63	25	BSA-4 GOA-4
JA-91-1197	TOMI MARU NO. 51	25	BSA-4 GOA-4
JA-91-1536	FUKUYOSHI MARU NO. 58	25	BSA-4 GOA-5
JA-91-1538	OTOWA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1539	FUKUSHIO MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1540	MIYAJIMA MARU	15	BSA-4 GOA-4 WOC-4
JA-91-1547	TEISHO MARU NO. 68	25	BSA-4 GOA-4
JA-91-1548	FUKUHO MARU NO. 78	25	BSA-4 GOA-4
JA-91-1563	SHOYO MARU (B)	11	BSA-5 GOA-5
JA-91-1572	RYUHO MARU NO. 51	25	BSA-4 GOA-4
JA-91-1582	KUROSHIMA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-1583	NEW HAYATSUKI	11	BSA-5 GOA-5 WOC-5
JA-91-1584	KAIYO MARU NO. 38	20	BSA-4 GOA-5 WOC-4
JA-91-1585	NEW HIROTSUKI	11	BSA-5 GOA-5 WOC-5
JA-91-2010	KAIUN MARU NO. 65	20	BSA-4 GOA-4
JA-91-2014	SURUGA MARU	11	BSA-5 GOA-5 WOC-5
JA-91-2025	HIYO MARU	11	BSA-5-9 GOA-9-5 WOC-9-5
JA-91-2029	REEFER FRESH	11	BSA-5 GOA-5 WOC-5
JA-91-2031	SHUNYO MARU NO. 168	20	BSA-4 GOA-5 WOC-4
KS-91-0001	GAE YANG HO	15	BSA-7-8-4 GOA-5-8
KS-91-0002	SUNFLOWER NO. 7	15	BSA-4-7-8 GOA-5-8
KS-91-0003	CHEOG YANG HO	15	BSA-7-8-4 GOA-5-8
KS-91-0004	PUNG YANG HO	15	BSA-4-8-7 GOA-8-5
KS-91-0006	OYANG HO	15	BSA-7-4-8 GOA-5-8
KS-91-0033	NAM BUG HO	15	BSA-7-4-8 GOA-8-5
KS-91-0034	CRYSTAL DAHLIA	15	BSA-4-8-7 GOA-8-5
KS-91-0037	DAEJIN NO. 52	15	BSA-4-7-8 GOA-5-8
KS-91-0039	DONGSAN-HO	15	BSA-4-7-8 GOA-5-8
KS-91-0041	NO. 7 SANG WON	20	BSA-4-7-8 GOA-5-8
KS-91-0042	TAE BAEK HO	15	BSA-4-7-8 GOA-8-5
KS-91-0044	HAN KIL HO	20	BSA-7-8-4 GOA-5-8
KS-91-0045	HAN JIN HO	20	BSA-8-4-7 GOA-5-8
KS-91-0047	SHIN AN HO	15	BSA-4-8-7 GOA-8-5
KS-91-0048	NO. 70 OYANG HO	15	BSA-7-4-8 GOA-8-5
KS-91-0051	DAE SUNG HO	15	BSA-8-6-7-4 GOA-6-8-5
KS-91-0075	NO. 5 CHIL BO SAN HO	11	BSA-5-8 GOA-5-8
KS-91-0079	NO. 99 TAE BAEK	11	BSA-8-5 GOA-5-8
KS-91-0081	TAE YANG NO. 12	11	BSA-8-5 GOA-5-8
KS-91-0090	GAE CHEOG HO NO. 2	11	BSA-8-5 GOA-8-5
KS-91-0091	NO. 29 TAE BAEK	11	BSA-5-8 GOA-5-8
KS-91-0095	ORYONG NO. 503	15	BSA-8-4-7 GOA-8-5
KS-91-0098	REEFER NO. 5	11	BSA-5-8 GOA-8-5
KS-91-0099	SAJO DOLPHIN	11	BSA-5-8 GOA-8-5
KS-91-0103	SALVIA	15	BSA-8-4-7 GOA-5-8
KS-91-0104	YUYANG HO	15	BSA-8-7-4 GOA-8-5
KS-91-0105	NO. 602 TAE WOONG	20	BSA-4-8-7 GOA-8-5
KS-91-0106	NO. 1 HAN SUNG	15	BSA-4-7-6-8 GOA-5-6-8
KS-91-0107	HANIL HO	20	BSA-7-4-8 GOA-5-8
KS-91-0112	GAE CHEOG HO	10	BSA-4-7-8 GOA-8-5
KS-91-0118	NO. 77 DONG BANG	11	BSA-8-5 GOA-5-8
KS-91-0119	HANG JIN	11	BSA-5-8 GOA-5-8
KS-91-0121	NO.71 DONG BANG	15	BSA-4-7-8 GOA-8-5
KS-91-0123	ORYONG NO. 501	15	BSA-4-7-8 GOA-5-8
KS-91-0135	CORAL STAR	11	BSA-8-5 GOA-8-5
KS-91-0136	DAE JIN NO. 21	15	BSA-8-4-7 GOA-8-5
KS-91-0137	JOON SUNG HO	15	BSA-4-6-8-7 GOA-6-8-5
KS-91-0139	NO. 9 JEONG WOO	11	BSA-8-5 GOA-8-5
KS-91-0141	NO. 103 NAM CHANG	11	BSA-5-8 GOA-5-8
KS-91-0142	OCEAN EXPRESS	11	BSA-5-8 GOA-5-8
KS-91-0143	TEA WOONG HO	15	BSA-7-4-8 GOA-5-8
KS-91-0147	REEFER NO. 1	11	BSA-8-5 GOA-8-5
KS-91-0148	REEFER NO. 2	11	BSA-8-5 GOA-8-5
KS-91-0149	REEFER NO. 3	11	BSA-5-8 GOA-5-8
KS-91-0150	REEFER NO. 6	11	BSA-8-5 GOA-5-8
KS-91-0151	NO. 101 HYUN IL	11	BSA-8-5 GOA-8-5
KS-91-0152	DONG BANG HO	15	BSA-7-8-4 GOA-5-8
NL-91-0022	ZEELAND	15	NWA-1-6-4

FEDERAL REGISTER REPORT—Continued

Permit No.	Vessel name	Type	Fishery-activity
NL-91-0031	FRIESLAND	20	NWA-4-6-1
NL-91-0041	CORNELIS VROLIJK FZD SCH 171	15	NWA-6-1-4
NL-91-0043	FRANZISKA	15	NWA-4-1-6
NL-91-0044	DIRK-DIEDERIK	15	NWA-1-6-4
PL-91-0006	POLLUX	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0007	GRINWAL	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0009	WALEN	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0011	OTOL	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0012	MUSTEL	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0015	LANGUSTA	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0020	WLOCZNIK	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0027	KASZUBY 2	11	BSA-8-5 GOA-8-5 WOC-8-5
PL-91-0029	HALNIAK	11	BSA-8-5 GOA-5-8 WOC-5-8
PL-91-0033	BURAN	11	BSA-5-8 GOA-5-8 WOC-5-8
PL-91-0034	MARLIN	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0037	ANTARES	15	BSA-4-8 GOA-8-5 WOC-4-8
PL-91-0038	ARCTURUS	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0039	KALMAR	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0040	SAGITTA	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0041	ZULAWY	11	BSA-8-5GOA-8-5 WOC-5-8
PL-91-0045	TUNEK	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0046	AMAREL	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0048	GEMINI	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0050	KOLIAS	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0054	TAZAR	15	BSA-8-4 GOA-8-5 WOC-4-8
PL-91-0060	AWIOR	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0061	WINETA	11	BSA-8-5 GOA-8-5 WOC-8-5
PL-91-0062	SIRIUS	15	BSA-8-4GOA-8-5 WOC-4-8
PL-91-0063	MORS	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0065	DELFIN	15	BSA-8-4 GOA-5-8 WOC-4-8
PL-91-0066	HAJDUK	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0075	DENEBOLA	15	BSA-8-4 GOA-5-8 WOC-4-8
PL-91-0077	ORCYN	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0078	ORLEN	15	BSA-4-8 GOA-8-5 WOC-4-8
PL-91-0080	REKIN	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0081	ADMIRAL ARCISZEWSKI	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0084	PARMA	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0085	BOGAR	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0094	INDUS	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0095	REGULUS	15	BSA-4-8 GOA-5-8 WOC-8-4
PL-91-0097	AQUILA	15	BSA-8-4 GOA-3-5 WOC-8-4
PL-91-0098	MAZURY	11	BSA-5-8 GOA-8-5 WOC-5-8
PL-91-0099	CASSIOPEIA	15	BSA-8-4 GOA-5-8 WOC-4-8
PL-91-0103	AQUARIUS	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0107	PROF. BOGUCKI	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0114	DALMOR 2	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0115	ALTAIR	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0116	KOCIEWIE	11	BSA-8-5 GOA-8-5 WOC-8-5
PL-91-0118	KANTAR	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0119	POWISLE	11	BSA-5-8 GOA-5-8 WOC-5-8
PL-91-0120	M/V KURPIE	11	BSA-8-5 GOA-8-5 WOC-8-5
PL-91-0121	AKRUX	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0123	ATRIA	15	BSA-8-4 GOA-8-5 WOC-8-4
PL-91-0124	HOMAR	15	BSA-4-8 GOA-5-8 WOC-4-8
PL-91-0125	ACAMAR	15	BSA-8-4 GOA-8-5 WOC-8-4
UR-91-0581	PERLAMUTR	15	NWA-4
UR-91-0593	LAZURNY	15	NWA-4
UR-91-0660	LUN	15	NWA-4
UR-91-0817	MARSHAL VASILEVSKII	15	NWA-4
UR-91-0825	NOVATOR	15	NWA-4
UR-91-0878	POLOTSK	15	NWA-4
UR-91-0879	ALEKSANDRIT	15	NWA-4
UR-91-0881	MYS FRUNZE	15	NWA-4
UR-91-0885	NAVIGATOR	15	NWA-4
UR-91-0886	GRIGORIY POLUYANOV	15	NWA-4

[FR Doc. 91-160 Filed 1-4-91; 8:45 am]
BILLING CODE 3510-22-M

COMMISSION OF MINORITY BUSINESS DEVELOPMENT

[90-N-8]

Public Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Wednesday, January 23, 1991, in

Austin, Texas. The hearing is open to the public.

The January 23rd hearing will convene at 1 P.M. at the John H. Reagan State Office Building, room 106, 105 West 15th Street, Austin, TX 78701.

The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunities.

The Commission was established by Public Law 100–656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION CONTACT: Arlene Pinkney or Connie K. McCracken at 202–523–0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

Andre' M. Carrington,
Executive Director.

[FR Doc. 91–170 Filed 1–4–91; 8:45 am]

BILLING CODE 6820-PB-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Settlement on an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

December 31, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

The Governments of the United States and Mauritius agreed to amend the current bilateral textile agreement to establish a limit for Categories 351/651 for the period February 28, 1990 through February 27, 1991. As a result, the limit for Category 351/651, which has currently been filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATON: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 24917, published on June 19, 1990.

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

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 31, 1990.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 13, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Mauritius and exported during the twelve-month period of which began on February 28, 1990 and extends through February 27, 1991.

Effective on January 7, 1991, you are directed to increase to 125,000 dozen [1] the current limit for Categories 351/651.

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

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–156 Filed 1–4–91; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 154. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 154 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: January 1, 1991.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

[1] The limit has not been adjusted to account for any imports exported after February 27, 1990.

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Alaska:						
Adak [5]	$46		$31		$77	12-01-90
Anaktuvuk Pass	83		57		140	12-01-90
Anchorage:						
05-16—09-15	119		52		171	05-16-91
09-16—05-15	79		54		133	01-01-91
Atqasuk	129		86		215	12-01-90
Barrow	89		59		148	12-01-90
Bethel	70		73		143	12-01-90
Bettles	65		45		110	12-01-90
Cold Bay	71		54		125	12-01-90
Coldfoot	75		47		122	12-01-90
Cordova	74		89		163	01-01-91
Dillingham	76		38		114	12-01-90
Dutch Harbor-Unalaska	91		54		145	12-01-90
Eielson AFB:						
05-15—09-15	78		61		139	05-15-91
09-16—05-14	60		59		119	01-01-91
Elmendorf AFB:						
05-16—09-15	119		52		171	05-16-91
09-16—05-15	79		54		133	01-01-91
Fairbanks:						
05-15—09-15	78		61		139	05-15-91
09-16—05-14	60		59		119	01-01-91
Ft. Richardson:						
05-16—19-15	82		59		141	05-16-91
09-16—05-15	119		52		171	01-01-91
Ft. Wainwright:						
05-15—09-15	78		61		139	05-15-91
09-16—05-14	60		59		119	01-01-91
Homer	57		61		118	01-01-91
Juneau	96		70		166	01-01-91
Katmai National Park	89		59		148	12-01-90
Kenai:						
05-01—09-30	86		70		156	05-01-91
10-01—04-30	64		70		134	01-01-91
Ketchikan	81		75		156	01-01-91
King Salmon [3]	75		59		134	12-01-90
Kodiak	68		61		129	01-01-90
Kotzebue	125		73		198	01-01-91
Kuparuk Oilfield	75		52		127	12-01-90
Murphy Dome:						
05-15—09-15	78		61		139	05-15-91
09-16—05-14	60		59		119	01-01-91
Noatak	77		66		143	12-01-90
Nome	61		75		136	01-01-91
Noorvik	77		66		143	12-01-90
Petersburg	61		54		115	01-01-91
Point Hope	99		61		160	12-01-90
Point Lay	106		73		179	12-01-90
Prudhoe Bay-Deadhorse	64		57		121	12-01-90
Sand Point	63		40		103	12-01-90
Seward	52		50		102	12-01-90
Shungnak	77		66		143	12-01-90
Sitka-Mt. Edgecombe	65		63		128	01-01-91
Skagway	81		75		156	01-01-91
Spruce Cape	68		61		129	01-01-91
St. Mary's	60		40		100	12-01-90
St. Paul Island	81		34		115	12-01-90
Tanana	61		75		136	01-01-91
Tok	59		59		118	01-01-91
Umiat	97		63		160	12-01-90
Unalakleet	58		47		105	12-01-90
Valdez:						
05-01—10-31	116		66		182	05-01-91
11-01—04-30	85		63		148	01-01-91
Wainwright	90		75		165	12-01-90
Walker Lake	82		54		136	12-01-90
Wrangell	81		75		156	01-01-91
Yakutat	70		40		110	12-01-90
Other [3, 4]	42		47		89	01-01-91
American Samoa	55		47		102	12-01-90
Guam	99		59		158	12-01-90
Hawaii:						
Island of Hawaii: Hilo	59		36		95	12-01-90
Island of Hawaii: Other	59		47		106	12-01-90
Island of Kauai [1]	87		61		148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Island of Kure [1]			13		13	12-1-90
Island of Maui: Kihei:						
04-01—12-19	85		50		135	12-01-90
12-20—03-31	97		50		147	12-20-90
Island of Maui: Other	59		47		106	12-01-90
Island of Oahu	86		40		126	12-01-90
Other	59		47		106	12-01-90
Johnston Atoll [2]	18		17		35	12-01-90
Midway Islands [5]			13		13	12-01-90
Northern Mariana Islands:						
Rota	45		31		76	12-01-90
Saipan	68		47		115	12-01-90
Tinian	44		24		68	12-01-90
Other	20		13		33	12-01-90
Puerto Rico:						
Bayamon:						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Carolina:						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Fajardo (including Luquillo):						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Ft. Buchanan (incl GSA Serv Ctr, Guaynabo):						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Mayaguez	117		50		167	12-01-90
Ponce	117		50		167	12-01-90
Roosevelt Roads:						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Sabana Seca:						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
San Juan (incl San Juan Coast Guard Units):						
04-16—12-14	89		61		150	12-01-90
12-15—04-15	110		63		173	12-15-90
Other	53		43		96	12-01-90
Virgin Islands of the U.S.:						
05-01—11-30	95		63		158	05-01-91
12-01—04-30	128		66		194	12-01-90
Wake Island [2]	4		17		21	12-01-90
All Other Localities	20		13		33	12-01-90

[1] Commercial facilites are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: January 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-204 Filed 1-4-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 6, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive

Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comments at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: December 31, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Revision.
Title: Annual Survey of Bilingual Education.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden Responses: 57.
Burden Hours: 1710.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State educational agencies are required to collect, analyze and publish data under the Bilingual Education Act. The Department uses this information to report to Congress.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: National Evaluation of Adult Education Program.
Frequency: One-time.
Affected Public: Individuals or households; Non-profit institutions; Small businesses or organizations.
Reporting Burden Responses: 159,400.
Burden Hours: 29,380.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to evaluate the potential of programs supported by the Federal Adult Education Program for significantly reducing deficits in the adult population with respect to literacy, English proficiency, and secondary education. The Department uses the information collected to assess program goals and objectives.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Report on Post-Employment Services and Annual Reviews (4RSA–62).
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden Responses: 84.
Burden Hours: 84.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This report is used by state Vocational Rehabilitative agencies to provide caseload data. The Department uses the information collected to assess the accomplishments of program goals and objectives.

[FR Doc. 91–159 Filed 1–4–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–149, for the transfer of 40 fuel elements for use as fuel for the Ringhals 2 power reactor. The fuel elements contain 18,000 kilograms of uranium, enriched to 3.4 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on December 28, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–226 Filed 1–4–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket Nos. 90–104–NG and 90–105–NG]

Broad Street Oil & Gas Co.; Applications To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of applications for blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 4, 1990, of two applications filed by Broad Street Oil & Gas Co. (Broad Street) requesting blanket authorizations to import up to 290 Bcf and export up to 290 Bcf of natural gas from and to Canada over a two-year period commencing with the date of first delivery. Broad Street intends to use existing pipeline facilities of United States and Canadian pipelines for transportation of the imported and exported natural gas. Broad Street states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

For administrative purposes, FE has decided to consolidated the two blanket authorization requests; any final decision on the two applications will be contained in one opinion and order.

The applications were 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.

DATES: 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., February 6, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094–I, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Broad Street is an Ohio corporation with its principal place of business at 37 West Broad Street, Columbus, Ohio 43215. Broad Street is a marketer of natural gas, acting as agent on behalf of both producers and purchasers. Broad Street requests authorization to import and export natural gas for its own account or as an agent on behalf of others.

Broad Street states that the imported gas would make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies, and commercial and industrial end-users. In regard to its request for export authority, Broad Street proposes to export natural gas obtained from fields in the states of Texas, Oklahoma and Kansas. The specific terms of each import and export arrangement would be negotiated on an individual basis, including price and volume.

The decision on the 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). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the consolidated applications should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Broad Street asserts that the proposed exports will result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, and benefit the citizens of producing states and therefore is in the public interest. Parties opposing the import/export arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the blanket import/export applications are granted, a total two-year term volume may be authorized without imposing a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

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 considedred as the basis for any decision on the applications must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to these applications 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 applications. 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 address listed above.

It is intended that a decisional record on the applications will be developed 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 question 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 will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the applications and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Copies of Broad Street's applications are available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 28, 1990

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–227 Filed 1–4–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–98–NG]

CanadianOxy Marketing Inc.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on November 13, 1990, by CanadianOxy Marketing Inc. (CanadianOxy) requesting a blanket authorization to import Canadian natural gas for short-term sales to customers in the United States. Authorization is requested to import up to 100 Bcf of Canadian natural gas over a two-year period, with no restriction on the daily volume, beginning on the first day of delivery after CanadianOxy's present blanket import authority expires.

The application is 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.

DATES: 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., February 6, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestall Building, room 3F–056, FR–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of the Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–114, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: CanadianOxy is a Delaware corporation with its principal place of business in Calgary, Alberta and is currently authorized by DOE/FE Opinion and Order 298 (Order 298), issued January 31, 1989, in ERA Docket No. 88–66–NG, to import up to 100 Bcf of natural gas from Canada over two years. This authorization expires on February 22, 1991. CanadianOxy requests a new blanket authorization, beginning on the date of first delivery after February 22, 1991, the day the current authorization expires.

CanadianOxy proposes to import the gas from its Canadian parent, Canadian Occidental Petroleum Ltd., and a variety of other suppliers for sale to a wide range of markets in the United States, including pipelines, local distribution companies, and industrial and commercial end-users. CanadianOxy indicates it may also act as agent for suppliers and purchasers in securing transportation arrangements for imported supplies. CanadianOxy intends to use existing pipeline facilities to transport the gas, and proposes to continue to file quarterly reports with FE giving details of the individual import transportations.

In support of its application, CanadianOxy maintains that the provisions of each short-term sale, including the price and volumes, would be negotiated between CanadianOxy and its Canadian suppliers in response to market conditions and would be sufficiently flexible to allow adjustments during the term of the arrangement. Therefore, CanadianOxy contends that its proposal is consistent with DOE's import policy guidelines and would simply continue its existing import arrangement for short-term, spot-market sales.

The decision on the application for import authority will be made consistent with 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). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

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 of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received form 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 requierments 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 question 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 will be provided to all parties. If no party requests additional procedures, a 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 CanadianOxy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. 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, December 31, 1990.

Clifford P. Tomaszewski,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-228 Filed 1-4-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-112-NG]

Transco Energy Marketing Co.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 21, 1990, of an application filed by Transco Energy Marketing Company (TEMCO), for blanket authority to import up to 1 Bcf per day or 730 Bcf of Canadian natural gas over a two-year period beginning February 3, 1991. TEMCO intends to utilize existing pipeline facilities for the transportation of the volumes imported. TEMCO also requests that an import authorization be granted on an expedited basis.

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.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than 4:30 p.m., e.s.t., February 6, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: TEMCO, a Delaware corporation with its principle place of business in Houston, Texas, is a wholly owned subsidiary of Transco Energy Services Company, which, in turn, is a wholly owned subsidiary of Transco Energy Company. Under the blanket authority sought, TEMCO, acting either for its own account or for the account of others, would import natural gas from a variety of Canadian suppliers for resale to suitable purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions. In support of its application, TEMCO asserts that since no new facilities are required for the proposed imports, there will be no adverse environmental impacts.

All parties should be aware that under any authorization issued, TEMCO would be required to file quarterly reports with FE detailing the prices, volumes and terms of each blanket import sale.

The decision on the application for import authority will be made consistent with DOE's natural 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). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. Further, FE may grant the aggregate volumes requested by TEMCO rather than place a daily limit in approving natural gas imports. A decision on TEMCO's request for expedited treatment of its application will not be made until all responses to this notice have been received and evaluated.

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 of 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 procedural action to be taken on the application. All protests, motions to intervene, notices on 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 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 question 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 requests for a conference should demonstrate why the conference would materially advance the proceeding. Any requests for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevent 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, a notice will be provided to all parties. If no party requests additional procedures, a 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 TEMCO'S application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. 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, December 31, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-229 Filed 1-4-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-3895-9 /EPA/OSW-FR-91-013]

Additional Data Available on Wastes Studies in the Report to Congress on Special Wastes From Mineral Processing

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on recently acquired data on five of the twenty mineral processing wastes studied in the July 1990, Report to Congress on Special Wastes From Mineral Processing. These five wastes are listed below in their respective mineral commodity sectors.

* Coal Gas

—gasifier ash from coal gasification
—process wastewater from coal gasification

* Ferrous Metals (iron and carbon steel)

—basic oxygen furnace and open hearth furnace air pollution control dust/sluge from carbon steel production

* Phosphoric Acid

—phosphogypsum
—process waterwater from phosphoric acid production

The additional data are available for public inspection at the RCRA Docket, 401 M Street SW., Washington, DC, Room M2427, 2nd floor, Waterside Mall. Docket hours are 9 a.m. to 2 p.m. Monday through Friday, execpt Federal holidays. Call 202-475-9327 to make the appointment required for viewing the docket. Comments on the new data will be accepted through February 6, 1991.

BACKGROUND: The Report to Congress on Special Wastes From Mineral Processing, released July 1990, contains detailed studies of 20 mineral processing wastes temporarily excluded from regulation as hazardous wastes under subtitle C of the Resource Conservation and Recovery Act (RCRA) by the Mining Waste Exclusion. A public comment period on the Report to Congress ended October 19, 1990. Since the release of the Report to Congress, the Agency has collected additional data on five of the twenty wastes studied in the report.

The new information on phosphoric acid process wastewater and phosphogypsum supplements information concerning the generation and management of those wastes, the cost of alternative waste management practices, waste characteristics, ground water monitoring data, and state regulations. The Agency is specifically soliciting comments on the engineering feasibility of the alternative waste management practices presented as part of the new data, including the accuracy of the Agency's cost estimation for the alternatives. In addition, comments are requested as to the extent of improvement in environmental protection offered by the various engineering alternatives. Finally, the Agency solicits comments on the efficacy of these alternatives to achieve compliance with the subtitle C or D regulatory options. This new information will be used to assist the Agency in its evaluation of the subtitle C and D regulatory options for these wastes.

New information has also been collected on two non-operational coal gasification plants, the existence of which was discovered too late in the development of the Report to Congress for discussion in the document. This new information does not impact the Agency's recommendation presented in the Report to Congress for subtitle D management of the ash and process wastewater produced by coal gasification.

Finally, the Agency collected additional information on volumes and management practices for basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel, production to supplement information presented in the Report to Congress. The new data indicates that much of this waste is disposed of on-site. The Agency solicits comment on the impact that this new information should have on its recommendations in the Report to Congress to regulate these wastes under subtitle D.

Because these new data may be utilized in the regulatory decision-making process for those five wastes, the new data are being placed into the RCRA docket for public inspection and comment. To all readers to clearly distinguish these new data, they have been placed under a new docket number: F-91-RM2A-FFFFF. All comments on the new data received by the close of the comment period will be considered by the Agency when making a final regulatory determination on these wastes. Comments will be accepted only on data specifically referenced in this notice.

New data placed onto the docket includes:

* Supplemental Information on Generation and Management of Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control Dust/Sluge from Carbon Steel Production. December, 1990.

* Supplemental Information on Coal Gasification: The DOW Chemical Gasification Plant. December, 1990.

* Supplemental Information on Coal Gasification: The Cool Water Gasification Plant. December, 1990.

* Supplemental Information on Coal Gasification: Revised Data on Generation and Management of Coal Gasification Gasifier Ash (Slag) and Process Wasterwater, December, 1990.

* Dow Chemical Company's Response to the National Survey of Special Wastes from Mineral Processing Facilities for the Plaquemine, Louisiana Facility, October, 1990.

* Florida Department of Environmental Regulation, Proposed Phosphogypsum Management Rule, Chapter 17-763, F.A.C., November, 1990.

* Phosphoric Acid Process Water Data provided to EPA by Texasgulf, Inc. October 4, 1990.

* Supplemental Analysis of Phosphoric Acid Production Waste Management Alternatives, (including trip reports from visits to six phosphoric acid production plants during August and September, 1990.) December, 1990.

* Badger Design and Constructors, Inc., Phosphoric Acid Water Management Study, prepared for ICF, Inc., Fairfax, Va., November 16, 1990.

* Selected papers from the *Proceedings of the Third International Symposium of Phosphogypsum,* Florida Institute of Phosphate Research, Orlando, Florida, December 4-7, 1990.

* Florida Phosphate Council, *FDER Ground Water Quality Data Joint Water Quality/ RCRA Overview Committee,* Ardaman and Associates, Inc., (consultants), Orlando Florida, vol. I and II, June 1989.

* Florida Phosphate Council, *FDER Ground Water Monitoring Data and Gardinier Phosphogypsum Stacks and Cooling Ponds, Polk and Hillsborough County, Florida,* Ardaman and Associates, Inc. (consultants), Orlando, Florida, July 1989.

* Information transmitted to EPA by Agrico (Phosphoric Acid), October 15, 1990.

—*Agrico Chemical Company*—Uncle Sam Plant—Solid Waste Permit Modifications Request Permit No. P-0103, I.D. No. C.D.

093-0889. (Submitted to LDEQ—Solid Waste Division on March 28, 1989).

—*Agrico Chemical Company*—Uncle Sam Plant—Response to Comments on Solid Waste Permit Modification Request Permit No. P-0103, I.D. No. G.D. 093-0889. (Submitted to LDER—Solid Waste Division on May 21, 1990).

—*Agrico Chemical Company*—Uncle Sam Plant—Response to Comments of Solid Waste Permit Modification Request Permit No. P-0103, I.D. No. G.D. 093-0889. (Submitted to LDEQ—Solid Waste Division on August 13, 1990).

—Comments from LDEQ—Solid Waste Division, after reviewing of the permit modification request dated March 28, 1989 (Dated February 14, 1990).

—*Agrico Chemical Company*—Uncle Sam Plant Semi-Annual Industrial Solid Waste Disposal Ground Water Monitoring Reports. (Dated January 29, 1990 and July 30, 1990).

—Ardaman and Associates, Inc., *Seepage Calculations and Estimated Release of Phosphoric Acid to Land for SARA Section 313, Agrico—Uncle Sam Plant, Uncle Sam, La.*, Orlando, Florida, June 4, 1990.

The regulatory determination, scheduled to be signed by the Administrator in Spring 1991, will determine which of the 20 mineral processing wastes, if any, will remain within the Mining Waste Exclusion.

DATES: Public comments on these additional data will be accepted through February 6, 1991.

ADDRESSES: Those persons, companies, or organizations intending to submit comments for the record must send an original and two copies to the following address: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Place the docket number F-91-RM2A-FFFFF on your comments.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000; for technical information contact Bob Hall or Scott Ellinger; (OS-323W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (703) 308-8412, and (703) 308-8410, respectively.

Dated: December 27, 1990.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91-195 Filed 1-4-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL: 3896-3]

Chesapeake Executive Council; Meeting

ACTION: Notice of public meeting on January 8, 1991.

Theme: The Decade we can win.

Location: Mahan Hall, U.S. Naval Academy, Annapolis, Maryland.

10 a.m.: Registration.

10:30 a.m.: Public meeting.

Presentation of Colors—Pledge of Allegiance: Welcoming Remarks, U.S. Naval Academy Superintendent Rear Admiral Virgil L. Hill, Jr.

Presentation of Management Plans: Bluefish Management Plan, Weakfish/Spotted Sea Trout Management Plan, Waterfowl Mangement Plan, Public Access Plan, by Ms. Verna Harrison, Chair, Living Resources Subcommittee.

Presentation of Advisory Committee Reports: Scientific & Technical Advisory Committee, by Dr. Joseph Mihursky, Chair.

Citizen Advisory Committee, by Ms. Mary Roe Walkup, Chair.

Local Government Advisory Committee, by Ms. Anna M. Long, Chair.

Presentation of the Independent Panel Report, by Ms. Fran Flanigan, Chair.

Representation of the Recreational Boat Pollution Report, by Ms. Ann Swanson, Chair.

11:05 A.M.: Public Meeting concludes. Chesapeake Executive Council begins executive session. (Private)

12 p.m.: Public Meeting reconvenes.

Administrator Reilly introduces Admiral Frank B. Kelso, Chief of Naval Operations.

Admiral Frank B. Kelso, CNO, remarks.

EPA Administrator William K. Reilly remarks.

CBC Chairman Kenneth J. Cole, remarks.

Mayor Sharon Pratt Dixon, DC, remarks.

Governor L. Douglas Wilder, VA, remarks.

Governor Robert P. Casey, PA, remarks.

Governor William Donald Schaefer, MD, remarks.

Administrator Reilly concludes with closing remarks.

1:50 P.M.: Joint Press Conference

For further information about the public meeting, contact Thomas McCully, Chesapeake Bay Liaison Office, at 301-267-0061.

Dated: January 3, 1991.

George M. Walker,

Acting Director, Chesapeake Bay Liaison Office.

[FR Doc. 91-367 Filed 1-4-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200455.

Title: Port of Oakland/Puget Sound Tug and Barge Co. dba Hawaiian Marine Lines Terminal Agreement.

Parties:

Port of Oakland (Port)

Puget Sound Tug and Barge Co. dba Hawaiian Marine Lines (HML).

Filing Party: Mr. John E. Nolan, Assistant Port Attorney, Port of Oakland, 530 Water Street, Oakland, CA 94607.

Synopsis: The Agreement provides for: HML's non-exclusive use of certain premises at the Port's Charles P. Howard Terminal with certain rights to transfer to other Port facilities; HML's use of the assigned premises as its published regularly scheduled Northern California port of call; the Port's tariff to apply to HML's use of the premises; and HML to pay to the Port 90% of dockage and wharfage charges on containerized cargo subject to an annual 15,000 revenue ton per acre breakpoint level with an alternate 65% or 80% wharfage tariff level applicable to certain breakbulk cargo.

Agreement No.: 224-200456.

Title: Port of Houston Authority/Strachan Shipping Company Terminal Agreement.

Parties:

Port of Houston Authority (Port)

Strachan Shipping Company (SSC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: SSC's assignment to perform freight handling services at the Port's Barbours Cut Transit Shed No. Two Section B (West) and in certain areas adjacent thereto; the Port to retain the right to use the area(s) adjacent to the facility and allocate the use of Transit Shed space; and SSC to furnish all manpower equipment and fixtures for services, pay $1.00 per ton of cargo handled, and guarantee an annual income of $25,000 to be generated by this per ton charge. The term of the Agreement expires December 31, 1992.

Agreement No.: 224–200457.

Title: Port of Houston Authority/ Ceres Gulf Incorporated Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Ceres Gulf Incorporated (CGI).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for CGI to perform freight handling services at the Port's Wharves and Transit Sheds Nos. 19 and 20 subject to the charges, rates, rules and regulations in the Port's tariff; and CGI's use of the facility for repair of cargo handling equipment and vehicles. CGI guarantees an annual income of $1.25 per square foot of shedded space generated by wharfage charges plus a $200 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreement expires December 31, 1992.

Agreement No.: 224–200458.

Title: Port of Houston Authority/ Shippers Stevedoring Company Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Shippers Stevedoring Company (SSC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: SSC's assignment to perform freight handling services at the Port's Barbours Cut Transit Shed No. Two Section A (East) and in certain areas adjacent thereto; the Port to retain the right to use the area(s) adjacent to the facility and allocate the use of Transit Shed space; and SSC to furnish all manpower equipment and fixtures for services, pay $1.00 per ton of cargo handled, and guarantee an annual income of $25,000 to be generated by this per ton charge. The term of the Agreement expires December 31, 1992.

Agreement No.: 224–200459.

Title: Port of Houston Authority/ Shippers Stevedoring Company Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Shippers Stevedoring Company (SSC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: SSC's assignment to perform freight handling services at the Port's Wharves and Transit Shed No. 31 subject to the charges, rates, rules and regulations in the Port's tariff; and SSC's use of the facility for repair of cargo handling equipment and vehicles. In consideration for the assignment, SSC guarantees an annual income of $1.25 per square foot of shedded space generated by wharfage charges plus a $200 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreement expires December 31, 1992.

Agreement No: 224–200460.

Title: Port of Houston Authority/Port-Cooper T. Smith Stevedoring Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Port-Cooper T. Smith Stevedoring (P–CTSS).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: P–CTSS's assignment to perform freight handling services at the Port's Wharves and Transit Sheds Nos. 16 through 18 subject to the charges, rates, rules and regulations in the Port's tariff; and P–CTSS's use of the facility for repair of cargo handling equipment and vehicles. In consideration for the assignment, P–CTSS guarantees an annual income of $1.25 per square foot of shedded space generated by wharfage charges plus a $200 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreement expires December 31, 1992.

Agreement No.: 224–200461.

Title: Port of Houston Authority/ Fairway Terminal Corporation Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Fairway Terminal Corporation (FTC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: FTC's assignment to perform freight handling services at the Port's Wharves and Transit Sheds Nos. 27 through 29 subject to the charges, rates, rules and regulations in the Port's tariff; and FTC's use of the facility for repair of cargo handling equipment and vehicles. In consideration for the assignment, FTC guarantees an annual income of $1.25 per square foot of shedded space generated by wharfage charges plus a $400 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreemnt expires December 31, 1992.

Agreement No.: 224–200462.

Title: Port of Houston Authority/ Strachan Shipping Company Terminal Agreement.

Parties:

Port of Houston Authority (Port)
Strachan Shipping Company (SSC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: SSC's assignment to perform freight handling services at the Port's Wharves and Transit Sheds Nos. 24 through 26 subject to the charges, rates, rules and regulations in the Port's tariff; and SSC's use of the facility for repair of cargo handling equipment and vehicles. In consideration for the assignment, SSC guarantees an annual income of $1.25 per square foot of shedded space generated by wharfage charges plus a $400 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreement expires December 31, 1992.

Agreement No.: 224–200463.

Title: Port of Houston Authority/ James J. Flanagan Stevedores Terminal Agreement.

Parties:

Port of Houston Authority (Port)
James J. Flanagan Stevedores (JJFS).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement provides for: JJFS's assignment to perform freight handling services at the Port's Wharves and Transit Sheds Nos. 21 through 23 subject to the charges, rates, rules and regulations in the Port's tariff; and JJFS's use of the facility for repair of cargo handling equipment and vehicles. In consideration for the assignment, JJFS guarantees an annual income of $1.25

per square foot of shedded space generated by wharfage charges plus a $400 per month total documentation charge, and an annual cargo movement of 0.9 of a ton per square foot of shedded space. The term of the Agreement expires December 31, 1992.

Agreement No.: 224-200464.

Title: Port of Houston Authority/Fairway Terminal Corporation Terminal Agreement.

Parties:

Port of Houston Authority (Port)

Fairway Terminal Corporation (FTC).

Filing Party: Ms. Martha T. Williams, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252-2562.

Synopsis: The Agreement provides for: FTC's assignment to perform freight handling services at the Port's Barbours Cut Transit Shed No. One Section B (West-to Pole No. 7) and in certain areas adjacent thereto: the Port to retain the right to use the area(s) adjacent to the facility and allocate the use of Transit Shed space; and FTC to furnish all manpower equipment and fixtures for services, pay $1.00 per ton of cargo handled, and guarantee an annual income of $25,000 to be generated by this per ton charge. The term of the Agreement expires December 31, 1992.

Dated: January 2, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-205 Filed 1-4-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200453.

Title: Port Vancouver/Naviera Interamericana Navicana S.A. Terminal Agreement.

Parties:

Port Vancouver (Port)

Naviera Interamericana Navicana S.A. (NIN).

Synopsis: The Agreement provides for: NIN to use the Port as its designated Columbia River port of call including all berths at Terminal 2 and 3 and adjacent dock and backup areas; the Port to perform all of NIN's terminal services; NIN to pay for services and handling pursuant to the Port's tariff; and a sharing of the terminal revenues consisting of dockage, wharfage and services/facilities charges.

Dated: January 2, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy

Assistant Secretary.

[FR Doc. 91-206 Filed 1-4-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-39]

Transportation Services Incorporated as Agent for Sea-Land Service, Inc., et al. v. Interlatin Produce Co., Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services Incorporated as agent for Sea-Land Service, Inc., Seaboard Marine, Ltd. and Crowley Caribbean Transport, Inc. ("Complainant") against Interlatin Produce Co., Inc. ("Respondent") was served December 31, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and demurrage charges lawfully assessed pursuant to Complainant's applicable tariff for 160 shipments of containerized refrigerated cargo from Central America to the United States between February and May 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 31, 1991, and the final decision of the Commission shall be issued by April 29, 1992.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-169 Filed 1-4-91; 8:45 am]

BILLING CODE 6730-01-M

[Petition No.'s P6-90, P7-90 and P8-90]

Appeal of Staff Action, Request for Leave To File and Petition for Review of Staff Tariff Rejection

Notice is given of the filing of petitions appealing staff tariff rejection actions. Petition No. P6-90 appeals five tariff rejection actions and was filed by the Asia North America Eastbound Rate Agreement and several other rate agreements and conferences (collectively, the "Conferences"). Petition No. P7-90 was filed by the Transpacific Freight Conferences of Japan ("TPFCJ"), who requests leave to file late its appeal of a similar staff tariff rejection action. Petition No. P8-90 is an appeal by the West Coast Middle East Rate Agreement ("WCME") of another similar staff tariff rejection action. All of the appeals have been consolidated because they concern essentially the same issue. Specifically, the petitions appeal staff's rejection of tariff provisions which were filed to meet the requirements of the Commission's final rule in Docket 88-19—*Effective Date of Tariff Changes.* The rejected provisions designate the date of receipt for "split shipments" as being the date the full quantity of cargo in a shipment has been received by the carrier. The time of receipt for a shipment becomes important in determining the applicable tariff rates and charges on a given shipment.

To facilitate thorough consideration of the appeals, interested persons are invited to reply to the petitions no later than January 22, 1991. Replies shall be directed to the Secraetary, Federal Maritime Commission, Washington, DC 20573-0001, and shall consist of an original and 15 copies. Copies of replies shall also be served on the following named individual for each petition:

P6-90: Jeffrey F. Lawrence, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037.

P7-90: Charles F. Warren, Esq., Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, DC 20036.

P8-90: R. Frederic Fisher, Esq., Lillick & Charles, Two Embarcadero Center, San Francisco, California 94111-3996.

Copies of the petitions are available for examination at the Washington, DC, office of the Commission, 1100 L Street, NW., room 11101.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-177 Filed 1-4-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dana Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 28, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dana Bancorp, Inc.*, Dana, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Dana, Dana, Indiana.

2. *Farmers Savings Bank, Trustee of Farmers Savings Bank Stock Ownership Plan & Trust*, West Union, Iowa; to become a bank holding company by acquiring 53 percent of the voting shares of BJS, Inc., West Union, Iowa, and Westmont Corporation, West Union, Iowa, and thereby indirectly acquire The Farmers Savings Bank, West Union, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Breckenridge Bancshares Company*, St. Ann, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Centennial Bank, Breckenridge Hills, Missouri.

Board of Governors of the Federal Reserve System, December 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-172 Filed 1-4-91; 8:45 am]

BILLING CODE 6210-01-M

MidState Bancorp; 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 January 28, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *MidState Bancorp*, Hinton, Oklahoma; to engage *de novo* in making and servicing loans, primarily consumer, pursuant to § 225.23(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-173 Filed 1-4-91; 8:45 am]

BILLING CODE 6210-01-M

The Royal Bank of Canada; 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 January 25, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Royal Bank of Canada*, Montreal, Quebec, Canada; to engage *de novo* through its subsidiary, RBC Dominion Securities Corporation, New York, New York, in riskless principal activities as approved by the Board in *Bankers Trust New York Corp.*, 75 Federal Reserve Bulletin 829 (1989), and subject to limitations previously approved by the Board. Applicant proposes to conduct these activities on a nationwide basis. The Royal Bank of Canada has received Board approval to engage in a broad range of nonbanking activities, including engaging through RBC Dominion Securities Corporation in private placement activities and underwriting and dealing in, to a limited extent, debt and equity securities that are not eligible to be underwritten by a state member bank. *The Royal Bank of Canada*, 76 Federal Reserve Bulletin 567 (1990); *The Royal Bank of Canada*, 76 Federal Reserve Bulletin 158 (1990).

Board of Governors of the Federal Reserve System, December 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-174 Filed 1-4-91; 8:45 am]

BILLING CODE 6210-01-M

Charles Wangensteen, V and John Wangensteen, 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 January 22, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, MInnesota 55480:

1. *Charles Wangensteen, V and John Wangensteen;* to acquire an additional 0.40 percent of the voting shares of Chisholm Bancshares, Inc., Chisholm, Minnesota, for a total of 10.36 percent and thereby indirectly acquire The First National Bank of Chisholm, Chisholm, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Steven J. Wells*, Ardmore, Oklahoma; to acquire an additional 2.50 percent of the voting shares of Amcorp Financial, Inc., Ardmore, Oklahoma, for a total of 13.74 percent, and thereby indirectly acquire American National Bank, Ardmore, Oklahoma.

Board of Governors of the Federal Reserve System, December 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-175 Filed 1-4-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Management Information System; *Form Number:* HCFA-R-4; *Use:* The Medicaid Management Information System (MMIS) is a State-operated, Federally-mandated, computer system used for automated Medicaid claims processing and information retrieval for program management. Data elements represent the Federally-imposed recordkeeping requirements of MMIS; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 47; *Average House per Response:* 47,177; *Total Estimated Burden Hours:* 2,217,300.

2. *Type of Request:* New; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Medicial Case Review; *Form Number:* HCFA-R-1; *Use:* ESRD Network Organizations perform reviews of ESRD facilities using defined standards of care to assure that ESRD beneficiaries receive proper medical care; *Frequency:* Monthly; *Respondents:* Individuals/households, businesses/other for profit, Federal agencies/employees, nonprofit institutions, and small businesses/organizations; *Estimated Number of Responses:* 216; *Average Hours per Response:* 16 (reporting) and 1,200 (reporting); *Total Estimated Burden Hours:* 3,456 (reporting) and 21,600 (recordkeeping) for a total of 25,056.

3. *Type of Request:* Revision; *Title of Information Collection:* Psychiatric Unit and Rehabilitation Unit/Hospital Criteria Work Sheets; *Form Numbers:* HCFA-437, 437A, and 437B; *Use:* State Agencies are required to conduct onsite verifications to assure that rehabilitation hospitals and rehabilitation and psychiatric units meet criteria for exclusion from the Prospective Payment System. The HCFA work sheets are used to document findings on how well hospitals/units meet the exclusion criteria; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,921; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 480.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Health Maintenance Organizations Reporting Forms; *Form Number:* HCFA-HMOF-2-5; *Use:* Peer Review Organizations/Quality Review Organizations are authorized to review services for quality of care provided and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries and report the results to HCFA; *Frequency:* Quarterly; *Respondents:* Businesses/other profit and small businesses/organizations; *Estimated Number of Responses:* 216; *Average Hours per Response:* .25 (reporting) and 12 (recordkeeping); *Total Estimated Burden Hours:* 54 (reporting) and 648 (recordkeeping) for a total of 702.

5. *Type of Request:* Extension; *Title of Information Collection:* Attending Physician's Statement and Documentation of Medicaid Emergency; *Form Number:* HCFA-1771; *Use:* This form is used to document the attending physician's statement that the hospitalization was required due to an emergency and give clinical support for the claim; *Frequency:* On occasion;

Respondents; Businesses/other for profit; *Estimated Number of Responses:* 1,500; *Average House per Response:* .25; *Total Esimated Burden Hours:* 375.

6. *Type of Request:* New; *Title of Information Collection:* Analysis of Malpractice Premium Data; *Form Number:* HCFA–R–143; *Use:* The survey of physician-owned medical liability insurers will provide information for use in computing the malpractice input component of the Malpractice Geographic Practice Cost Index; *Frequency:* One-time; *Respondents:* Businesses/other for profit, State/local governments, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 51; *Average Hours per Response:* .25; *Total Esimated Burden Hours:* 12.75.

7. *Type of Request:* New; *Title of Information Collection:* Home Care Agency Screening Instrument and Follow-up Telephine Interview; *Form Number:* HCFA-45; *Use:* Identification and description of effective quality assurance strategies will enable HCFA to determine what, if any, regulatory or other initiatives are necessary; *Frequency:* One-time; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 10,000; *Average Hours per Response:* .167; *Total Estimated Burden Hours:* 1,670.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Hearing—Part B Medicare Claim; *Form Number:* HCFA–1965; *Use:* This form is used by either the "Medicare Claims" beneficiary or a part B supplier/physician to request a hearing with the Medicre carrier's hearing officer, after Supplementary Medical Insurance Benefits have been denied at the informal review stage; *Frequency:* On occasion; *Respondents:* Individuals/households and small businesses/organizations; *Estimated Number of Responses:* 55,000; *Average Time per Response:* 10 minutes; *Total Estimated Burden Hours:* 9,166.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicaid State Agency Third Party Liability Inventory Form; *Form Number:* HCFA–464; *Use:* This form is used by Medicaid State Agencies to enforce Medicaid as "payor of last resort" by identifying third parties responsible for the legal liability to pay for health care and services arising out of injury or disease; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 56; *Average Hours per Response:* 8; *Total Estimated Burden Hours:* 448.

10. *Type of Request:* Extension; *Title of Information Collection:* Request for Reconsideration of Part A Health Insurance Benefits; *Form Number:* HCFA–2649; *Use:* This form is used to request reconsideration of an adverse determination made on Part A health insurance claim for items or services under the Medicare program; *Frequency:* On occasion; *Respondents:* Individuals/households and State/local governments; *Estimated Number of Responses:* 62,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 15,500.

11. *Type of Request:* Extension; *Title of Information Collection:* Request for Claim Number Verification; *Form Number:* HCFA–1600; *Use:* When Medicare providers affiliated with State, local, or Federal agencies are unable to obtain a correct claim number from the Medicare beneficiary or when any other provider is unable to obtain written consent of the beneficiary because of illness or injury, this form is used to request the correct claim number from the Social Security Field Office; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 453,100; *Average Time per Response:* 5 minutes; *Total Estimated Burden Hours:* 37,758.

12. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Eligibility Quality Control (MEQC) Statistical Tables; *Form Numbers:* HCFA–302—309; *Use:* The MEQC statistical tables are a useful device in carrying out the primary objective of the MEQC system—reducing dollar losses in the administration of Medicaid. They provide information concerning the major causes of errors, signifying where States should direct their corrective action efforts; *Frequency:* Semi-annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 108; *Average Hours per Response:* 2.24; *Total Estimated Burden Hours:* 242 (reporting) and 148 (recordkeeping) for a total 390.

13. *Type of Request:* Revision; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form Numbers:* HCFA–1514; *Use:* This form is used by providers of services to request certification for participation in the Medicare/Medicaid programs; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 1,984; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 496.

14. *Type of Request:* Extension; *Title of Information Collection:* Application for Health Insurance Benefits under Medicare for Individual with Chronic Renal Disease; *Form Number:* HCFA–43; *Use:* This form is the application form used to obtain information needed to determine Medicare eligibility for end stage renal disease and becomes a permanent part of the claims file; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 13,500; *Average Time per Response:* 26 minutes; *Total Estimated Burden Hours:* 5,850.

15. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements Contained in Home Health Agencies Conditions of Participation; *Form Nubmer:* HCFA–R–39; *Use:* Home health agencies participating in Medicare are required to establish and maintain this information in order to show compliance with published health and safety standards; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 5,659; *Average Hours per Response:* 6.84; *Total Estimated Burden Hours:* 38,709.

16. *Type of Request:* Reinstatement; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Form Number:* HCFA–276; *Use:* This form is needed to establish the reasonable cost of providing covered services to the enrolled Medicare population of a prepaid health plan; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 600; *Average Hours per Response:* 43.47 (reporting) and 140.8 (recordkeeping); *Total Estimated Burden Hours:* 26,080 (reporting) and 17,600 (recordkeeping) for a total of 43,680.

17. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in the Hospice Care Regulation; *Form Number:* HCFA–R–30; *Use:* This information collection is needed to implement the Medicare hospice benefit. Information is needed from individuals electing hospice care and from hospices participating in the program to assure that statutory and regulatory requirements are met; *Frequency:* On occasion; *Respondents:* Individuals/households, businesses/other for profit, non-profit organizations, and small businesses/organizations; *Estimated Number of Responses:* 18,000; *Average Hours per Response:* 25.91; *Total Estimated Burden Hours:* 466,300. (reporting) and 17,600 (recordkeeping) for a total of 43,680. Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and

recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 26, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-202 Filed 1-4-91; 8:45 am]

BILLING CODE 4120-03-M

Notice of Hearing: Reconsideration of Disapproval of California State Plan Amendment (SPA)

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

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on February 12, 1991 in Room 406, 50 United Nations Plaza, San Francisco, California, to reconsider our decision to disapprove California State Plan Amendment 90-04. A compliance hearing will also be held February 12, 1991, to determine whether the State of California has failed to comply with the nursing home survey and certification requirements of the Omnibus Budget Reconciliation Act of 1987.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove California State Plan amendment (SPA) number 90-04.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

California SPA 90-04 would amend the State Medicaid plan for payment of nursing facility services. State plan amendment 90-04 has been submitted to comply with the nursing home reform payment provisions of section 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87).

The issue in this matter is whether SPA 90-04 violates section 1902(a)(13)(A) of the Act which requires that States' Medicaid payment rates take into account the facilities' costs of complying with the nursing home reform requirements of OBRA 87.

Section 1902(a)(13)(A) of the Act requires that States' Medicaid payment rates take into account the facilities' costs of complying with the nursing home reform requirements of OBRA 87. Section 4211(b)(2) of OBRA 87 required each State to submit by April 1, 1990, an amendment to its payment plan for nursing facility services in order to be effective October 1, 1990. This provision further requires that all such plan amendments submitted on or before April 1, 1990, be reviewed by HCFA and approved or disapproved no later than September 30, 1990. Federal regulations at 42 CFR 447.253 and 447.255 require the State to provide satisfactory assurances and related information to HCFA that, effective October 1, 1990, its payment rates take into account the costs incurred by nursing facilities in meeting the new certification requirements imposed by the OBRA 87 nursing home reform requirements.

Although the State of California submitted a plan amendment on March 29, 1990, HCFA's review of the amendment determined that it was not acceptable. Despite the State's indication that nursing facilities in the State will incur significant costs in meeting the new requirements, the plan was not modified and rates were not increased to meet these costs. Instead, the State indicated that its current system, as modified by recently enacted State legislation, was in "substantial compliance" with the new Federal requirements. The State further expressed its position that the costs incurred by facilities in meeting the new requirements would exceed the enhancements in patient outcomes brought about by the new Federal standards. Therefore, HCFA could not determine that the State's plan takes into account the added cost which facilities will incur in meeting the nursing home reform requirements of OBRA 87.

Section 4211 of OBRA 87 must be complied with in order for nursing facilities to meet the new Federal nursing home reform requirements. These requirements are necessary for a nursing facility to participate in the Medicaid program. Further, States are required by section 1902(a)(13)(A) of the Act to modify their Medicaid payment systems to take these added costs into account. There is no provision in Federal law which permits waiver of these requirements or which allows HCFA to determine that an individual State's system is equivalent to the new standards.

The notice to California announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. John Rodriguez,

Deputy Director, Medical Care Services, Department of Health Services, 714/744 P Street, Sacremento, California 94234.

Dear Mr. Rodriguez: I am responding to your request for reconsideration of the decision to disapprove California State Plan Amendment (SPA) 90-04. California 90-04 would amend the State Medicaid plan for payment of nursing facility services. State plan amendment number 90-04 was submitted by the State to comply with the nursing home reform payment provisions of section 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87).

The issue in this matter is whether SPA 90-04 violates section 1902(a)(13)(A) of the Act which requires that States' Medicaid payment rates take into account the facilities cost of complying with the nursing home reform requirement of OBRA 87.

I am scheduling a hearing on your request for reconsideration to be held on February 12, 1991, at 2:00 p.m. in Room 406, 50 United Nations Plaza, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430. A compliance hearing will also be held on February 12, 1991, to determine whether the State of California has failed to comply with the nursing home survey and certification requirements of OBRA 87.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky, Ph.D.,

Adminstrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-203 Filed 1-4-91; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-01-4050-09 FES 90-38]

Availability of Final Wilderness Suitability Study and Environmental Impact Statement (EIS) for the Wales Creek, Hoodoo Mountain and the Quigg West Wilderness Study Areas (WSAs); Montana

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of availability of the final wilderness suitability study and EIS for the Wales Creek, Hoodoo Mountain and Quigg West WSAs.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and sections 603(a) and 202(a) of the Federal Land Policy and Management Act of 1976, the Department of the Interior has prepared a Final Wilderness Suitability Study and Environmental Impact Statement for the Wales Creek, Hoodoo Mountain and Quigg West WSAs. The proposed action recommends that the Wales Creek and Hoodoo Mountain WSAs not be designated wilderness and that they continue to be managed as set forth in the Garnet Resource Area Resource Management Plan (RMP) and accompanying Environmental Impact Statement (Garnet RMP/EIS).

The recommendation for the 520 acre Quigg West WSA is that it be designated wilderness as a tack-on to the larger Forest Service RARE II Area, Quigg (Q-1807). If the Forest Service area is not designated wilderness, the Quigg West unit would be managed under a special management designation through the Garnet RMP/EIS. The Quigg West WSA is located approximately 20 miles west of Phillipsburg, Montana.

The Wales Creek and Hoodoo Mountain WSAs are located in the Garnet Mountain Range of western Montana. The 11,580 acre Wales Creek WSA is approximately 40-miles east of Missoula, Montana; and the 11,380 acre Hoodoo Mountain WSA is approximately 16 miles northeast of Drummond, Montana.

The Bureau of Land Management wilderness proposals will utlimately be forwarded by the Secretary of the Interior to the President and by the President to Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council of Environmental Quality Regulations, 40 CFR 1501.10b(2). The final decision on wilderness designation rests with Congress.

SUPPLEMENTARY INFORMATION: Copies of the final document are available at the following BLM offices:

Butte District Office, Bureau of Land Management, P.O. Box 3388, 106 N. Parkmont, Butte, Montana 59702, at phone 406-494-5059 or (FTS 585-8059).

Garnet Resource Area Office, Bureau of Land Management, 3255 Fort Missoula Road, Missoula, Montana 59801, at phone 406-329-3914 or (FTS 585-3914).

Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800, at phone 406-255-2936 or (FTS 588-7936).

Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240, at phone 202-208-1913 or (FTS 268-1913).

Copies are also available for inspection at the following libraries:

Maureen and Mike Mansfield Library, University of Montana, Missoula, Montana 59812.

The public libraries at—Missoula, Great Falls, Helena, and Deer Lodge.

FOR FURTHER INFORMATION CONTACT: Darrell Sall, Resource Area Manager, Bureau of Land Management, 3255 Fort Missoula Road, Missoula, Montana 59801, at phone 406-329-3914 or (FTS 585-3914).

Dated: December 31, 1990.

Jonathan P. Deason,

Director, Office Environmental Affairs.

[FR Doc. 91-178 Filed 1-4-91; 8:45 am]

BILLING CODE 4310-DN-M

[CA-065-01-3110-B00]

Realty Action—Exchange; California

AGENCY: Bureau of Land Management, California; Department of Interior.

ACTION: Notice of realty action; exchange of public and private lands in Kern County, CA 27733.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

Mount Diablo Meridian, California

T. 32 S., R. 38E.
Section 14, W½NE¼, SE¼, E½SW¼;
Section 22, SW¼NE¼, SE¼SE¼NE¼, N½SE¼, SE¼SE¼, E½SW¼SE¼;

San Bernardino Meridian, California

T. 11N., R. 10 W.
Section 8, N½N½SE¼, S½SE¼, SW¼

In exchange for these lands, the United States will acquire private land within the designated Desert Tortoise Natural Area in Kern County from landowners of record. As exchange agreements are developed, separate notices of realty action will be published, specifically describing the parcels to be exchanged and the parties involved.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire portions of the non-Federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoises within its range. Continued declines led to Federal listing of the desert tortoise as threatened on April 2, 1990. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchanges will be on an equal value basis. Full equalization of value will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations, terms and conditions.

1. A reservation of right-of-way to the United States of ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Rights of way of record.

3. Public easements for ingress and egress.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area, (619) 375-7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office,

300 South Richmond Road, Ridgecrest, California 93555.

DATES: On or before February 21, 1991, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, in care of the above address. Objectives will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 24, 1990.

Larry D. Foreman,

Acting District Manager.

[FR Doc. 91-21 Filed 1-4-91; 8:45 am]

BILLING CODE 4310-04-M

Bureau of Reclamation

Coordinated Long-range Operation of Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Review of existing coordinated long-range operating criteria for Colorado River reservoirs.

SUMMARY: The Operating Criteria, promulgated pursuant to Public Law 90-537, were published in the Federal Register on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty. The Operating Criteria provide that they will be reviewed at least at 5-year intervals with participation by such Colorado River Basin State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate. Public Law 90-537 allows the Secretary of the Interior, as a result of actual operating experiences or unforeseen circumstances, to modify the Operating Criteria to better achieve their specified statutory purposes.

This will be the fourth 5-year review of the Operating Criteria conducted since their initial promulgation in 1970. Mr. Dennis B. Underwood, Commissioner of Reclamation, shall be the authorized agent of the Secretary of the Interior for the purpose of conducting and coordinating this review.

DATES: The existing Operating Criteria are included at the end of this notice. Written comments as to whether the Operating Criteria should be modified are invited during the 60 days following publication of this notice. Written comments may be mailed to:

Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005.

or

Regional Director, Upper Colorado Region, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah 84147.

SUPPLEMENTARY INFORMATION: If the comments received indicate a need for further information, meetings may be held to receive further input from the public. All respondents to this notice will be notified by mail of the times, dates, and places of any such meetings.

The scope of this review shall be consistent with the statutory purposes of the Operating Criteria, which are "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty." Long-range operations generally refers to reservoir operations on an annual or less frequent basis, as opposed to short-term (hourly or daily) operations.

Dated: December 31, 1990.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 91-230 Filed 1-4-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: Jan. 2, 1991.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) And (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Tennessee Farmers Cooperative
(2) P.O. Box 3003, LaVergne, TN 37086
(3) P.O. Box 3003, LaVergne, TN 37086
(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-215 Filed 1-4-91; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: TRINOVA Corporation, 3000 Strayer, P.O. Box 50, Maumee, OH 43537-0050

2. Wholly-owned subsidiaries that will participate in the operations, and state(s) of incorporation:

Aeroquip Corporation, 3000 Strayer, P.O. Box 632, Maumee, OH 43537-0632. State of Incorporation: Michigan

Vickers Incorporated, 3000 Strayer, P.O. Box 631, Maumee, OH 43537-0631. State of Incorporation: Delaware.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-216 Filed 1-4-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-329 (Sub-No. 1X)]

Cedar Valley Railroad Co. Abandonment Exemption—in Bremer County, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Cedar Valley Railroad Company of a 13.48-mile line of railroad between milepost 274.48, near Waverly, and milepost 261.0, near Readlyn, in Bremer County, IA, subject to standard labor protective conditions, an historic

preservation condition, an endangered species condition, a public use condition, and a trail use/rail banking condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 6, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 17, 1991, petitions to stay must be filed by January 22, 1991, and petitions for reconsideration must be filed by February 1, 1991. Requests for a public use condition must be filed by January 17, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-329 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: David H. Hoesing, Rasmussen & Hoesing, 9140 West Dodge Road, suite 275, Omaha, NE 68114.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

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

Decided: December 27, 1990.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-217 Filed 1-7-91; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 18, 1990, a proposed consent decree in *United States of America* v. *AVX Corporation, et al.*, Civil Action No. 83-3882-Y, was lodged with the United States District Court for the District of Massachusetts. This case concerns claims by the United States and the Commonwealth of Massachusetts for past and future cleanup costs, for injunctive relief, and for natural resource damages at the New Bedford Harbor Superfund site (the Site) in southeastern Massachusetts. The United States' claims are under section 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 7003 of the Resource Conservation and Recovery Act, section 504 of the Clean Water Act, and the Rivers and Harbors Act. The Commonwealth has similar claims under section 107 of CERCLA and state law.

The proposed consent decree resolves these claims against two out of the five defendants named in this lawsuit. The settling defendants are Belleville Industries, Inc. and Aerovox Incorporated. The consent decree requires these two defendants to pay a total of $12.6 million towards the costs incurred by the federal and state governments for investigation and cleanup of PCB contamination in New Bedford Harbor and for natural resource damages. Of this amount, $9.45 million will be paid to the Environmental Protection Agency's Superfund for past and future cleanup costs. The remaining $3.15 million will be paid to the National Oceanic and Atmospheric Administration (NOAA), which is the lead federal natural resource trustee at this site, and the Massachusetts Secretary of Environmental Affairs, who is the designated state natural resource trustee, for natural resource damages. Most of this damages amount will be placed in a fund in the Registry of the U.S. District Court and will be used jointly by NOAA, the Department of the Interior, and the state trustee to restore, replace, or acquire the equivalent of natural resources that have been injured by the PCB contamination in New Bedford Harbor.

This settlement does not affect the pending claims relating to the New Bedford Harbor site against the three other defendants in this action.

The Department of Justice will receive comments on the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AVX Corporation*, D.J. Ref. 90-11-2-32.

The proposed consent decree may be examined at the Office of the United States Attorney, 1107 J.W. McCormack Post Office/Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, 2203 JFK Federal Building, Boston, Massachusetts 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). Copies of the proposed consent decree may be obtained in person or by mail from the Document Center at the above address. In requesting a copy, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-182 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Action

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Solid State Circuits, Inc., a/k/a MRAC, Inc.*, Civil Action No. 90-3545-S-2, was lodged with the United States District Court for the Western District of Missouri on December 19, 1990. This Consent Decree concerns a Complaint filed by the United States against Solid State Circuits, Inc., also known as MRAC, Inc., pursuant to sections 106 and 107 of CERCLA to compel SSC to implement the remedial action selected in the Record of Decision issued by the Environmental Protection Agency ("EPA") on September 27, 1989 for the Solid State Circuits ("SSC") Site. The SSC Site is located in Republic, Missouri, and was operated by Solid State Circuits, Inc. The SSC Site was placed on the National Priorities List on June 10, 1986 (41 FR 21,054).

The proposed Consent Decree requires that Solid State Circuits, also known as MRAC, Inc., undertake the remedial action selected in the Record of Decision and pay the unreimbursed past and future costs of the United States which the United States has 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. *Solid State Circuits, Inc., a/k/a MRAC, Inc.*, DOJ. Ref. No. 90-11-3-186.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Missouri, 222 N. John Q. Hammons, suite 1200, Springfield, Missouri 65806, and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., Washington, DC 20004, (202) 347-2072. 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 $56.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-179 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that, on December 10, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 88-07, titled "Basic Principles And Control of Refinery Emulsion Formation," filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the parties participating in Project 88-07. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become participants in Project No. 88-07:

Shell Development Company, P.O. Box 2099, Houston, TX 77252-2099;

Petro-Canada Inc., P.O. Box 2844, Calgary, Alberta T2P 3E3, Canada.

No other changes have been made in either the membership or the planned activities of the group research project.

On September 6, 1989, the participants in PERF Project No. 88-07 filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 17, 1989 (54 FR 42578).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-180 Filed 1-4-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Reserach Notifications; SQL Access Group

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group ("the Group") on December 6, 1990 has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990 and August 31, 1990, the Group filed additional written notifications. The Department published a notice in the **Federal Register** in response to the additional notifications on July 18, 1990 (55 FR 29277) and October 17, 1990 (55 FR 42081), respectively.

The identities of the additional parties to the Group are;

ASK, Inc., Ingres Division, P.O. Box 4026, 1080 Marina Village Parkway, Alameda, CA 94501-1095.

Fulcrum Technologies, Inc., 560 Rochester Street, Ottawa, Canada KIS 5K2.

Locus Computing Corporation, 9800 La Cienega Boulevard, Inglewood, CA 90301-4440.

Software AG, 11190 Sunrise Valley Drive, Reston, VA 22091

and

Uhlandstrasse 12, 6100 Darmstadt, Germany.

Sterling Software, 21050 Vanowen Street, Canoga Park, CA 91304.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-181 Filed 1-4-90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 21, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on December 26, 1990: J. Ward Testa.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91-153 Filed 1-4-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-267]

Public Service Co. of Colorado (Fort St. Vrain Nuclear Generating Station); Exemption

I.

Public Service Company of Colorado (PSC or the licensee) is the holder of Facility Operating License No. DPR-34, which authorizes operation of the Fort St. Vrain Nuclear Generating Station (FSV) at steady-state reactor power levels not in excess of 842 megawatts thermal. The license states, among other things, that FSV is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. FSV consists of a high temperature gas cooled reactor located at the licensee's site in Weld County, Colorado. FSV is now permanently shutdown and partially defueled.

II.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section 50.47(b) of 10 CFR part 50 provides that both offsite and onsite emergency plans must meet the standards specified in subparagraphs (1) through (16) of 10 CFR 50.47(b). With respect to offsite emergency preparedness, PSC states that an exemption from 10 CFR 50.54(q) is necessary because, with the proposed cessation of offsite response capability for FSV, PSC will no longer meet the standards for offsite preparedness that are listed in 10 CFR 50.47(b) and in appendix E to 10 CFR part 50. In particular, PSC will not meet the standards for offsite preparedness because under the proposed Defueling Emergency Response Plan (DERP), the Emergency Operations Facility will be eliminated, the prompt notification (siren) system will not be utilized and the annual dissemination of basic emergency planning information to the public located within the five-mile radius (the current approved Emergency Planning Zone) of FSV will not be continued.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Further, 10 CFR 50.12(a)(2) provides that the Commission will not consider granting an exemption unless special circumstances are present. The special circumstance of 10 CFR 50.12(a)(2) applies to FSV's situation:

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III.

By letter dated June 15, 1990, the licensee requested an exemption from the emergency preparedness requirements of 10 CFR 50.54(q) based on the FSV's permanent shutdown status and partial defueled condition. FSV was permanently shutdown on August 18, 1989. The licensee submitted a Defueling Safety Analysis Report (DSAR) on August 16, 1989. This report indicated that the potential risk to the public was significantly reduced and the range of credible accidents and accident consequences were limited after the permanent shutdown and during defueling. The worst case accident for this facility is the dropping of a loaded spent fuel shipping cask in the reactor building. The licensee's analysis showed a two hour exposure of 0.19 mrem whole body gamma dose at 100 meters. They concluded that based upon the consequences of this worst case accident, the highest emergency classification that can occur is an Alert. Therefore, it would be appropriate to reduce the scope of the FSV emergency preparedness plan by eliminating offsite emergency response, while maintaining the emergency response capability necessary for onsite response to an Alert emergency classification.

The NRC staff has independently calculated the offsite dose resulting from a fuel handling accident using the assumptions and parameters in the standard review plan, the updated Safety Analysis Report (SAR) and the licensee's submittal dated June 15, 1990. The NRC staff's analysis indicated that the two hour whole body gamma dose would be 0.3 mrem at 100 meters. This value agrees with the licensee's exposure dose and is a small fraction of the (1) Rem whole body gamma dose from exposure to airborne radioactive materials. Under the general guidelines defining emergency classifications in NUREG–0654/FEMA–REP–1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Procedures in Support of Nuclear Power Plants," dated November 1980, as well as the nature of the accident, it would be highly unlikely that FSV would be in an emergency situation in which the result would be classified greater than an Alert. Under these circumstances, the staff believes that the offsite emergency response plan is not required. The staff took this finding into consideration while reviewing the proposed DERP based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), and NUREG–0654.

The NRC staff has reviewed the DERP based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), the requirements of appendix E to 10 CFR part 50, and the guidance criteria of NUREG–0654. The NRC staff also reviewed the DERP based on the requirements of 10 CFR 50.47(d) for a license authorizing only fuel loading and low power testing. The requirements of 10 CFR 50.47(d) address the lower risk associated with low power operation and are generally appropriate for reviewing the offsite aspects of the FSV DERP.

Based on this review, the Commission has concluded that the FSV DERP provides an acceptable emergency preparedness plan for FSV in its non-operating and partially defueled condition, and the plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The licensee's request for exemption, based on the standards set forth in 10 CFR 50.12, is reasonable in light of the highly reduced offsite radiological risk associated with FSV's non-operating and partially-defueled condition. The requested exemption, is (1) Authorized by law, is consistent with the common defense and security, and will not present an undue risk to the public health and safety, and (2) presents special circumstances.

IV.

Regarding the existence of special circumstances which justify the exemption, 10 CFR 50.12(a)(2)(ii) applies to FSV's situation. For operating nuclear plants, emergency planning is essential to safety and the NRC's emergency planning regulations exist to ensure that adequate protective measures can and will be taken to protect the public health and safety in the event of a radiological emergency. The Commission concurs in PSC's analysis that no credible accident can occur that would require offsite emergency preparedness and thus adversely impact public health and safety in terms of offsite emergency preparedness. Considering the partially defueled condition at FSV, requiring PSC to continue to meet the full range of NRC's emergency planning regulations is not necessary in order to achieve the underlying purpose of 10 CFR 50.54(q). With the level of emergency preparedness provided by the DERP, PSC will be fully capable of responding adequately to the spectrum of credible accidents that could occur at FSV in its partially defueled condition.

V.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, (1) The exemption requested by PSC's letter dated June 15, 1990, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present as described above.

Accordingly, the Commission hereby grants the following exemption:

The Fort St. Vrain Nuclear Generating Station is exempt from the requirements of 10 CFR 50.54(q) in regard to offsite emergency response for emergency preparedness,

provided that (1) The reactor is permanently shutdown, and (2) the Fort St. Vrain Nuclear Generating Station Defueling Emergency Response Plan is implemented.

This Exemption will remain in effect unless and until revoked by the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (55 FR 53215, December 27, 1990).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 31st day of December 1990.

[FR Doc. 91-218 Filed 1-4-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28724; File No. SR-AMEX-90-34]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Modification of the Exchange's Strike Price Policy

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1990, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to conduct a one-year pilot program during which the Exchange will introduce 2½ point strike (exercise) price intervals for options on certain stocks trading between $25 and $50. The AMEX will review the utility of these narrower intervals and the criteria for determining a stock's eligibility for inclusion in the program at the end of the pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since April 1985, the uniform policy among options exchanges has been to list strike (exercise) prices for equity options at 2½ point intervals for options with underlying stocks trading between $5 and $25, and at 5 point intervals for options with underlying stocks trading above $25. During the five years that the program has been in effect, the Exchange has noted that member firms have expressed a great deal of satisfaction with the 2½ point strike price policy for options on stocks trading below $25. In addition, the AMEX states that member firms have cited considerable customer interest in trading options at the narrower intervals and generally feel that the quality of markets for those options has been enhanced.

The Exchange now proposes to list strike prices at 2½ point intervals for options on certain stocks which trade between $25 and $50 per share. Since May 1990, the Exchange Options Committee has been studying the feasibility of and the criteria for developing such narrower strike price intervals. The study was prompted by the observation that certain low volatility stocks of highly capitalized companies tend to trade in a fairly narrow price range and exhibit limited options trading activity because in-the-money options sell for little more than intrinsic value while out-of-the-money options yield little premium income to attract uncovered or covered writers.

The AMEX believes that, for certain selected stocks, the ability to add strike price at 2½ point intervals between $25 and $50 will offer customers greater opportunities and flexibility which, in turn, will enhance the depth and liquidity for those options markets. In addition, the Exchange believes that narrower intervals will enable customers to tailor more finely their options positions to achieve intended investment objectives.

Accordingly, the Exchange proposes the following general criteria to be applied in determining a stock's eligibility for inclusion in the pilot program. An undearlying stock must:

1. Have a minimum of 250 million shares outstanding;
2. Have a dividend yield of at least 2%;
3. Trade at a price between $25 and $50; and
4. Have a lower than market volatility (*e.g.*, currently less than 30%) as measured over the previous six months.

Using the above criteria, the Exchange finds that five AMEX options would qualify for the pilot.

The AMEX believes that the proposed rule change is consistent with the requirements of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposal is designed to promote just and equitable principles of trade and to protect the investing public by increasing the flexibility accorded market participants. This increased flexibility will, in turn, enhance the depth and liquidity of the AMEX's options market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received any formal comments regarding the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-219 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28725; File No. SR-CBOE-90-34]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Implementation of Transaction Fees for Stocks, Rights and Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement a fee for transactions in stocks, rights and warrants traded on the CBOE in an amount equal to the number of shares times $.003 plus the transaction value times $.0001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to implement a fee for transactions in stocks, rights and warrants in an amount equal to the number of shares times $.003 plus the transaction value times $.0001. The proposed fees, which shall apply to all transactions effected after trading in each product begins, is designed to allow the CBOE to establish transaction fees similar to those imposed on the American Stock Exchange.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges amoung the Exchange's members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-220 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28726; File No. SR-NYSE-89-24]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Reporting of Extensions of Time for Payment/Delivery of Securities by Correspondent Broker-Dealers.

I. Introduction

On September 8, 1989, the New York Stock Exchange ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to require member organizations to file a monthly report indicating all correspondent broker-dealers whose overall ratio of requested extensions of time on payment/delivery of securities to total transactions for the month exceeds 2%.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27293 (September 26, 1989), 54 FR 41194 (October 5, 1989). Three comment letters were received by the Commission regarding the proposal.[3]

II. Background and Description of the Proposal

Regulation T, issued by the Board of Governors of the Federal Reserve System ("FRB") pursuant to the Act, governs the extension of credit to customers by broker-dealers for purchasing securities.[4] Rule 15c3-3 under the Act governs the extension of credit for selling securities.[5] Under Regulation T and rule 15c3-3(n), a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities exchange or a registered national securities association [collectively, self-regulatory organizations ("SROs")]. Under Regulation T and rule 15c3-3(n), an SRO may grant a broker-dealer an extension of time for payment for purchases or for delivery on sales of securities when: (1) It is satisfied that the broker-dealer is acting in good faith in making the request; and (2) exceptional circumstances warrant such action. The SROs that process extension requests, including the NYSE, have developed standards and procedures for evaluating, granting, denying, and controlling extension requests. The standards include acceptable reasons for requesting an extension, number of extensions permitted per reason, and special limitations and restrictions on customers.[6]

In addition, the NYSE has been designated by the Commission as the Designated Examining Authority ("DEA") for almost all of its members.[7] This designation places sole responsibility upon the Exchange for examining its members for compliance with rules relating to the financial, operational, and custodial practices of member firms.

The NYSE is proposing to require its member organizations to file a monthly report with the Exchange's Credit Regulation Section identifying all correspondent broker-dealers whose overall ratio of extensions of time for payment/delivery of securities requested pursuant to Regulation T and rule 15c3-3(n) to total transactions for the month exceeds 2%, regardless of whether such requests were made to the Exchange or another SRO. The monthly report will require member firms to identify: (1) The correspondent's name; (2) the number of transactions by the correspondent for the month; (3) the number of extensions for the month; and (4) the ratio of the number of extensions requested to total transactions.

The Exchange states that the purpose of the proposed monthly report will be to permit the Exchange to identify and effectively regulate instances where an excessive number of extensions of time requests have been made by member organizations on behalf of their correspondent broker-dealers. The Exchange further states that the proposed report is necessary to allow the Exchange an opportunity to assess the overall incidence and impact of requests for extensions of time for payment/delivery of securities submitted pursuant to Regulation T and rule 15c3-3(n) by member organizations and to take appropriate action to monitor and regulate extensions of credit for customers of broker-dealers. In the rule filing, the Exchange points out that it is necessary to monitor extensions requested on behalf of correspondents because the credit is being extended by the member organization carrying the account. The Exchange states that because other SROs that process extension requests do not necessarily utilize the same standards, parameters, and restrictions as the NYSE, the Exchange is requiring such reporting in order to allow it to determine the aggregate effect of extensions upon its members. Finally, the Exchange states that, while the ratio of extensions requested to total transactions is computed by the Exchange from extension requests filed with it by each member firm, the Exchange does not have the capability to make such calculations separately for each correspondent requesting extensions through a member organization.

Under the proposal, the Exchange will require that the reports be submitted no later than ten business days following the end of a reporting month. Further, the first reports must be submitted to the Exchange 90 days after Commission approval of this rule filing.

III. Comments Received

The Commission received three comment letters regarding the proposed rule change. Bear, Stearns & Co. Inc. submitted a letter ("Bear Stearns letter") which stated that the proposed rule is insufficiently clear because it does not indicate whether proprietary transactions should be included in a calculation of correspondent transactions.[8] The Bear Stearns letter further stated that the NYSE's proposed rule would result in redundant reporting because Bear Stearns, which acts as a clearing agent for numerous broker-dealers, already reports extension requests to the Exchange, and that, in most instances, the extension reports are identified by correspondent code. The letter suggests that the Exchange

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] Comment letters were received from Bear, Stearns & Co. Inc., Broadcort Capital Corp., and the Securities Industry Association ("SIA"). See letter from Raymond L. Aronson, Managing Director, Legal Department, Bear, Stearns & Co., Inc., to Jonathan Katz, Secretary, SEC, dated October 24, 1989; letter from Eugene E. Eilbacher, Vice President, Chief Operating Officer, Broadcort Capital Corp., to Jonathan G. Katz, Secretary, SEC, dated October 26, 1989; and letter from Richard Brueckner, Chairman, Clearing Committee, SIA, to Jonathan Katz, Secretary, SEC, dated December 27, 1989.

[4] 12 CFR 220.4(c) and 220.8(d) (1989). Regulation T requires that customers with a cash account pay for securities within seven business days of purchase; for customers with a margin acocunt, there must be sufficient minimum margin (typically 50%) to support the purchase.

[5] 17 CFR 240.15c3-3. In particular, rule 15c3-3(m) requires a broker-dealer which executes a customer sell order to obtain possession of the securities within ten business days of the settlement date or to close the transaction by purchasing the securities. Under paragraph (n) of the Rule, broker-dealers may request an extension of time from an SRO.

[6] See NYSE Interpretation Handbook, pages 6430-44, for a description of the Exchange's parameters.

[7] 17 CFR 240.17d-1 (1990).

[8] See letter from Raymond L. Aronson, Managing Director, Legal Department, Bear, Stearns & Co. Inc., to Jonathan Katz, Secretary, SEC, dated October 24, 1989.

consider an exception to its proposed rule for clearing firms that already report the required information in a different format.

Broadcort Capital Corp. submitted a letter ("Broadcort letter") which stated that the Exchange could capture the same information as on the proposed monthly report by implementing minor changes to its existing reporting system, rather than requiring an additional monthly report.[9]

A letter submitted by the Securities Industry Association ("SIA letter") stated that the proposed rule change would impose too much of a burden on clearing firms.[10] The SIA letter stated that it is the responsibility of the SRO to provide regulatory oversight of its members; therefore, the Exchange should regulate the introducing brokers and not impose additional work on clearing firms.

The NYSE submitted a letter in response to the Bear Stearns and Broadcort letters.[11] In its response letter, the NYSE addressed several points that were raised by the commentators. First, the Exchange stated that the comment letters incorrectly indicated that the data being requested in the proposed rule change is either already supplied to the Exchange or could be readily captured through existing reports. The Exchange stated that, although its current extension system records and maintains totals of the number of extension requests received from each member organization broken down by each branch office or correspondent of the firm, this information comes to the Exchange under an internal coding system that is unique to each member organization. Thus, the Exchange cannot discern the branch office or correspondent of the firm. The Exchange stated that in order for it to use the information supplied by the member organizations, these member organizations would have to supply the Exchange with a breakdown of their coding system and identify the symbol used for each branch or correspondent. The Exchange concluded that keeping this information updated would require constant reporting of every correspondent change by member organizations and concomitant changes to the Exchange system programming.

The NYSE also stated that it only receives FOCUS reports containing numerical transactional data from carrying/clearing member organizations, and not from introducing broker-dealers.[12] This is relevant because FOCUS reports filed with the Exchange by member firms provide the Exchange with the total number of transactions done by the member firm filing the report. For member firms that also carry customer accounts, this total includes transactions done by introducing broker-dealers.[13] Thus, the information provided to the Exchange on the FOCUS reports does not report separately the number of transactions done by introducing firms. The NYSE also noted that, although member organizations that clear and carry customer accounts for other member and non-member organizations are aware of the total transactions processed through them by each correspondent, this information is not reported to the Exchange.

In its response letter, the NYSE also stated that the information it requires to monitor extensions of credit currently is not received from those clearing firms that do not submit extension requests to the Exchange. Finally, in response to the Bear Stearns suggestion that the proposed rule change is insufficiently clear because it does not indicate whether proprietary transactions should be included in a calculation of correspondent transactions, the Exchange stated that because proprietary transactions of correspondents would be considered customer transactions for purposes of Regulation T and Rule 15c3–3(n), they would be included in the proposed calculation.

IV. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1) and 7(a) of the Act.[4] Specifically, the Commission believes the proposal is consistent with section 7(a) in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities. The Commission also believes that the proposal supports the purposes of Regulation T, which was issued by the FRB pursuant to section 7(a) of the Act, because it helps to regulate extensions of credit by and to brokers and dealers. The Commission further finds that the proposed rule change is consistent with the requirements of section 17(d) of the Act and rule 17d–1 thereunder in that the Exchange has been designated as having responsibility for examining NYSE members who also are members of another SRO for compliance with applicable financial responsibility rules such as Regulation T and rule 15c3–3(n) under the Act.[15] Finally, the proposal will assist the Exchange in enforcing compliance with the above provisions, as required by section 6(b)(1) of the Act.[16]

At the outset, the Commission notes that Regulation T was promulgated to prevent the excessive use of credit in the securities markets.[17] Further, in creating the provisions in Regulation T and rule 15c3–3 for extensions of time for payment or delivery of securities, it was recognized that only in "exceptional circumstances" may a customer be granted an extension of time for payment to his or her broker of the amount required under Regulation T or for delivery of securities under rule 15c3–3.[18] In addition, the large number of extension requests that have been filed with the various SROs in recent years demonstrates the need to ensure that the SROs which process these requests have in place regulatory procedures that ensure the extension requests are appropriately handled and maintained.[19]

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[9] See letter from Eugene E. Eilbacher, Vice President, Chief Operating Officer, Broadcort Capital Corp., to Jonathan G. Katz, Secretary, SEC, dated October 26, 1989.

[10] See letter from Richard Brueckner, Chairman, Clearing Committee, SIA, to Jonathan Katz, Secretary, SEC, dated December 27, 1989.

[11] See letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, to Jonathan Katz, Secretary, SEC, dated December 18, 1989. The SIA letter was received by the Commission after the statutory period for public comment had expired. Because the Commission's approval of the NYSE proposal is occurring well after the SIA letter was received, the Commission is taking into consideration the comments of SIA in making its determination regarding this proposal.

[12] The Financial and Operational Combined Uniform Single Report (or FOCUS report) is a means of monitoring broker-dealer compliance with the Commission's financial responsibility rules and consists of monthly, quarterly, and annual financial reports. *See* generally 17 CFR 249.617 for the forms used in filing FOCUS reports.

[13] See rule 17a–5 under the Act (17 CFR 240.17a–5 (1989)) for the FOCUS reporting requirements of broker-dealers who clear transactions or carry customer accounts and broker-dealers who do not clear transactions or carry customer accounts.

[14] 15 U.S.C. 78f(b)(1) and 78g(a) (1988).

[15] 15 U.S.C. 78q(d) (1988) and 17 CFR 240.17d–1 (1990).

[16] The Commission notes that a national securities exchange is subject to suspension or revocation of its registration or to other sanctions if it fails to enforce compliance by one of its members with the provisions of the Act or the rules thereunder or with exchange rules. *See* Section 19(h)(1) of the Act, 15 U.S.C. 78s(h)(1) (1988).

[17] See 15 U.S.C. 78g(a) (1988).

[18] See Regulation T (12 CFR 220.4(c) and 220.8(d)) and Rule 15c3–3(n) (17 CFR 240.15c3–3(n)) under the Act.

[19] For example, in 1989, 1,525,781 extension requests were processed by the three SROs that currently process the largest number of these requests. During the first half of 1990, these three SROs processed 668,717 extensions requests.

The Commission also believes that careful monitoring by the SROs of requests for extensions of time for payment or delivery of securities is important for the detection of potentially abusive sales or trading practices. The Commission agrees with the NYSE that detecting and identifying instances where excessive Regulation T extension requests are filed will assist the Exchange in detecting potentially excessive reliance on extensions. Consequently, the Commission believes that the NYSE's proposal is consistent with section 7(a) of the Act and should assist the Exchange in strengthening the effectiveness of its Regulation T and rule 15c3–3 regulatory program.

While the Commission recognizes that the Exchange's proposed new monthly report will add a new reporting requirement for reporting member firms, the Commission believes that the benefits to the NYSE's regulatory oversight in this area outweigh any burden to its member firms who will be required to keep and report this information to the NYSE. Although the Exchange states that some of its member firms already report the number of extension requests broken down by branch office or correspondent, the information comes to the Exchange in a form that the Exchange cannot use unless the firms provide additional information and the Exchange makes several substantial adaptations to its existing system.[20] The Commission believes that the Exchange's decision to require a monthly report from its member organizations setting forth this information is a reasonable means of ensuring that the Exchange receives this important information in a timely and accurate manner. The Commission believes that the information the Exchange will receive from the monthly report, namely the ratio of extension requests to total transactions for each correspondent, can assist the Exchange in monitoring for potential sales practice abuses. The Commission believes that this information also will assist the Exchange in satisfying its responsibilities under the securities laws to ensuring compliance with the provisions of Regulation T and rule 15c3–3(n).

The Commission also believes that the concerns raised in the comment letters have been adequately addressed by the NYSE. As discussed above, the NYSE's response letter indicates that the alternatives suggested by the commentators to the NYSE proposal are either inefficient or impractical, and would not achieve the same result as the NYSE proposal.

Further, the Commission believes that the information the NYSE will derive from the proposed monthly reports will assist it in carrying out its statutory oversight responsibilities as designated under rule 17d–1 under the Act. In addition, because carrying firms ultimately are responsible for the credit extensions of their correspondent firms, the Commission believes that it is consistent with the NYSE's responsibilities under rule 17d–1 for the Exchange to require members with correspondent firms to supply this information.

Finally, the Commission notes that in order for Regulation T to be an effective regulatory tool, there must be a timely and accurate exchange of information between the SROs. To ensure that broker-dealers (or customers) are not abusing their Regulation T privileges, there must be a flow of information between the SROs so that each SRO knows the number of extension requests filed by any given broker-dealer or correspondent at any other SRO. The Commission believes that the NYSE proposal, which will provide the NYSE with additional information regarding its members, is one step toward that goal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated: December 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–221 Filed 1–4–91; 8:45 am]

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[20] See supra note 10 and accompanying text for the NYSE's discussion of this issue.

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. 34–28722, File No. SR–PHLX–89–57]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Responsibility of Specialists and Registered Options Traders To Make Ten-Up Markets

On December 12, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to expand the Exchange's ten-up guarantee for public customer orders.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 27573 (December 27, 1989), 54 FR 633.[3] No comments were received on the proposed rule change.

Currently, the PHLX requires specialists and Registered Options Traders ("ROTs") in all options series on the Exchange to guarantee public customer market and marketable limit orders a minimum ten contract fill at the availed upon best bid or offer ("ten-up requirement"). Currently, the availed upon best bid or offer is the best quote in the trading crowd.[4] For certain options series, the PHLX now proposes to determine the availed upon best bid or offer not just on the best quote in the trading crowd by also on the displayed or screen market quote, whichever is better. In particular, the PHLX proposes to use displayed quotes for options contracts in the two near-term expiration months. For these expiration months, public customer orders would be guaranteed a minimum ten contract fill at the best quote in the trading crowd or displayed market, whichever is better. Moreover, the PHLX proposes to extend the use of displayed market quotations in determining the availed upon best bid or offer for all options series on the PHLX as soon as the Exchange announces the availability of auto quote for updating options quotations. Upon such an announcement by the Exchange, the availed upon best bid or offer for these options quotations will be the better of the displayed or crowd markets.

The PHLX proposal includes three protective measures that the PHLX believes are appropriate due to the increased risk to specialists and ROTs of guaranteeing customers execution of their orders up to ten contracts at the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 15 CFR 240.19b-4 (1989).

[3] On October 29, 1990, the PHLX amended its proposal to: (1) Reduce from five minutes to three minutes the period after the opening rotation during which the displayed market would not be used as the basis for the ten-up market guarantee unless the displayed market quote had been updated (during the time when the displayed market is not the basis for the ten-up guarantee, the ten-up guarantee will be based on the crowd markets) and (2) delete its proposed exemption from the ten-up rule that would apply when a price change occurred in the underlying security within one minute prior to the receipt of a customer's order. See Letter from William Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, dated October 29, 1990.

[4] See Securities Exchange Act Rel. No. 26669 (March 27, 1989), 54 FR 13282.

best displayed bid or offer. First, the PHLX proposal provides a three minute window for the update of displayed quotations after the final opening rotation. During this time, unless a quotation has been updated, the ten-up guarantee will be based on the actual crowd market as opposed to the displayed market. Second, the PHLX proposal permits exemptions from the ten-up requirement to be granted by two floor officials with the concurrence of the Director of Surveillance for good cause, *e.g.*, a fast market condition or an obvious error. The PHLX proposal provides that any such exemption must be in writing and must set forth the basis upon which the exemption is granted. Finally, the PHLX proposal provides that ROT orders for less than ten contracts that are represented at a trading crowd by a floor broker shall not be used as a basis for the ten-up guarantee.

The Commission believes that the PHLX proposal to modify its current ten-up rule will expand the benefits to public customers associated with ten-up markets.[5] Specifically, in most instances public customers will be assured order execution to a minimum depth of ten contracts at the best bid or offer whether the best bid or offer is represented by the trading crowd or is displayed.[6] This proposal, as with the existing PHLX ten-up requirement, should encourage specialists and ROTs to become more competitive in making larger sized markets, thereby facilitating transactions in securities and contributing to a more free and open market. Moreover, as the Commission has not received negative comments from specialists and ROTs potentially affected by the proposal, the Commission has no reasons to believe that extending the ten-up requirement will be particularly burdensome on them.

Finally, the Commission believes that the qualification placed upon the expanded ten-up rule by the Exchange (*i.e.*, the three minute window for updating displayed quotes) is not unreasonable in view of the nature of options opening rotations. Because free trading cannot commence in an option until all series have gone through the rotation, it is possible that disseminated quotes for series handled early in the rotation may need to be updated after the rotation finishes. Thus, the ten-up requirement will be adhered to using current quotations. As noted, the ten-up requirement will continue during this period, but will be based on crowd quotations. The other two qualifications proposed by the Exchange are reasonable in light of the additional obligations and risk that the specialists and ROTs are undertaking in guaranteeing a minimum ten contract fill at the best bid or offer.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular sections 6 and 11a.[7] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with sections 11A(a)(1) (ii) and (iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-PHLX-89-57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: December 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-222 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

[5] Other exchanges also have adopted similar, but not identical, ten-up requirements. *See, e.g.* Securities Exchange Act Rel. Nos. 26924 (June 21, 1989), 54 FR 26284 (order approving a Chicago Board Options Exchange, Inc. ("CBOE") proposal that requires the trading crowd to make ten-up markets for options series that the CBOE includes in a pilot program); 27235 (September 11, 1989), 54 FR 38580 (order approving an American Stock Exchange proposal that requires specialists to make ten-up markets); and 28021 (May 16, 1990), 55 FR 21131 (order approving Pacific Stock Exchange ten-up proposal).

[6] Generally, quotations in the crowd respond quicker to changes in the underlying market and other information. Accordingly, basing a ten-up requirement on the better of displayed or crowd markets provides customers with greater price certainty and quality of execution. For example, if both the crowd market and displayed market for particular call option series is 5 bid, 5¼ offered and, thereafter, the crowd market responds to a decline in the price of the underlying market by changing to 4⅞ bid, 5⅛ offered, customer orders would receive the following executions under the proposed ten-up rule. Buy orders would be executed at 5⅛ and sell orders would be executed at 5. Therefore, customers would have the assurance that their orders will be executed at the displayed quotes, unless execution at the crowd quotes would be more advantageous for them.

[7] 15 U.S.C. 78f and 78k-1 (1982).

[8] 15 U.S.C. 78s(b) (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 34-28723; International Series Rel. No. 214; File No. SR-PHLX-90-35]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading of Index Warrants Based on the Financial Times-Stock Exchange 100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to rule 19b-4 of the Act, the PHLX proposes to list and to trade on an unlisted trading privileges ("UTP") basis warrants based on the Financial Times-Stock Exchange 100 Index ("FT-SE 100" or "Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow the PHLX to list and to trade, on a UTP basis, warrants on the FT-SE 100 Index. In July 1990, the Commission approved a PHLX proposal establishing listing standards for index warrants.[1] In accordance with the

[1] See Securities Exchange Act Rel. No. 28266 (July 26, 1990), 55 FR 31275 (order approving File No. SR-PHLX-90-8) ("Index Warrant Approval Order").

standards set forth in the Index Warrant Approval Order, the PHLX proposes to list warrants based on the FT-SE 100 Index, an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE").

The PHLX represents that the FT-SE 100 warrants will comply with the guidelines set forth in the Index Warrant Approval Order. Consistent with the Index Warrant Approval Order, trading in the FT-SE 100 warrants will be subject to Exchange Rule 1026 ("Suitability"), which applies the options suitability standard to index warrant recommendations made by members and member organizations, and to Exchange Rule 1027 ("Discretionary Accounts"), which requires that a Senior Registered Options Principal or Registered Options Principal approve and initial any discretionary index warrant transaction on the day it is executed. In addition, FT-SE 100 Index warrant transactions will be subject to Exchange Rule 747 ("Approval of Accounts"), which requires that member organizations obtain the approval of a general partner, voting stockholder or branch manager prior to making brokerage transactions for customer accounts. The PHLX also states that it will distribute a circular regarding suitability requirements to the membership.

The PHLX proposes to list and trade both American style warrants (exercisable throughout their life) and European style warrants (exercisable only on their expiration date). The FT-SE 100 warrants shall be direct, unsecured obligations of their issuer, registered with the Commission and subject to cash settlement during their one to five-year terms. The FT-SE 100 warrants will conform to the listing criteria set forth in the Index Warrant Approval Order, which require: (a) That the issuer exceed the Exchange's financial listing criteria and have assets in excess of $100 million; (b) that the warrants have a minimum public distribution of one million warrants with a minimum of 400 public warrant holders; and (c) that the warrants have an aggregate market value of $4 million. In addition, warrants which have already been approved for trading on another national securities exchange will be eligible for trading on the PHLX. The PHLX states that it is undertaking to secure a mutual surveillance information sharing agreement with the ISE with respect to reviewing trading in securities underlying the FT-SE 100 Index.

The PHLX believes that the proposed rule change is consistent with the requirements of the Act and, specifically, with section 6(b)(5), because the warrants are designed to promote just and equitable principles of trade and serve to facilitate transactions in securities by offering an innovative financing technique for issuers as well as the opportunity for U.S. warrant purchasers to hedge against or speculate on stock market fluctuations in the United Kingdom and the Republic of Ireland.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-223 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17920/File Nos. 812-7636; 812-7633; 812-7639]

Merrill Lynch Life Insurance Co., et al.

December 26, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of temporary order and filing of applications for permanent order.

APPLICANTS: Merrill Lynch Life Insurance Company, Royal Tandem Life Insurance Company, Tandem Insurance Group, Inc., (collectively, the "Insurance Companies"), Merrill Lynch Variable Life Separate Account, Royal Tandem Variable Life Separate Account, Tandem Variable Life Separate Account (collectively, the "Separate Accounts"), and Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch").

SUMMARY OF APPLICATIONS: Each Insurance Company and its respective separate account filed an application for an order of the Commission pursuant to (1) Section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from the provisions of sections 12(d)(1), 26(a)(2) and 27(c)(2) of the Act, and rule 6e-2 thereunder, and (2) section 17(b) granting exemptive relief from section 17(a), in the circumstances described in the application. Applicants further requested that an order be issued granting the relief on a temporary basis pending issuance of a permanent order after appropriate notice and opportunity for hearing. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the Rules thereunder for a statement of the relevant provisions.

FILLING DATE: The Applications were filed on November 21, 1990, and amended on December 14 and December 21, 1990.

HEARING OR NOTIFICATION OF HEARING: Notice is given that any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on January 21, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the specific issues contested. Serve the Applicants with the request, either personally or by mail, and send it to the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, along with proof of service by affidavit, or, for lawyers, by certificate. If no hearing is ordered, the applications for a permanent order will be granted.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 2 Penn Plaza, New York, NY 10121.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, (202) 272–3045 or Nancy Rappa, Senior Attorney, (202) 272–2622, Office of Insurance Products and Legal Compliance, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Merrill Lynch Life Insurance Company is a stock life insurance company organized under the laws of the State of Washington, with its principal office located in Seattle, Washington. Royal Tandem Life Insurance Company is a stock life insurance company organized under the laws of the State of New York, with its principal office located in Seattle, Washington. Tandem Insurance Group, Inc., is a stock life insurance company organized under the laws of the State of Illinois, with its principal office located in Plainsboro, New Jersey. The Insurance Companies currently issue various annual premium variable life insurance policies ("VLI Policies") and flexible premium variable life insurance policies ("Flexible Policies") (together, the "Policies") through their respective Separate Accounts.

2. The Separate Accounts were established by the respective Insurance Companies to provide the basic funding to support the benefits under certain variable life insurance policies, including the Policies (as described more fully in the Applications). The Separate Accounts are registered with the SEC as unit investment trusts.

3. The Insurance Companies have entered into an Indemnity Reinsurance and Assumption Agreement with Monarch Life Insurance Company ("Monarch"), a Massachusetts company, dated November 14, 1990 (the "Assumption Agreement") pursuant to which, subject to satisfaction of a number of conditions (including granting of the exemptive relief requested in the Applications), the Insurance Companies will assume the obligations of Monarch with respect to certain of the variable life insurance policies issued by Monarch through its Variable Account A. The policies to be assumed by the Insurance Companies (the "Existing Policies") include forms of policies currently being offered by Monarch, as well as forms of policies no longer offered by Monarch. As part of the Insurance Companies' assumption of the Existing Policies, the assets of Monarch's Variable Account A associated with those policies will be transferred to the Separate Accounts. Following the assumption, the Insurance Companies intend to continue to offer through the Separate Accounts the forms of the policies currently offered by Monarch.

Other than the relief requested from section 17(a) of the Act pursuant to 17(b), the relief requested in this Application is identical to the relief granted to Monarch and its Variable Account A in Investment Company Act Release Nos. IC–13914 (File No. 812–5724; May 1, 1984) and IC–14937 (File Nos. 812–6244; February 13, 1986). The Applications are virtually identical to the Applications filed by Monarch with respect to the exemptive order relief it received, except that the forms of variable life insurance policies described herein are those which the Insurance Companies intend to offer following the assumption and differ from those described in Monarch's application due to changes Monarch has made in its policy forms since relief was granted to it. The Separate Accounts are maintained as unit investment trusts within the meaning of section 4(2) of the Act. The Separate Accounts consist of several investment divisions, and all assets held in the designated Separate Accounts' investment divisions currently are used to purchase shares or units issued by registered investment companies organized either as open-end management investment companies or unit investment trusts.

3A. The Policies will be designed to provide insurance coverage on the life of the insured; they also may be surrendered for their net cash value while the insured is living. The death benefit and cash values under a particular Policy will vary based upon the investment performance of the chosen investment divisions of the Separate Accounts funding the policy.

4. Other versions of the Policies may be created in the future which provide for different structures for premium payments, such as scheduled payments or totally flexible premium payments.

5. The Flexible Policies will operate in much the same fashion as the VLI Policies. Policyowners will be permitted to allocate their investment base among the various investment divisions which invest in the underlying vehicles, including both mutual funds and the Trusts. The policy loading, which consists of sales load, a first year administrative expense and state and local premium tax charges, will be deducted from the premium, but, advanced by the Insurance Companies and included in the policyowner's investment base. The policy loading will then be deducted in equal installments on the next ten policy anniversaries.

6. The Trust is registered under the Act and is composed of multiple unit investment trust ("Series"), each comprised of U.S. Treasury securities which have been stripped of their coupons. By purchasing a portfolio of such securities, an interest rate may be "locked-in" for that Series. Thus, this vehicle creates the potential for a stable yield for policyowners allocating their premiums to an investment division investing in a Series of the Trust.

7. Units of the Trust will be sold only to the Separate Accounts. Units sold as a part of a primary offering will be priced, in conformance with rule 22c-1, based upon the net asset value next computed after receipt of an order to purchase. For this purpose, the net asset value will be calculated using the offering side evaluation of the portfolio securities.

8. Units of the Trust will also be redeemed in accordance with rule 22c-1 under the Act, based upon the bid side evaluation of the portfolio securities. In addition, Merrill Lynch, by agreement, will be obligated to maintain a secondary market in the units of the Trust of sufficient size to ensure that the Separate Accounts may always sell their Trust units to Merrill Lynch, rather than redeeming them with the trustee at the lower, bid-side value. Merrill Lynch may hold the units in its own inventory for resale to the Separate Accounts or it

may redeem the units, but only in amounts that match the dollar amounts of Series portfolio securities. The operation of the secondary market in this fashion helps to produce a stable yield for policyowners allocating net premiums to the investment divisions. Units will be repurchased by Merrill Lynch and may be sold or resold in the secondary market at a price computed in conformance with rule 22c-1, based upon the offering side evaluation of the portfolio securities.

9. The Separate Accounts will purchase units of each Series of the Trust for placement in the corresponding division based upon the net transactions by policyowners. At the time of purchase the Separate Accounts will pay that portion of the total price of the units equal to their "net asset value." The Insurance Companies will directly pay to Merrill Lynch out of their general account assets an amount equivalent to the portion designated as a sales charge. Thereafter, the Insurance Companies will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Separate Accounts held in the new investment divisions. This charge may vary, but will only reflect actual costs. However, in no event will it ever exceed an annual rate of .50 percent of the average daily net assets of each of the investment divisions investing in the Trust.

Relief Requested

1. Under the relief requested, as a technical matter, using the same Separate Accounts to support both the VLI Policies and Flexible Policies may bring into question the continued qualification of the VLI Policies under rule 6e-2. In order to avoid any potential questions of compliance, Applicants are seeking an order to provide exemptive relief from paragraphs (a)(2) and (b)(15) of rule 6e-2 to permit both the VLI Policies and Flexible Policies to be issued through the Separate Accounts.

2. In order to rely on rule 6e-2, paragraph (a)(2) of the Rule prescribes that other than advances made by the life insurance company to establish and maintain the account, the assets of the separate account must be derived solely from the sale of variable life contracts as defined in rule 6e-2. Since the Commission has adopted a second rule, rule 6e-3(T), which defines a second type of variable life contract, it could be argued that a contract falling within the definition in paragraph (c)(1) of rule 6e-3(T) would not be a "contract as defined in rule 6e-2." Applicants believe that the Flexible Policies currently being registered should be treated as flexible premium variable life contracts under rule 6e-3(T). Thus, an issue is raised whether, upon the sale of the Flexible Policies, the assets of the Separate Accounts would be derived solely from the specified type of contract so as to permit the VLI Policies to continue to be issued in reliance on the relief sought under rule 6e-2.

3. The same issue is raised by paragraph (b)(15) of rule 6e-2. That paragraph provides that all the assets of the Separate Accounts consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts. Presumably, a "variable life insurance separate account" is a separate account that meets the definition set forth in paragraph (a)(2) of rule 6e-2. Therefore, unless the Separate Accounts are deemed to be a variable life insurance separate account as defined in paragraph (a)(2), the relief provided by paragraph (b)(15) would be unavailable.

4. Applicants submit that there is no reason why one separate account should be prohibited from issuing both policies qualifying under rule 6e-2 and rule 6e-3(T). There are no apparent conflicts of interest that would arise as a result of one policy having scheduled premiums and another allowing flexible premiums. In adopting 6e-3(T), the Commission placed no such restriction on the separate account. In addition, the Commission has proposed an amendment to rule 6e-2 to permit the use of the same account for both types of contracts. (Release IC-14421, March 15, 1985.)

5. Section 12(d)(1)(A) of the Act, as here relevant, generally restricts the ability of a registered investment company to acquire the securities of any other investment company. However, section 12(d)(1)(E) removes such restrictions if, inter alia, the acquired securities are the only securities held by a registered unit investment trust that issues two or more classes of securities, each of which provides for accumulation of shares of a different investment company.

6. Typically, the unit investment trusts which have relied upon the section 12(d)(1)(E) exception have invested in underlying management companies. The new structure proposed by Applicants will involve the Separate Accounts investing in a management company (the "Series Fund") as well as another unit investment trust (the "Trust").

7. The Insurance Companies and the Separate Accounts assert that the fact that one unit investment trust will be investing in another unit investment trust should not affect the availability of the section 12(d)(1)(E) exception. The statutory exception does not specify the type of investment company in which the unit investment trust must invest; rather, the exception depends on the classification of the acquiring company, which requirement is met in the instant case. However, to remove any doubt, Applicants have requested an exemption from the provisions of section 12(d)(1), to the extent necessary, to permit the Separate Accounts to acquire the units of the Trust.

8. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Insurance Companies and the Separate Accounts assert that the requested relief meets this standard, benefitting the investors in the Separate Accounts by allowing greater flexibility in investment opportunities, without creating the dangers and abuses arising from pryamiding of control targeted by section 12.

9. The Insurance Companies and the Separate Accounts also request an order pursuant to section 6(c) of the Act, exempting Applicants from the provisions of sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the Insurance Companies to recover the amounts paid by them to Merrill Lynch in connection with the Separate Accounts' acquisition of Trust units through an asset charge. Although Applicants believe that the proposed asset charge may be assessed in conformance with the exemptions provided by rule 6e-2, they recognize that the subject asset charge may not fall squarely within the type of administrative fees envisioned as permitted under the Act and rule 6e-2, and for that reason request exemptive relief.

10. Applicants submit that such exemptive relief meets the standards of section 6(c) of the Act in that it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The payment by the Insurance Companies of amounts to Merrill Lynch to compensate them for their expenses and services as sponsors of the Trust is necessary to induce

Merrill Lynch to create the Trust, to implement the operational procedures for the Trust and to continue to maintain a secondary market for Trust units. The compensation will reimburse Merrill Lynch for operational, and overhead expenses, and legal, accounting and evaluator's fees. None of the compensation received by Merrill Lynch is designed as reimbursement of distribution expenses or to compensate Merrill Lynch for sales efforts. Moreover, the, amount of the compensation was determined on the basis of arm's-length negotiations, which are presumed to yield fair values.

11. The Insurance Companies believe that this method of compensating Merrill Lynch benefits policyowners by stabilizing the yield to policyowners and by creating more equitable results among policyowners, allocating a proportionate share of the acquisition expenses to all policyowners allocating premiums to the new investment divisions rather than permitting the expenses borne by individual policyowners to vary based upon the timing of their particular allocation.

12. Applicants believe that the proposed asset charge, which will be cost based with no anticipated element of profit, is a reasonable and proper charge designed to cover expenses that are properly viewed as a cost of operating and administering the Separate Accounts. Accordingly, Applicants believe the requested relief meets the standards set by section 6(c) and should be granted.

13. Applicants request exemption from section 17(a) of the Act to permit the proposed transactions between Merrill Lynch and the Separate Accounts. Applicants state that all the outstanding voting stock of Merrill Lynch and the Insurance Companies is beneficially owned by Merrill Lynch & Co. Inc., and thus Merrill Lynch and the Separate Accounts are affiliated persons within section 2(a)(3) of the Act. Applicants assert, however, that the conditions set forth in section 17(b) for the granting of an exemptive order are met under the proposed transactions between Merrill Lynch and the Separate Accounts.

14. Applicants assert that the consideration the Separate Accounts will pay Merrill Lynch upon the purchase of Trust units, including, indirectly, the transaction charge, will be fair and reasonable and will not involve overreaching on the part of any person concerned. According to the application, the price at which the Separate Accounts will purchase and resell units from and to Merrill Lynch will be based upon the offering side evaluation of the underlying securities. Applicants state that a qualified independent evaluator will determine the offering side valuation of the underlying securities for any purchase or sale of units by the Separate Accounts and that market prices for the underlying securities are usually readily available. Applicants assert that as a result of this independent evaluation of the worth of the underlying securities, the Separate Accounts will be buying and selling units from Merrill Lynch at a price determined to be at "market," and this evaluation should eliminate any possibility that Merrill Lynch would sell units to the Separate Accounts at an inflated price or purchase units from the Separate Accounts at a price below their market value. Applicants state that the presence of Merrill Lynch as market maker enables the Separate Accounts to receive a better price for units they sell than they might otherwise receive if Merrill Lynch were not standing ready and able to purchase the units at a price based on the offering side of the market. Applicants further state that Merrill Lynch will not be able to influence the Separate Accounts to purchase or sell units the Separate Accounts would not otherwise have purchased or sold. Similarly, the Separate Accounts will only purchase units from Merrill Lynch as owners choose to direct their purchase payments for Contracts or cash value of existing Contracts to subaccounts of the Separate Accounts and will only sell units when owners surrender their Contract, reallocate cash value from those subaccounts, or make a Contract loan.

15. Applicants note that while the Insurance Companies and Merrill Lynch are affiliated persons they have separate management. Applicants represent that the compensation of sales persons selling the Contracts is not dependent upon nor affected by the particular investment vehicle or vehicles to which owners allocate the premiums for or the cash value of the Contracts. Applicants therefore assert that such sales persons are not expected to have a preference as to which investment vehicle or vehicles owners select under the Contract.

16. Applicants state that the evaluator is not affiliated with Merrill Lynch or the Insurance Companies, nor is the evaluator an affiliate of an affiliate of Merrill Lynch or the Insurance Companies, nor will any successor evaluator for the Zero Fund be so affiliated.

The Commission notes that the Insurance Commissioner from Massachusetts has advised the Commission that it is urgent that the Insurance Companies assumptively reinsure immediately certain variable life insurance contracts issued by Monarch and that such assumption reinsurance is in the interests of all policy owners. The Commission further notes that the exemptive relief is substantially identical to the exemptive relief received by Monarch in connection with the issuance of the contracts and will therefore allow the Applicants to offer polices which are substantially identical to the policy issued by Monarch. Under these circumstances, the Commission has determined that the granting of the application without prior notice to policy owners on a temporary basis is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Accordingly,

It is ordered, pursuant to section 6(c) of the Act, that the exemptions from sections 12(d)(1), 26(a)(2), and 27(c)(2) of the Act, and paragraphs (a)(2) and (b)(15) of rule 6e-2 thereunder, be, and hereby are, granted as of December 26, 1990, on a temporary basis.

It is further ordered, pursuant to section 17(b) of the Act, that the exemption from section 17(a) of the Act be, and hereby is, granted as of December 26, 1990, on a temporary basis.

It is further ordered, That the above temporary order shall remain in effect only until such time as the Commission shall by order: (1) Terminate such temporary order after notice and opportunity for a hearing; or (2) terminate such temporary order by the issuance of a permanent order in this matter.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-162 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17921; 812-7637; 812-7634; and 812-7640]

Merrill Lynch Life Insurance Co., et al.

December 26, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of temporary order and filing of applications for permanent order.

APPLICANTS: Merrill Lynch Life Insurance Company, Royal Tandem Life

Insurance Company, Tandem Insurance Group, Inc., (collectively, the "Insurance Companies"), Merrill Lynch Variable Life Separate Account, Royal Tandem Variable Life Separate Account, Tandem Variable Life Separate Account (collectively, the "Separate Accounts"), and Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch").

SUMMARY OF APPLICATIONS: Each Insurance Company and its respective separate account filed an application for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f) and 27(h)(3) of the Act, and rules 6e-2, 6e-3(T) and 22c-1 thereunder, in the circumstances described in the Application and further requesting that an order be issued granting the relief on a temporary basis pending issuance of a permanent order after appropriate notice and opportunity for hearing.

FILING DATE: The Applications were filed on November 21, 1990, and amended on December 14 and December 21, 1990.

HEARING OR NOTIFICATION OF HEARING: Notice is given that any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m. on January 21, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the specific issues contested. Serve the Applicants with the request, either personally or by mail, and send it to the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, along with proof of service by affidavit, or, for lawyers, by certificate. If no hearing is ordered, the applications for a permanent order will be granted.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2 Penn Plaza, New York, NY 10121.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Attorney, (202) 272–33045 or Nancy Rappa, Senior Attorney, (202) 272–2622, Office of Insurance Products and Legal Compliance, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Merrill Lynch Life Insurance Company is a stock life insurance company organized under the laws of the State of Washington, with its principal office located in Seattle, Washington. Royal Tandem Life Insurance Company is a stock life insurance company organized under the laws of the State of New York, with its principal office located in Seattle, Washington. Tendem Insurance Company is a stock life insurance company organized under the laws of the State of Illinois, with its principal office located in Plainsboro, New Jersey.

2. The Separate Accounts were established by the respective Insurance Companies to provide the basic funding to support the benefits under certain variable life insurance policies, including the Policies (as described more fully in the Applications). The Separate Accounts are registered with the SEC as unit investment trusts.

3. The Insurance Companies have entered into an Indemnity Reinsurance and Assumption Agreement with Monarch Life Insurance Company ("Monarch"), a Massachusetts company, dated November 14, 1990 (the "Assumption Agreement") pursuant to which, subject to satisfaction of a number of conditions (including granting of the exemptive relief requested in the Applications), the Insurance Companies will assume the obligations of Monarch with respect to certain of the variable life insurance policies issued by Monarch through its Variable Account A. The policies to be assumed by the Insurance Companies (the "Existing Policies") include forms of policies currently being offered by Monarch as well as forms of policies no longer offered by Monarch. As part of the Insurance Companies' assumption of the Existing Policies, the assets of Monarch's Variable Account A associated with those policies will be transferred to the Separate Accounts. Following the assumption, the Insurance Companies intend to continue to offer through the Separate Accounts the forms of the policies currently offered by Monarch. Other than the relief requested from rule 6e–3(T) under the Act, with respect to deduction of deferred premium taxes from the cash surrender value of flexible premium policies, the relief requested in the Applications is identical to the relief granted to Monarch and its Variable Account A in Investment Company Act Release No. 16219 (File No. 812–6684; January 12, 1988). The Applications are virtually identical to the Application filed by Monarch with respect to the other exemptive order relief it received, except that the forms of variable life insurance policies described herein are those which the Insurance Companies intend to offer following the assumption and differ from those described in Monarch's application due to changes Monarch has made in its policy forms since relief was granted to it.

The Separate Accounts will consist of one or more investment divisions, each of which will invest in shares or units issued by registered investment companies. The Separate Accounts' current divisions will invest in ten portfolios of Merrill Lynch Series Fund, Inc. and in designated trusts in The Merrill Lynch Fund of Stripped ("Zero") U.S. Treasury Securities (the "Merrill Trusts").

4. Three plans are available under the Schedule Premium Policies offered by the Separate Accounts: Plan A, which offers both a level face amount and the choice of a scheduled premium payment period; Plan B, which offers a level face amount (but whose Variable Insurance Amount is calculated differently than under Plan A or Plan C); and Plan C, which offers a face amount that decreases at a later point in time.

5. Each Policy will provide for a death benefit equal to the larger of the Policy's face amount or the "Variable Insurance Amount" at the time of the insured's death. The Variable Insurance Amount for the Scheduled Premium Policies issued under Plans A and C will be determined by multiplying a Policy's cash surrender value by the applicable net single premium factor. The Variable Insurance Amount for Policies issued under Plan B will be determined in the same manner as under Plans A and C during the first policy year, but thereafter will equal the sum of a Policy's face amount plus the applicable net single premium factor multiplied by the excess, if any, of the cash surrender value over the fixed base (which is calculated in the same manner as the cash surrender value except that the calculation is based on the guaranteed maximum cost of insurance rates and an assumed interest rate of 4% and assumes that all scheduled premiums have been duly paid and that no unscheduled premiums have been paid or any policy loans made).

6. The Scheduled Policies also permit the payment of unscheduled premiums or additional payments, subject to certain conditions, with or apart from scheduled premium payments or the single premium payment.

Relief Requested

1. Applicants request an exemption from Rule 6e–2(c)(1) under the Act, to the extent necessary, to treat the Schedule Premium Policies and substantially similar policies funded by the Separate Accounts as "variable life insurance contracts" within the meaning of rule 6e–2(c)(1).

2. Applicants represent that the reduction in face amount for Scheduled Premium Policies issued under Plan C is designed to permit Policy owners to purchase a given face amount during early policy years for lower scheduled premiums than they would pay for the same face amount under Plan A or Plan B. During later policy years, after the face amount of a Policy issued under Plan C has been decreased, the Policy's cash surrender value is likely to be significant due to cumulative investment experience and premium payments, and it is likely that the Policy's Variable Insurance Amount would provide a substantial death benefit. Applicants submit that the reduction in face amount in later policy years does not affect the variable nature of a Policy issued under Plan C, such as its Variable Insurance Amount, investment base or cash surrender value, and therefore should not be viewed as a feature disqualifying a Policy issued under Plan C as a variable life insurance contract under rule 6e–2(c)(1).

3. Applicants submit that permitting unscheduled premium payments under the Scheduled Premium Policies merely provides an additional benefit to Policy owners and does not affect the fundamental nature of the Policies as scheduled premium variable life insurance contracts, and therefore should not be viewed as a feature disqualifying the Policies as variable life insurance contracts under rule 6e–2(c)(1).

4. Applicants submit that the variable extended term insurance ("ETI") option and variable reduced paid-up insurance option provide an additional benefit to a scheduled premium Policy owner by making it possible for the owner to continue insurance protection and participation in the Separate Account even though the owner no longer desires, or may not be able, to pay scheduled premiums. Applicants assert that the availability of these variable non-forfeiture options do not affect the character of the Policy before the options take effect and therefore should not be viewed as a feature disqualifying the Policies as variable life insurance contracts under rule 6e–2(c)(1).

5. The scheduled premium Policies provide for deductions for sales loads and premium tax charges. An 8.5% charge, consisting of a 6.0% sales load and a 2.5% premium tax charge, is deducted from each scheduled premium paid under a Policy before allocation to the Policy's Investment Base. In addition, a deferred sales load of 24.0% of each first year scheduled premium paid under a Scheduled Premium Policy is deducted from the Policy's Investment Base in equal installments of 2.4% on each of the first through tenth policy anniversaries. No front-end sales load or premium tax charge is deducted from an unscheduled premium paid under a Policy before allocation to the Policy's investment base. Instead, a deferred charge of 7.0% of each unscheduled premium payment, consisting of a 4.5% sales load and a 2.5% premium tax charge, is deducted from the Policy's Investment Base in ten equal installments of .70% on each of the ten policy anniversaries on or following receipt and acceptance of that payment.

6. A Policy's Investment Base includes the deferred sales loads and any deferred premium tax charges (the "deferred policy loading"). However, the cash surrender value of a Policy reflects a deduction from the Policy's Investment Base for the balance of any deferred policy loading not yet deducted. Upon surrender of a Policy, the balance of the deferred policy loading not previously deducted is subtracted in determining the net cash surrender value, which is the amount payable to the Policy owner, and is equal to the cash surrender value less any Policy debt.

7. Applicants request an exemption from section 2(a)(35) of the Act and rules 6e–2(b)(1) and 6e–2(c)(4) thereunder, to the extent necessary, for the term "sales load," as used in the Act and rules thererunder, to be deemed to include the deferred sales loads chargeable to first year scheduled premiums and any unscheduled premiums paid under the Scheduled Premium Policies and any substantially similar policies.

8. Applicants submit that the mere fact that the timing of deductions for deferred sales loads under the Scheduled Premium Policies may not fall neatly within the literal pattern of section 2(a)(35) and rule 6e–2(c)(4) does not change their essential nature as charges designed to defray sales expenses. Applicants submit that rule 6e–2(c)(4) can be construed to include deferred sales loads, and that the granting of the requested relief would simply align the language of rule 6e–2 with the SEC's contemplation at the time it adopted the Rule.

9. Applicants request an exemption from sections 27(a)(3) and 27(h)(3) of the Act and rule 6e–2(b)(13)(ii) thereunder, to the extent necessary to permit the deduction of a deferred sales load chargeable to unscheduled premium payments under the Scheduled Premium Policies (under which the deferred sales load so chargeable is 4.5% of each unscheduled premium payment) and any substantially similar policies, even though sales loads so chargeable to subsequently paid scheduled premiums might result in a technical violation of such provisions.

10. Applicants submit that the mere fact that the sales load chargeable to an unscheduled premium is deferred, whereas the sales load for a subsequently paid scheduled premium is deducted up-front, is not inconsistent with the policies underlying rule 6e–2(b)(13)(ii) because every Scheduled Premium Policy owner benefits from the fact that the full amount of the unscheduled premium payment is invested from the time the payment is accepted.

11. With respect to situations where the ability to pay unscheduled premiums between scheduled premiums results in a higher deferred or total sales load deducted from subsequent premiums than prior premiums, Applicants assert that every Scheduled Premium Policy owner benefits from the fact that a deferred sales load in the amounts set forth above are assessed for unscheduled premiums. Moreover, Applicants represent that an unscheduled premium payment functions differently from scheduled premium payments. Whereas the payment of scheduled premiums ensures guaranteed policy benefits, the payments of unscheduled premiums does not affect the Policy guarantees unless paid after the scheduled premium payment period (assuming all scheduled premiums have been duly paid) or unless paid after the Policy is applied to the variable ETI option. Unscheduled premium payments, however, affect the investment element of the Policy. Accordingly, because unscheduled premium payments serve a different purpose than scheduled premium payments, Applicants submit that it is entirely appropriate that the load structures for scheduled and unscheduled premium payments be analyzed separately. When so analyzed, the load structures for scheduled premiums and for unscheduled premiums comply with rule 6e–2(b)(13)(ii).

12. Applicants request an exemption from sections 26(a)(2) and 27(a)(2) of the Act and rules 6e–2(b)(13)(iii) and 6e–2(c)(4) thereunder, to the extent necessary to permit the deduction from the Investment Base of the premium tax charge for an unscheduled premium payment in ten equal installments on the ten policy anniversaries on or following receipt and acceptance of that payment under the Scheduled Premium Policies and any substantially similar policies.

13. Applicants submit that the imposition of the premium tax charge in

this deferred form is more advantageous to Scheduled Premium Policy owners than having the full amount deducted up-front. Applicants assert that this charge is cost-based, and that no additional or contingent charge will be due for the balance should the death benefit become payable before the premium tax charge has been fully deducted.

14. Applicants request an exemption from section 27(a)(1) of the Act and rules 6e-2(b)(1), 6e-2(b)(13) and 6e-2(c)(4) thereunder, on the same terms specified in rule 6e-2(b)(13)(i) and 6e-2(c)(4), except that life expectancy and the cost of insurance deduction for the scheduled premium Policies and any substantially similar policies will be based upon rates derived from the 1980 Commissioners Standard Ordinary Male and Female Mortality Tables ("1980 CSO Tables") rather than the 1958 Commissioners Standard Ordinary Mortality Table ("1958 CSO Table").

15. Applicants represent that the 1980 CSO Tables were adopted subsequent to the adoption of rule 6e-2 and reflect more recent information and data about mortality. In general, insurance charges based on the 1980 CSO Tables are lower than those based on the 1958 CSO Table.

16. Applicants represent that they use the 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the scheduled premium Policies. Accordingly, Applicants submit that it is appropriate that, in determining what is deemed to be sales load under the scheduled premium Policies, the deduction for the cost of insurance should be based on the 1980 CSO Tables rather than the 1958 CSO Table.

17. Applicants request an exemption from sections 2(a)(32) and 27(c)(2) of the Act and rules 6e-2(b)(12) and 6e-2(b)(13)(iv) thereunder, to the extent necessary, to permit the net cash surrender value to reflect a deduction of the balance of the deferred policy loading upon surrender of scheduled premium Policies or any substantially similar policies.

18. Applicants assert that deducting the balance of deferred policy loading in determining the amount payable to a Policy owner upon surrender of the Policy does not restrict the Policy owner from receiving on redemption his or her "proportionate share," for purposes of section 2(a)(32), of the value of the Separate Account funding the Policy. Applicants represent that the deferred policy loading deducted at the time of surrender consists of sales loads and premium tax charges that were chargeable to premiums when paid but were intended to be deducted over a period of time rather than up-front from those premiums. Applicants submit that their method of deferring the deduction of those charges results in a larger net amount for initial investment in the Separate Account, thus providing a benefit to Policy owners.

19. Applicants submit that the record suggests that the SEC, in adopting rule 6e-2, determined that a policy providing for a cash surrender value, regardless of the amount, would constitute a "redeemable security" within the intent of the Act. The scheduled premium Policies provide for a net cash surrender value, and this value reflects a reduction for the deferred policy loading not yet deducted.

20. For the same reasons as stated with respect to scheduled premium Policies, Applicants request an exemption from sections 2(a)(32) and 27(c)(1) of the Act and rules 6e-3(T)(b)(12) and 6e-3(T)(b)(13)(iv) thereunder, to the extent necessary, to permit the net cash surrender value to reflect a deduction of the balance of any deferred premium taxes upon surrender of flexibile premium policies or any substantially similar products.

21. Applicants request an exemption from section 22(c) of the Act and rules 6e-2(b)(12) and 22c-1 thereunder, to the extent necessary, to permit the deduction upon surrender of the balance of deferred policy loading under schedule premium Policies and substantially similar policies.

22. Applicants recognize that, while rule 6e-2(b)(12) provides certain exemptive relief for surrender procedures for variable life insurance policies, rule 6e-2(b)(12) could be read, in conjunction with other paragraphs of rule 6e-2, as being premised on the absence of a deduction of deferred charges when the amount payable on surrender is determined. Nonetheless, Applicants believe that their procedure of deducting the balance of deferred policy loading in determining the net cash surrender value payable to a Policy owner is not inconsistent with the policy and purposes of rule 22c-1. Applicants contend that their procedure for determining the net cash surrender value under a scheduled premium Policy on a basis next computed after receipt of the Policy and written surrender request would not have the dilutive effect or encourage the speculative trading that rule 22c-1 is designed to prohibit.

23. For the same reasons as stated with respect to scheduled premium Policies, Applicants request an exemption from section 22(c) of the Act and rules 6e-3(T)(b)(12) and 22c-1 thereunder, to the extent necessary, to permit the deduction upon surrender of the balance of deferred premium taxes under flexible premium Policies and substantially similar policies.

24. Applicants request an exemption from sections 26(a)(2)(C), 27(c)(2), 27(d) and 27(f) of the Act, to the extent necessary, to permit the deduction upon surrender of the deferred policy loading and deferred premium taxes under scheduled premium Policies and flexible premium Policies, respectively, and substantially similar policies.

25. Applicants submit that, while the deduction upon surrender of deferred charges is not expressly contemplated by these Sections, such deduction is not inconsistent with the policy and purposes of these Sections.

26. Applicants represent that, in addition to the deferred policy loading, certain other charges and expenses will be deducted periodically under the scheduled premium Policies. These charges include: The Mortality Cost, and the quarterly administrative fee deducted from a Policy's Investment Base quarterly on each Policy processing date; the first year administrative fee deducted quarterly from a Policy's Investment Base on the first four Policy processing dates; the mortality and expense risk charge and guaranteed benefits risk charge deducted from the assets of the Separate Account funding a Policy (which charge is deducted from the daily investment results of each division in the Separate Account in determining its net rate of return); and the trust charge deducted from the assets of the investment divisions of the Separate Account A investing in the Merrill Trusts (which charge is deducted from the daily investment results of those divisions in determining their respective net rates of return).

27. While not conceding the applicability of sections 26 or 27 to the Mortality Cost under the scheduled premium Policies or substantially similar policies, Applicants request an exemption from section 26(a) and 27(c)(2) of the Act and rule 6e-2(b)(13)(iii) thereunder, to the extent necessary, to permit the deduction from the Investment Base of the Policies, or substantially similar policies, of the Mortality Cost quarterly in arrears.

28. Applicants assert that, by determining and deducting the Mortality Cost quarterly in arrears from the Investment Base, the scheduled premium Policy owner avoids have a large charge deducted as a front-end load from each premium payment. Furthermore, the continual periodic deduction of the Mortality Cost benefits

the Policy owner because it increases the initial amount available for investment by the Policy.

29. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act, and rule 6e–2(b)(13)(iii) thereunder, to the extent necessary, to permit the deduction of the guaranteed benefits risk charge under the Scheduled Premium Policies and substantially similar policies. This charge is currently deducted at an annual rate of .15%. The Policies provide that this charge may be increased, but the sum of the charges for mortality and expense risks and guaranteed benefits risks may not exceed an annual rate of .90%. Applicants represent they will not increase the amount of the guaranteed benefits risk charge for scheduled premium Policies above .15% without first obtaining any necessary exemptive relief.

30. Applicants represent that the guaranteed benefits risk charge is reasonable in relation to the risk assumed. Applicants have reviewed the level of the guaranteed benefits risk charge under comparable scheduled premium variable life insurance contracts currently being offered, and represent that the charge under the Scheduled Premium Policies is within the range of industry practice for comparable contracts.

31. Applicants represent that they believe that the sales load being imposed under the Scheduled Premium Policies may not cover the costs associated with them. Applicants have concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Scheduled Premium Policies will benefit the Separate Accounts and Policy owners.

The Commission notes that the Insurance Commissioner from Massachusetts has advised the Commission that it is urgent that the Insurance Companies assumptively reinsure immediately certain variable life insurance contracts issued by Monarch and that such assumption reinsurance is in the interests of all policy owners. The Commission further notes that the exemptive relief is substantially identical to the relief received by Monarch in connection with the issuance of the contracts and will therefore allow the Applicants to offer policies which are substantially identical to the policies issued by Monarch. Under these circumstances, the Commission has determined that the granting of the Applications without prior notice to policy owners on a temporary basis is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Accordingly,

It is ordered, pursuant to section 6(c) of the Act, that the exemption from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d), 27(f) and 27(h)(3) of the Act, and rules 6e–2, 6e–3(T) and 22c–1 thereunder, be, and hereby are, granted as of December 26, 1990 on a temporary basis.

It is further ordered, That the above temporary order shall remain in effect only until such time as the Commission shall by order: (1) Terminate such temporary order after notice and opportunity for a hearing; or (2) terminate such temporary order by the issuance of a permanent order in this matter.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–163 Filed 1–4–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–25235]

Filings Under the Public Utility Holding Company Act of 1935

December 28, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 22, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7820)

Eastern Utilities Associates ("EUA"), a registered holding company, and its wholly owned subsidiary company, EUA Ocean State Corporation ("EUA–OS"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43(a), 45(a) and 50(a)(5) thereunder.

By orders dated October 12, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790) and September 28, 1989 (HCAR No. 24960), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA of a new subsidiary company EUA–OS; (2) the acquisition by EUA–OS of 25 percent equity interests in two partnerships ("OSP I" and "OSP II") formed to own and operate Unit I and Unit II of the Project; (3) the funding by EUA of EUA–OS to enable EUA–OS to meet its obligation to make capital contributions to OSP I and OSP II in an amount not to exceed $60 million; and (4) the financing of 100 percent of the construction costs of each of the Units through non-recourse loans under separate general construction loan credit facilities in connection with which: (i) EUA–OS and the other partners in OSP I and OSP II entered into Equity Contribution Agreements ("Equity Agreements") whereby they agreed upon commercial operation of each of Unit I and Unit II to make equity contributions aggregating no more than approximately 50 percent of the total commitments under the respective credit facilities; (ii) EUA–OS and the other partners secured their obligations under the Equity Agreement by their respective equity interests in OSP I and OSP II; and (iii) EUA and other parent corporations of partners in OSP I and OSP II agreed to enter into equity contribution support agreements ("Support Agreements") to provide proportional guarantees of their respective subsidiaries' obligations under the Equity Agreements.

By order dated March 2, 1990 (HCAR No. 25049), the Commission, among other things, authorized EUA to acquire all of the outstanding common stock of Newport Electric Corporation

("Newport"). Newport, through its wholly-owned subsidiary company, Newport Electric Power Corporation ("Newport Power"), has a 4.9 percent equity interest in each of OSP I and OSP II. In connection with the financing of Unit I and Unit II, Newport Power entered into Equity Agreements and secured its obligations thereunder by granting security interests in its interests in OSP I and OSP II, and Newport entered into Support Agreements with respect to Newport Power's obligations under the Equity Agreements.

By order dated December 18, 1990 (HCAR No. 25217), the Commission authorized EUA–OS to acquire Newport Power's interests in OSP I and OSP II and to assume all of Newport Power's and Newport's rights and obligations under the Equity Agreements and Support Agreements, respectively, so that Newport will not be obligated to fund Newport Power's equity contributions, in the amount of $11.27 million, required upon the commercial operation of Unit I and Unit II.

EUA and EUA–OS now propose to increase the aggregate amount of financing for EUA–OS from $71.27 million to $75 million ("Financing"). EUA and EUA–OS proposed to obtain the Financing through internal and external sources.

EUA–OS proposes to issue and sell, through December 31, 1992, up to $75 million in any combination of (a) Short-term notes ("Short-Term Notes") to lending institutions, and (b) long-term secured and/or unsecured notes ("Long-Term Notes") to institutional investors (collectively "Debt"). EUA–OS proposes to issue the Long-Term Notes under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. EUA–OS requests authorization to begin negotiating the terms of the Long-Term Notes. It may do so.

The Short-Term Notes will bear interest either at the commercial bank prime rate as adjusted from time-to-time or at available money market rates, which in all cases will be less than such commercial bank prime rate at the time of issuance. Such borrowings from lending institutions will be made under the EUA system's existing credit lines. The existing credit line arrangements include: (a) Borrowing at the prime rate or money market rates, if lower: and (2) borrowing at the prime rate or money market rates, if lower, together with a commitment fee equal to ¼ of 1 percent multiplied by the credit line. The maximum amount of such borrowings by EUA–OS will not exceed $75 million at any one time. Short-Term Notes bearing interest at the commercial bank base rate will have maximum maturities of nine months and may be subject to prepayment at any time without premium. Short-Term Notes bearing interest at money market rates will have maximum maturities of nine months and may be subject to prepayment at any time without premium. Short-Term Notes bearing interest at money market rates will have maximum maturities of sixty days and will not be prepayable. EUA–OS expects that funds for the repayment of its short-term borrowings from banks and EUA will be provided from internally generated cash, the proceeds of long-term debt to be issued by EUA–OS, sales of its common stock to EUA and capital contributions, loans and/or advances by EUA.

The Long-Term Notes will mature in not more than thirty years from the first day of the month in which such Note is issued. Long-Term Notes are expected to be sold at not less than 98 percent nor more than 102.75 percent of principal amount and to bear interest payable quarterly or semi-annually in arrears. Long-Term Notes may be unsecured or secured by a lien on substantially all or a portion of the assets or revenues of EUA–OS. EUA proposes to guarantee all or a portion of the obligations of EUA–OS with respect to the Debt.

Pursuant to the Debt, EUA–OS requests an exception from the standards required under the Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935, as amended dated February 16, 1956 and May 8, 1969 (HCAR Nos. 13105 and 16369) ("SOP") for deviations therefrom regarding sinking funds and redemption provisions. The Debt may not contain sinking fund provisions, whereas the SOP requires the creation of a sinking fund. In addition, the Debt may not be callable prior to their maturity, whereas the SOP requires that bonds must be callable for redemption at any time upon reasonable notice and with reasonable redemption premiums, if any.

EUA proposes to finance and/or refinance the loans, open account advances, purchases of capital stock and capital contributions to EUA–OS by short-term borrowings under its existing bank lines of credit to be evidenced by the issuance of notes ("Notes"). Such Notes will be mature in not more than nine months from their respective dates of issuance, and the principal amount of the Notes authorized hereunder and outstanding at any one time will not exceed $75 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–224 Filed 1–4–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 17919/File Nos. 812–7657; 812–7658]

Order Granting Exemptions; Royal Tandem Life Insurance Co., et al.

December 26, 1990.

Royal Tandem Life Insurance Company, Tandem Insurance Group, Inc. (collectively, the "Insurance Companies"), Royal Tandem Variable Life Separate Account, Tandem Variable Life Separate Account, Monarch Life Insurance Company ("Monarch"), Variable Account A of Monarch, Monarch Financial Services, Inc., and Merrill Lynch, Pierce, Fenner & Smith, Inc. (collectively, the "Applicants") filed applications on December 20, 1990, for orders of the Commission pursuant to sections 11(a) and 11(c) of the Investment Company Act of 1940 (the "Act") approving exchange offers to be made in connection with the assumption and reinsurance by the Insurance Companies of certain variable life insurance policies issued by Monarch.

The Commission notes that the Insurance Commissioner from Massachusetts has advised the Commission that it is urgent that the Insurance Companies assumptively reinsure immediately certain variable life insurance contracts and that such assumption reinsurance is in the interests of all policy owners. The Commission also notes that the exchange will take place at each policy owner's relative net asset value without the imposition of any charges. The Commission further notes that the Applicants will offer policies which are substantially identical to the policies issued by Monarch. Under these circumstances, the Commission has determined that the granting of the application without prior notice to policy owners is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Accordingly,

It is ordered, pursuant to sections 11(a) and 11(c) of the Act, that the offers of exchange be, and hereby are, approved effective forthwith.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-164 Filed 1-4-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before February 6, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *AGENCY Clearance Officer:* William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Nominate a Small Business Person or Advocate of the year

Form No.: n/a

Frequency: Annually.

Description of Respondents: Organizations nominating a small business leader for small business advocacy awards.

Annual Responses: 400.

Annual Burden: 866.

Title: Surety Bond Guarantee Assistance

Form Nos.: 990, 991, 994, 994B, 994C, 994F, 9994H

Frequency: On Occasion.

Description of Respondents: Small business contractors applying for the Surety Bond Guarantee Program.

Annual Responses: 55,000.

Annual Burden: 28,837.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 91-213 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

Region IX Regional Executive Board Public Meeting

The U.S. Small Business Administration Region IX Regional Executive Board Meeting, located in the geographical area of San Francisco, will hold a public meeting at 9 a.m. on Friday, January 11, 1991, at the Sheraton Santa Barbara, 1111 East Cabrillo Boulevard, Santa Barbara, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Oscar Wright, Regional Administrator, U.S. Small Business Administration, 71 Stevenson Street, Suite 2000, San Francisco, California 94105-2939, telephone (415) 744-6402.

Dated: December 21, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-208 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting from 9 a.m. to 11:30 a.m. on Tuesday, January 29, 1991, at Lake Elsinore Valley Chamber of Commerce, 132 West Graham Avenue, Lake Elsinore, California, to discuss such matters as may be presented by members, staff of the U.S. Business Administration, or others present.

For further information, write or call John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, Suite 160, Santa Ana, California 92703, telephone (714) 836-2494.

Dated: December 19, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-209 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, January 28, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (203) 240-4670.

Dated: December 19, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-210 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

Region V Executive Committee Advisory Council Public Meeting

The U.S. Small Business Administration Region V Executive Committee Advisory Council, located in the geographical area of Chicago, will hold a public meeting from 9 a.m. to 4 p.m. on Friday, January 11, 1991, at the O'Hare Ramada Hotel, Rosemont, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator, for Public Affairs, U.S. Small Business Administration, 230 South Dearborn Street, room 510, Chicago, Illinois 60604, telephone (312) 353-0359.

Dated: December 19, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-211 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, will hold a public meeting at 9 a.m. on Friday, January 11, 1991, at the SBA Office, 625 Silver SW., Suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Tom W. Dowell, District Director, U.S. Small Business Administration, 625 Silver SW., Suite 320, Albuquerque, New Mexico 87102, telephone (505) 766-1902 or FTS 474-1902.

Dated: December 19, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-212 Filed 1-4-90; 8:45 am]

BILLING CODE 8025

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.70 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: December 19, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-214 Filed 1-4-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1319]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Loads Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 22, 1991 at 1 p.m. in room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to prepare for the 35th Session of the International Maritime Organization Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 4 to 8, 1991. Items of discussion will include the following: Subdivision and damage stability of dry cargo ships, including Ro-Ro ships less than 100 meters; the new Code of Intact Stability; subdivision and damage stability standards for passenger ships; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; stability, load line, and tonnage aspects of open-top container ships and livestock carriers; fitting of topside tank non-return valves; hull cracking in large ships; review of the stability requirements for dynamically supported craft; adequacy of IMO instruments to prevent and mitigate marine pollution incidents; double hull tanker stability; role of the human element in marine casualties; the Work Program of SLF 35; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojeen or LCDR Gilbert at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: December 21, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-184 Filed 1-4-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1316]

South Africa Parastatal Organizations: Receipt of Request To Review Classification

SUMMARY: A request has been received to review whether USKO Limited (formerly the Union Steel Corporation) should be classified as a South African "parastatal organization" for purposes of the Comprehensive Anti-Apartheid Act of 1986, as amended (Pub. L. 99-440).

DATES: Comments must be received not later than February 15, 1991.

ADDRESSES: Comments should be sent to the Office of Southern African Affairs, room 4238, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Jim Bond, Office of Southern African Affairs (202) 647-8433; or Tony Perez, Office of the Legal Adviser, (202) 647-4110, Department of State.

SUPPLEMENTARY INFORMATION: State Department Public Notice No. 983, published on November 19, 1986 (51 FR 419192), listed South African firms which had been deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986. The notice provided that any person believing that, due to unique circumstances, a firm should be included or excluded from the list of parastatal organizations can request that the Department review the particular case. The notice stipulated that the Department of State may invoke the authorities set forth in section 603(b) of the Act in conducting a review. Any person who willfully makes a false or misleading statement in a submission to the Department will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001. In State Department Public Notice No. 1007, published March 27, 1987 (52 FR 9982), the Department gave notice of a revised list of corporations, partnerships, and entities deemed to be "parastatal organizations" for purposes of the Act. Also, after seeking public comment in Public Notice No. 1182, published March 4, 1990 (55 FR 12616), the Department gave notice in Public Notice No. 1249, published August 27, 1990 (55 FR 34975), that it had approved ISKOR Limited's request to be removed from the list of parastatal organizations.

A request has been submitted to the Department to review whether USKO Limited (formerly Union Steel Corporation) should be removed from the list of parastatal organizations contained in Public Notice No. 983, as revised by Public Notice No. 1001 and Public Notice No. 1249. The Department of State requests public comment on USKO's application.

Dated: December 24, 1990.

Herman J. Cohen,

Assistant Secretary for African Affairs.

[FR Doc. 91-183 Filed 1-4-91; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended December 21, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47323
Date filed: December 18, 1990
Parties: Members of the International Air Transport Association
Subject: Canada To Europe Cargo Resolutions R-1 To R-5
Proposed Effective Date: January 1, 1991

Docket Number: 47324
Date filed: December 18, 1990
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0401 dated October 15, 1990. JAPAN/KOREA-SOUTHWEST PACIFIC—r-1 to r-11 et al.
Proposed Effective Date: April 1, 1991

Docket Number: 47330
Date filed: December 21, 1990
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0419 dated November 13, 1990. Europe-Southeast Asia—R-1 To R-11 et al
Proposed Effective Date: March 1 and April 1, 1991

Docket Number: 47331
Date filed: December 21, 1990
Parties: Members of the International Air Transport Association
Subject: Mail Vote 451—(Increase fares from PRC to Japan)
Proposed Effective Date: January 1, 1991

Docket Number: 47332
Date filed: December 21, 1990
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/364 dated December 14, 1990. Expedited Resos—R-1 To R-3; intended effective date: January 1, 1991. CAC/Reso/164 dated December 19, 1990. Expedited Resos—R-4; intended effective date: February 14, 1991

Docket Number: 47333
Date filed: December 21, 1990
Parties: Members of the International Air Transport Association
Subject: Comp MV/P 0657 dated December 12, 1990. Mail Vote 449—(014a Construction Rule)
Proposed Effective Date: April 1, 1991

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-191 Filed 1-4-91; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 28, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

T3Docket Number: 47337
T3Date filed: December 26, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 23, 1991
Description: Joint Application of Eastern Airlines, Inc. and USAir, Inc. pursuant to section 401(h) of the Act and subpart Q of the Regulations for approval of the transfer to USAir of Eastern's authority to serve the nonstop Pittsburgh-Toronto market and the nonstop Baltimore/Washington-Ottawa/Montreal markets.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-192 Filed 1-4-91; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 21, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47320.
Date filed: December 17, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 1991.
Description: Joint Application of American Airlines, Inc., and Trans World Airlines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations requests that the Department approve the transfer to American of TWA's certificate authority for service between the United States and London, between the United States and points served via London, and between U.S. points other than New York and St. Louis and certain other countries.

Docket Number: 47321.
Date filed: December 17, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 14, 1991
Description: Joint Application of American Airlines, Inc. and Eastern Air Lines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations requests the Department approved the transfer to American of the certificate for Route 72-F (New York/Newark-Montreal/Ottawa) held jointly by Eastern and Continental.

Docket Number: 47325.
Date filed: December 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1991
Description: Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, request approval of the transfer to Northwest of Hawaiian's certificate authority to provide air transportation of persons, property and mail: (1) between the United States and Australia via intermediate points; (2) between Guam and Saipan, Northern Mariana Islands, on the one hand, and Nagoya, Japan, on the other; and (3) between Guam and Saipan, Northern Mariana Islands, on the one hand, and Fukuoka, Japan, on the other Related certificate amendments also are sought.

Docket Number: 47327.
Date filed: December 21, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 1991.
Description: Application of Antigua and Barbuda Airways International, Ltd., pursuant to section 402 of the Act and subpart Q of the Regualtions to operate scheduled and charter air services carrying passengers, cargo, and

mail between the United States and Antigua.

Docket Number: 47329.

Date filed: December 21, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 1991.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between a point or points in the United States, on the one hand, and points in Australia and New Zealand, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-193 Filed 1-4-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway and railroad consolidation project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Mr. James Bednar, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), and the Alameda Corridor Transportation Authority (ACTA), will prepare an environmental impact statement (EIS) on a proposed multi-modal transportation project along the approximately 18-mile long Alameda Corridor in Los Angeles County, California. The fundamental purpose of the project is to provide the improvements necessary to consolidate freight rail service along the Alameda Corridor, so that efficiency of goods movement will be enhanced and delays to automotive traffic will be greatly reduced. Coupled with the improved freight rail facilities will be an improved roadway facility to encourage truck movements to also consolidate along Alameda Street.

The completed Alameda Corridor will include elements that address freight rail movements, truck and automotive traffic in the corridor, and vehicular cross traffic. The recommended project will be developed through a process that will take into account construction and operating costs, engineering feasibility, railroad operation, intrusion into neighborhoods, disruption and displacement of residents and businesses, access to local destinations, and other issues. The goal is a facility that will effectively balance competing requirements, while at the same time will promote the concept of freight rail consolidation.

Although the specific details of the project alternatives have not been defined, a number of options are under consideration. The range of alternatives would, in addition to the no-project option, include options to improve both rail and highway service in the Alameda Street Corridor from approximately Henry Ford Avenue to I-10. Potential highway improvements include improved four- and six-lane roadways. Numerous grade separations are to be considered, regardless of the mix or rail/roadway options. In addition, specific design variations are possible, affecting both alternative rail trackage to be used and train staging/storage areas at both the northern and southern ends of the project corridor. Also to be evaluated is the potential for railway electrification.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to other interested parties who have expressed or are known to have an interest in this proposal. A formal scoping meeting will be held on Thursday, January 24, 1991, at Bateman Hall in the City of Lynwood. The draft EIS/EIR will be available for public review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program)

Issued on: December 28, 1990.

Douglas E. Bennett,

Senior Area Engineer, Sacramento, California.

[FR Doc. 91-185 Filed 1-4-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 91-3]

Cancellation "With Prejudice" of Broker License No. 5383 Arthur J. Brewer.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on December 13, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and parts 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled "with prejudice" the individual broker license (no. 5383) issued to Mr. Arthur J. Brewer.

Dated: December 20, 1990.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-231 Filed 1-4-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 4
Monday, January 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 4, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-287 Filed 1-3-91; 1:38 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 11, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-288 Filed 1-3-91; 1:38 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 15, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-289 Filed 1-3-91; 1:38 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 18, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-291 Filed 1-3-91; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 A.M., FRIDAY, JANUARY 25, 1991.

PLACE: .2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: CLOSED

MATTERS TO BE CONSIDERED: .

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-292 Filed 1-3-91; 2:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 29, 1991.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Applications of the Chicago Board of Trade for contract designation in Cash Settled Three Year and Five Year Interest Rate Swap futures

—Application of the MidAmerica Commodity Exchange for contract designation in Options on Corn futures

—Application of the Chicago Mercantile Exchange for contract designation in Options on Broiler Chicken futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-293 Filed 1-3-91; 2:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 29, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-294 Filed 1-3-91; 2:09 pm]

BILLING CODE 6351-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., January 9, 1991.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Implementation of the Non-Vessel-Operating Common Carrier Amendments of 1990

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91-295 Filed 1-3-91; 1:39 pm]

BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 56, No. 4
Monday, January 7, 1991

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.

ACTION

Student Community Service Projects; Availability of Funds

Correction

In notice document 90-29742 beginning on page 52198 in the issue of Thursday, December 20, 1990, make the following corrections:

1. On page 52201, in the first column, in paragraph (3)(c), in the second and third lines, delete "'Non-partisan election'".

2. On the same page, in the second column, in the second entry under "*Region I*", in the third line, "203/240-327" should read "203/240-3237"

3. On page 52202, in the second column, under "*Region IX*", in the heading after the fourth entry, "Guam" was misspelled.

4. On the same page, in the third column, under "(Alaska)", "908174" should read "98174".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

Correction

In rule document 90-30535 beginning on page 53488 in the issue of Monday, December 31, 1990, make the following correction:

On page 53488, in the second column under **Subpart N-Investments, Loans and Guarantees by Electric Borrowers**, insert five asterisks in a line immediately below and before the next heading.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596-AA44

Disposal of Mineral Materials

Correction

In rule document 90-29112 beginning on page 51700 in the issue of Monday, December 17, 1990, make the following corrections:

1. On page 51702, in the 2nd column, in the 4th full paragraph, in the 13th line "no" should read "not".

2. On the same page, in the same column, in the same paragraph, in the 22nd line "Systems" should read "System".

3. On page 51703, in the first column, in the first full paragraph, in the second line "is" should read "in".

4. On the same page, in the third column, in the first paragraph, in the eighth line "Service" should read "System".

5. On page 51704, in the first column, in the second full paragraph, in the second line the word "in" should be inserted between "upon" and "the".

6. On page 51705, in the first column, in the first paragraph, in the second line "1995" should read "1955".

7. On the same page, in the second column, in the first paragraph, in the fifth line "Service" should read "System".

8. On the same page, in the same column, in the third paragraph, in the sixth line "Service" should read "System".

BILLING CODE 1505-01-D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Test Methods for Simulating Use and Abuse of Toys, Games, and Other Articles Intended for Use by Children

Correction

In rule document 90-29571 beginning on page 52039 in the issue of Wednesday, December 19, 1990, make the following correction:

§ 1500.51 [Corrected]

On page 52040, in the first column, in § 1500.51(e)(2)(i), in the fifth line, "± inch-pound" should read "± 0.2 inch-pound".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 901218-0318]

Reef Fish Fishery of the Gulf of Mexico

Correction

In rule document 90-29373 beginning on page 51722 in the issue of Monday, December 17, 1990, make the following correction:

§ 641.25 [Corrected]

On page 51723, in amendatory instruction 2, in the fourth line, and in the first line below the first set of asterisks, "(l)" should read "(e)"

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-556; RM-6794]

Radio Broadcasting Services; Copeland, KS

Correction

In rule document 90-30411 appearing on page 53306, in the issue of Friday, December 28, 1990, in the second column, after the fourth line, insert "**EFFECTIVE DATE**: February 11, 1991."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Establishment and Termination

Correction

In rule document 90-29165 beginning on page 51281 in the issue of Thursday, December 13, 1990, make the following corrections:

1. On page 51281, in the third column, in **SUPPLEMENTARY INFORMATION**, in the eighth line, after "16" insert "subgroups or".

2. On page 51282, in the first column, in the first complete paragraph, in the fifth line, "receive" should read "review".

BILLING CODE 1505-01-D

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

Correction

In notice document 90-29018 appearing on page 51172 in the issue of Wednesday, December 12, 1990, make the following correction:

In the second column, in the last line before the signature, replace the period after "1990" with a colon and add "Jonathan Berg"and "David Parmelee".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8323]

RIN 1545-AL06

Information Reporting on Real Estate Transactions

Correction

In rule document 90-29239 beginning on page 51282, in the issue of Thursday, December 13, 1990, make the following corrections:

§ 1.6045-4 [Corrected]

1. On page 51286, in the first column, in § 1.6045-4(d)(3)(iii), in the fifth line, "transferor's" was misspelled.

2. On the same page, in the same column, in § 1.6045-4(e)(1) introductory text, in the eighth line, "paragraphs" should read "paragraph".

3. On page 51287, in the second column, in § 1.6045-4(f)(2), in the third line from the bottom of the paragraph, "and (l)(g)(1)" should read "and (l)(1)".

4. On page 51290, in the third column, the first signature was omitted, and should read "Michael J. Murphy, *Acting Commissioner of Internal Revenue.*

BILLING CODE 1505-01-D

federal register

Monday
January 7, 1991

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Legislative Changes Concerning Payment to Hospitals for FY 1991; and Mid-Year FY 1991 Changes to Inpatient Hospital Prospective Payment System; Notice and Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-721-N]

Medicare Program; Legislative Changes Concerning Payment to Hospitals for Federal Fiscal Year 1991

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

ACTION: Notice of legislative changes.

SUMMARY: This notice describes changes to the Medicare prospective payment system for inpatient hospital services concerning the hospital wage index and the regional payment floor resulting from the provisions of the Continuing Resolution of October 1, 1990 (Pub. L. 101–403). Also described in this notice are those self-implementing portions of sections 4001 (a) and (c), 4002 (e) and (f), 4007, 4151, and 4158 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) that affect Federal fiscal year 1991 payments to prospective payment hospitals and hospitals and units excluded from the prospective payment system. The changes required by these sections affect the following: 15 percent capital payment reduction, use of the regional payment floor, offset for physician assistant services, market basket percentage increase, standardized amounts, hospital-specific rates for sole community hospitals and Medicare-dependent small rural hospitals, target rate of increases for excluded hospitals and units, hospital wage index, payments for graduate medical education, and Part B payment reduction.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966–4529.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1990, we published a final rule (55 FR 35990) to implement the Medicare inpatient hospital prospective payment system for Federal fiscal year (FY) 1991. In that rule, we set forth the methods, amounts, and factors for determining the FY 1991 prospective payment rates. We also established, for cost reporting periods beginning during FY 1991, new target rate percentages for determing the rate-of-increase limits for hospitals excluded from the prospective payment system.

Under that final rule, in accordance with sections 1886(b)(3)(B)(i) and 1886(d)(3)(A) of the Social Security Act (the Act), the applicable percentage increase in the average standardized amounts for prospective payment hospitals effective with discharges occurring on or after October 1, 1990 and in the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals effective for cost reporting periods beginning on or after October 1, 1990 was the percentage increase in the hospital market basket (that is, 5.2 percent). In accordance with section 1886(b)(3)(B)(ii), hospitals and hospital units excluded from the prospective payment system had their target amounts increased by the percentage increase in the hospital market basket for excluded hospitals and units (that is, 5.3 percent) effective with their cost reporting period beginning on or after October 1, 1990.

In the September 4, 1990 final rule, we also made the following changes that are affected by provisions in Public Law 101–508:

- We based the FY 1991 wage index solely on 1988 wage survey data and implemented a 1-year phase-in of the updated wage index to lessen the impact of the most significant changes. We limited the percentage change in the wage index value to 8 percent plus 50 percent of the difference between the 8 percent threshold and the new wage index value. Home office costs and fringe benefits associated with hospital and home office salaries were included in the updated wage index. Nonhospital costs were excluded from the index.
- We made adjustments to the wage data to reflect the provisions of section 1886(d)(8)(C) of the Act that were added by the section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) concerning wage index values for rural counties that are deemed urban.
- Based on the expiration of the statutory authority, we discontinued the use of the regional floor for prospective payment rates for discharges occurring on or after October 1, 1990.
- We added a new 42 CFR 412.120(c) that provides for a reduction in payment for inpatient hospital services to account for 100 percent of the reasonable charges for physician assistant services furnished to beneficiaries in a part of the hospital that is subject to the prospective payment system.

II. New Legislation

Since publication of the September 4, 1990 final rule, Congress has enacted two pieces of legislation that affect payment for hospitals. These are the Continuing Resolution of October 1, 1990 (Pub. L. 101–403) and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted October 1, 1990 and November 5, 1990, respectively. This notice announces the provisions of section 115 of Public Law 101–403 and sections 4001(a) and (c), 4002(e) and (f), 4007, 4151, and 4158 of Public Law 101–508 that are self-implementing and are effective before January 1, 1991.

A. Capital-Related Costs

Section 1886(g)(3)(A)(v) of the Act provides that payments to hospitals subject to the prospective payment system for capital-related costs of inpatient hospital services are to be reduced by 15 percent for payments attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 through September 30, 1990. Section 4001(a) of Public Law 101–508 extends the 15 percent capital payment reduction through portions of cost reporting periods or discharges occurring through September 30, 1991. Sole community hospitals are exempt from this provision under section 1886(g)(3)(B) of the Act. Section 4001(c) of Public Law 101–508 amends section 1886(g)(3)(B) of the Act to provide that rural primary care hospitals (as defined in section 1861(mm)(1) of the Act) are also exempt from the 15 percent capital payment reduction, effective October 1, 1990.

Section 4151 of Public Law 101–508 amended 1861(v)(1)(S)(ii)(I) of the Act to provide that payments for capital-related costs of outpatient hospital services are to be reduced by 15 percent for payments attributable to portions of cost reporting periods occurring during FY 1991. The reduction of payments for capital-related costs of outpatient hospital services does not apply to a sole community hospital as defined in section 1886(d)(5)(D)(iii) of the Act. For ambulatory surgical services, radiology services, and other diagnostic procedures performed in an outpatient hospital setting, the reduction in payments for capital-related costs is made before determining the blended amount under sections 1833(i)(3)(B)(i)(I) and 1833(n)(1)(B)(i)(I) of the Act.

B. Regional Floor

Section 4002(d) of Public Law 100–203 amended section 1886(d)(1)(A)(iii) of the Act to establish a "regional floor" for the prospective payment rate applicable to a hospital effective for discharges occurring on or after April 1, 1988 and before October 1, 1990. In accordance with this section, hospital payments have been based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15

percent of the average standardized amount for the Census region in which they are located. Since the statutory authority for use of the regional floor expired on October 1, 1990, we discontinued its use in the September 4, 1990 final rule (55 FR 36050) effective for discharges occurring on or after October 1, 1990.

Section 115(b)(1) of Public Law 101–403 amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through October 20, 1990. As required by section 115(b)(2) of Public Law 101–403, for this 20-day period, aggregate payments to hospitals are to be budget neutral, that is, estimated aggregate payments with the regional floor are to equal what estimated aggregate payment would have been without the continuation of the regional floor. Therefore, a budget neutrality adjustment factor of .99819 was applied to the payment rates that were effective October 1, 1990 through October 20, 1990. These rates are shown in section III of this notice in Tables 1a–i, 1b–ii, in 1c–i.

Section 4002(e) of Public Law 101–508 further amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through discharges occurring before October 1, 1993. In addition, this provision is not subject to budget neutrality. Therefore, the rates shown in Tables 1a–ii, 1b–ii, and 1c–ii in section III of this notice that are effective October 21, 1990 through December 31, 1990 are not adjusted by a budget neutrality factor for this provision.

C. Offset for Physician Assistant Services

Section 4002(f) of Public Law 101–508 amended section 9338 of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) (which was enacted on October 21, 1986) by eliminating the provision that would allow the Secretary to offset DRG payments for services performed by physician assistants in the part of the hospital that is subject to the prospective payment system. As a result of this, the provisions of § 412.120(c), which were published in the September 4, 1990 final rule (55 FR 36071), are voided. Under that section, duplicate payments for physician assistant services provided to hospital inpatients would have been eliminated since these services are paid under Part B of the Medicare program.

D. Freeze on Medicare Part A Payments

In general, section 4007 of Public Law 101–508 provides for a freeze in Medicare Part A payments for the period October 21, 1990 through December 31, 1990. Specifically, section 4007(a)(1) of Public Law 101–508 states that the market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Act) that is applicable to prospective payment hospitals and hospitals excluded from the prospective payment system is deemed to be 0 percent for discharges occurring on or after October 21, 1990 and before January 1, 1991. The revised standardized amounts effective for discharges occurring on or after October 21, 1990 and before January 1, 1991 are shown in section III of this notice in Tables 1a–ii, 1b–ii, and 1c–ii.

Under section 1886(b)(3)(C)(ii) of the Act, the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals for a given cost reporting period is the hospital-specific rate for the preceding 12-month cost reporting period updated by the applicable percentage increase for discharges occurring in the fiscal year in which the cost reporting period begins. For cost reporting periods beginning in FY 1990 and FY 1991, the applicable hospital market basket percentage increases reflected in the hospital-specific rate are 5.5 percent and 5.2 percent, respectively. However, in accordance with section 4007(a)(1) of Public Law 101–508, for discharges occurring on or after October 21, 1990 through December 31, 1990, the market basket percentage increase is deemed to be 0 percent. Accordingly, the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals is reduced to remove the market basket percentage increase reflected in the hospital-specific rate applicable to discharges occurring during that period as follows:

- For hospitals with cost reporting periods beginning on or after October 1, 1990 and before October 21, 1990, the hospital-specific rate is reduced by 5.2 percent effective for discharges occurring on or after October 21, 1990 and before January 1, 1991.
- For hospitals with cost reporting periods beginning on or after October 21, 1990 and before January 1, 1991, the hospital-specific rate is reduced by 5.5 percent for discharges occurring on or after October 21, 1990 and before the start of the FY 1991 cost reporting period. For discharges occurring after the start of the hospital's FY 1991 cost reporting period, the 5.5 percent reduction is eliminated and the hospital-specific rate is restored to its October 20, 1990 level. No market basket increase is applied to the hospital's FY 1991 hospital-specific rate until discharges occurring on or after January 1, 1991.
- For hospitals with cost reporting periods beginning on or after January 1, 1991, the hospital-specific rate is reduced by 5.5 percent effective for discharges occurring on or after October 21, 1990 and before January 1, 1991.

We note that since the hospital-specific rate is updated by cost reporting period, the market basket percentage increase that is reflected in the hospital-specific rate applicable to discharges occurring on or after October 21, 1990 and before January 1, 1991 is dependent on the hospital's cost reporting period. Since the market basket rate of increase was 5.5 percent in FY 1990 and 5.2 percent in FY 1991, the percentage reduction for hospitals with cost reporting periods beginning in FY 1990 is 5.5 percent compared to 5.2 percent for those with cost reporting periods beginning in FY 1991. Although the hospitals with cost reporting periods beginning in FY 1990 will experience a slightly higher reduction in payment for discharges occurring on or after October 21, 1990 and before January 1, 1991 than hospitals with cost reporting periods beginning in FY 1991, these hospitals received the benefit of the higher FY 1990 update that was applicable to hospitals located in rural areas during a greater proportion of their cost reporting period. This update (market basket plus 4.22 percentage points, or 9.72 percent) was effective for discharges occurring on or after January 1, 1990. Thus, a hospital with a FY 1990 cost reporting period beginning on or after January 1, 1990 received the higher update for its entire cost reporting period (other than for the October 21, 1990 through December 31, 1990 freeze period), whereas a hospital with a FY 1990 cost reporting period beginning before January 1, 1990 received the benefit of the higher update only for the portion of its cost reporting period occurring on or after January 1, 1990. The disproportionate impact of the FY 1990 update as well as the freeze results from the statutory effective dates for these provisions being established for discharges occurring on specific dates rather than for discharges occurring on a specific number of days in the cost reporting period beginning in the same fiscal year.

For hospitals and hospital units excluded from the prospective payment system, the applicable percentage increase in the target amount is equal to the market basket percentage increase (that is, 5.5 percent for FY 1990 and 5.3 percent for cost reporting periods beginning in FY 1991). However, in

accordance with section 4007(a)(1) of Public Law 101–508, the market basket percentage increase is deemed to be 0 percent for the period beginning on October 21, 1990 and ending on December 31, 1990.

Since the freeze has a varying effect by cost reporting period, we have computed factors that are to be applied to the target amount after being appropriately updated. The factors are the result of dividing the adjusted updated target amount, which includes the effect of the freeze, by the unadjusted updated target amount (5.5 percent or 5.3 percent, as appropriate). For example, for a hospital that has a cost reporting period from November 1, 1989 through October 31, 1990, the target amount will be increased by 5.5 percent and a factor of .9984 percent will be applied to the adjusted target amount for determining Medicare payment of inpatient operating costs. We have listed below the factors to be applied to the target amounts for the specified cost reporting periods affected by the freeze. The actual market basket update factors will continue into subsequent cost reporting periods.

ADJUSTMENT FACTORS TO BE APPLIED TO UPDATED TARGET AMOUNTS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER NOVEMBER 1, 1989 AND BEFORE JANUARY 1, 1991

Cost reporting period	Adjustment factor
Nov. 1, 1989 to Sept. 31, 1990	.9984
Dec. 1, 1989 to Nov. 30, 1990	.9941
Jan. 1, 1990 to Dec. 31, 1990	.9897
Feb. 1, 1990 to Jan. 31, 1991	.9897
Mar. 1, 1990 to Feb. 28, 1991	.9897
Apr. 1, 1990 to Mar. 31, 1991	.9897
May 1, 1990 to Apr. 30, 1991	.9897
Jun. 1, 1990 to May 31, 1991	.9897
Jul. 1, 1990 to Jun. 30, 1991	.9897
Aug. 1, 1990 to Jul. 31, 1991	.9897
Sept. 1, 1990 to Aug. 31, 1991	.9897
Oct. 1, 1990 to Sept. 30, 1991	.9901
Nov. 1, 1990 to Oct. 31, 1991	.9916
Dec. 1, 1990 to Nov. 30, 1991	.9957

E. Hospital Wage Index

As required by section 1886(d)(3)(E) of the Act, we updated the hospital wage index for FY 1991. Section 115(a) of Public Law 101–403 extended the use of the area wage index applicable to prospective payment system hospitals that was in effect on September 30, 1990 (that is, the wage index in use in FY 1990) to discharges occurring on or after October 1, 1990 through October 20, 1990. Section 4007(a)(3) of Public Law 101–508 further extends the use of this wage index for prospective payment hospitals for discharges occurring on or after October 21, 1990 and before January 1, 1991.

F. Graduate Medical Education

Section 4007(a)(4) of Public Law 101–508 specifies that the percentage change in the Consumer Price Index for All Urban Consumers (United States City Average) that is applicable to graduate medical education (GME) per resident payment amounts under section 1886(h)(2)(D) of the Act is deemed to be 0 percent for the payment of Medicare inpatient GME costs for the period October 21, 1990 through December 31, 1990. The freeze in the update of the per resident amounts will be applied for portions of cost reporting periods occurring during this period.

Since the per resident amounts represent payment for total Medicare GME costs and the apportionment between Medicare part A and part B is done on a ratio of part A and part B costs to total Medicare costs excluding GME costs, an adjustment to the GME update factor as applied to the per resident amount would result in a reduction to part A and part B costs. Therefore, in order to implement the freeze for that period for the payment of Medicare inpatient GME costs, we developed a percentage factor that is to be applied to Medicare part A GME costs in determining Medicare part A GME payments. This percentage is the result of dividing the adjusted updated per resident amount, as effected by the freeze in the Consumer Price Index for All Urban Consumers update, by the unadjusted updated per resident amount. We have listed below, by cost reporting period, the factors that are to be applied to Medicare part A GME costs in determining Medicare part A payments. The update factors listed in the September 4, 1990 final rule will be used to update the average GME per resident amounts (55 FR 36065). The effect of the freeze will be calculated at the end of the specified cost reporting period when Medicare Part A GME costs are determined.

The payment under part B for GME costs will be reduced with respect to the payment reduction as provided in section 4158 of Public Law 101–508.

PART A PAYMENT ADJUSTMENT FACTORS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER NOVEMBER 1, 1989, AND BEFORE JANUARY 1, 1991

Cost Reporting Period	Adjustment Factor
Nov. 1, 1989 to Oct. 31, 1990	.9990
Dec. 1, 1989 to Nov. 30, 1990	.9950
Jan. 1, 1990 to Dec. 31, 1990	.9920

PART A PAYMENT ADJUSTMENT FACTORS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER NOVEMBER 1, 1989, AND BEFORE JANUARY 1, 1991—Continued

Cost Reporting Period	Adjustment Factor
Feb. 1, 1990 to Jan. 31, 1991	.9920
Mar. 1, 1990 to Feb. 28, 1991	.9920
Apr. 1, 1990 to Mar. 31, 1991	.9920
May 1, 1990 to Apr. 30, 1991	.9920
Jun. 1, 1990 to May 31, 1991	.9920
Jul. 1, 1990 to Jun. 30, 1991	.9920
Aug. 1, 1990 to Jul. 31, 1991	.9920
Sept. 1, 1990 to Aug. 31, 1991	.9920
Oct. 1, 1990 to Sept. 30, 1991	.9920
Nov. 1, 1990 to Oct. 31, 1991	.9930
Dec. 1, 1990 to Nov. 30, 1991	.9970

G. Part B Payment Reduction

Section 4158 of Public Law 101–508 provides for a 2 percent payment reduction for payments made on a reasonable cost basis under part B which applies for portions of cost reporting periods occurring during the period from November 1, 1990 through December 31, 1990.

The reduction in part B payments will not apply to payments under risk-sharing contracts under section 1876 of the Act or under similar contracts under section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248) or section 222 of the Social Security Amendments of 1972 (Pub. L. 92–603).

If a reduction in the part B payment amount is made for items or services furnished on an assignment-related basis, as defined in section 1842(i)(1) of the Act, the provider furnishing the items or services will be considered to have accepted payment on the reasonable charge for the items or services, less any reduction in payment as required under section 4158 of Public Law 101–508, as payment in full.

H. Public Law 101–508 Provisions Effective January 1, 1991

The following provisions of section 4002 of Public Law 101–508 concern payment for inpatient hospital services and are effective on Jaunary 1, 1991. These provisions will be implemented through a separate final rule with comment period that will be published at a later date.

• Section 4002(a) updates the standardized amounts by the market basket percentage increase (5.2 percent) minus 2.0 percentage points for urban hospitals (3.2 percent), and section 4002(c) increases the rural standardized amounts by the market basket

percentage increase minus 0.7 percentage points (4.5 percent).

• Section 4002(b) increases the payment formula applicable to urban disproportionate share hospitals with 100 or more beds.

• Section 4002(d) implements the FY 1991 hospital wage index based solely on FY 1988 survey data with no provision for the limitation on percentage changes that was included in the September 4, 1990 final rule (55 FR 36036).

• Section 4002(h) makes revisions to the determination of hospital wage index values applicable to hospitals that have been redesignated under sections 1886(d)(8) and (10) of the Act.

III. Tables

This section contains the tables referred to in section II of this notice. For purposes of this notice, and to avoid confusion, we have retained the designations of Tables 1a, 1b, 1c, that were first used in the April 5, 1988 prospective payment notice (53 FR 11134). Tables 1a–i, 1b–1, and 1c–i are effective for October 1, 1990 through October 20, 1990. Tables 1a–ii, 1b–ii, and 1c–ii are effective for October 21, 1990 through December 31, 1990. The tables are as follows:

Table 1a–i.—National Adjusted Standardized Amounts, Labor/Nonlabor, Effective October 1, 1990 through October 20, 1990.

Table 1b–i.—Regional Adjusted Standardized Amounts, Labor/Nonlabor, Effective October 1, 1990 through October 20, 1990.

Table 1c–i.—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor, Effective October 1, 1990 through October 20, 1990.

Table 1a–ii.—National Adjusted Standardized Amounts, Labor/Nonlabor, Effective October 21, 1990 through December 31, 1990.

Table 1b–ii.—Regional Adjusted Standardized Amounts, Labor/Nonlabor, Effective October 21, 1990 through December 31, 1990.

Table 1c–ii.—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor, Effective October 21, 1990 through December 31, 1990.

TABLE 1A–I.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR; EFFECTIVE OCTOBER 1, 1990 THROUGH OCTOBER 20, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) multiplied by 0.99819]

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2526.96	1,041.08	2,486.95	1,024.60	2,446.35	788.18

TABLE 1B–I.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR; EFFECTIVE OCTOBER 1, 1990 THROUGH OCTOBER 20, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) multiplied by 0.99819]

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2,653.71	1,087.11	2,611.70	1,069.89	2,712.25	935.39
2. Middle Atlantic (PA, NJ, NY)	2,384.12	1,029.90	2,346.38	1,013.60	2,597.52	884.28
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,544.97	950.49	2,504.68	935.44	2,483.12	766.78
4. East North Central (IL, IN, MI, OH, WI)	2,684.32	1,124.59	2,641.83	1,106.78	2,514.48	852.22
5. East South Central (AL, KY, MS, TN)	2,442.47	860.65	2,403.80	847.03	2,461.02	715.04
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,545.69	1,024.69	2,505.39	1,008.46	2,391.94	763.91
7. West South Central (AR, LA, OK, TX)	2,531.05	944.06	2,490.97	929.11	2,293.96	702.53
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,441.55	1,011.22	2,402.90	995.20	2,319.80	808.00
9. Pacific (AK, CA, HI, OR, WA)	2,374.96	1,155.10	2,337.36	1,136.81	2,256.21	910.26

TABLE 1C–I.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR; EFFECTIVE OCTOBER 1, 1990 THROUGH OCTOBER 20, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) multiplied by 0.99819]

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2272.74	472.67	2236.75	465.19	1667.50	359.48
National	2492.01	971.11				

TABLE 1A–II.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR; EFFECTIVE OCTOBER 21, 1990 THROUGH DECEMBER 31, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) market basket increase removed]

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,406.41	991.42	2,368.31	975.72	2,329.65	750.58

TABLE 1B–II.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR; EFFECTIVE OCTOBER 21, 1990 THROUGH DECEMBER 31, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) market basket increase removed]

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2527.11	1035.25	2487.11	1018.85	2582.86	890.77
2. Middle Atlantic (PA, NJ, NY)	2270.38	980.77	2234.44	965.25	2473.60	842.09
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2423.56	905.14	2385.19	890.82	2364.66	730.20
4. East North Central (IL, IN, MI, OH, WI)	2556.26	1070.94	2515.80	1053.98	2394.52	811.57
5. East South Central (AL, KY, MS, TN)	2325.95	819.59	2289.13	806.63	2343.61	680.93
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2424.25	975.81	2385.87	960.35	2277.83	727.47
7. West South Central (AR, LA, OK, TX)	2410.30	899.02	2372.14	884.78	2184.52	669.01
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2325.08	962.89	2288.27	947.72	2209.13	769.46
9. Pacific (AK, CA, HI, OR, WA)	2261.66	1099.99	2225.86	1082.58	2148.57	866.83

TABLE 1C–II.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR; EFFECTIVE OCTOBER 21, 1990 THROUGH DECEMBER 31, 1990

[Adjusted standardized amounts as published in the September 4, 1990 final rule (55 FR 35990) market basket increase removed]

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2,164.32	450.12	2,130.05	442.99	1,587.95	342.33
National	2,373.13	924.78				

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact statement for any notice that would be likely to result in one of the following—

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

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RCA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RCA, States and individuals are not entities, but we consider all hospitals to be small entities. Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis that conforms to section 604 of the RFA unless the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rurual hospitals.

We have determined that this notice, in itself, will not produce any effects that would meet any of the criteria of E.O. 12291 or of the RFA since the amendments to which this notice pertains are already in effect or will go into effect without the publication of this notice. Implementation of these amendments is not dependent on the publication of this document. Therefore, we have determined that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required. For the same reason, we have determined and the Secretary certifies that this notice will not have a significant impact on a substantial number of small rural hospitals or on any other small entities.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date. However, because the provisions of this notice merely summarize statutory amendments that are self-implementing or that require only the ministerial application of established formulas and data bases, and because the effective dates of the provisions are October 1, 1990 through December 31, 1990, we believe a delayed effective date is unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This notice does not impose paperwork or information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the

authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

Authority: Sections 1815, 1833, 1861(v), and 1886 of the Social Security Act (42 U.S.C. 1395g, 1395(1), 1395(v), and 1395ww); section 115 of Pub. L. 101–403; and sections 4001, 4002, 4007, 4151 and 4158 of Pub. L. 101–508.

Dated: December 20, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: December 24, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–30618 Filed 12–31–90; 11:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-723-FC]

Medicare Program; Mid-Year FY 1991 Changes to the Inpatient Hospital Prospective Payment System

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

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period implements several provisions of section 4002 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) that affect Medicare payment for inpatient hospital services and that take effect with discharges occurring on or after January 1, 1991. The provisions of section 4002 of Public Law 101-508 affect the following: The standardized amounts, the hospital wage index, rural counties whose hospitals are deemed urban, and hospitals that serve a disproportionate share of low income patients.

DATES: *Effective date.* This final rule is effective January 1, 1991.

Comment date. Comments will be considered if we receive them at the appropriate address, as provided in **ADDRESSES**, no later than 5 p.m. on March 8, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-723-FC, P.O. Box 26676, Baltimore, Maryland 21207.

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

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

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

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

In commenting, please refer to file code BPD-723FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION:

I. Background

A. The September 4, 1990 Final Rule

On September 4, 1990, we published a final rule (55 FR 35990) to implement the Medicare inpatient hospital prospective payment system for Federal fiscal year (FY) 1991. In that rule, we set forth the methods, amounts, and factors for determining the FY 1991 prospective payment rates.

Under that final rule, in accordance with sections 1886(b)(3)(B)(i) and 1886(d)(3)(A) of the Social Security Act (the Act), the applicable percentage increase in the average standardized amounts for prospective payment hospitals effective with discharges occurring on or after October 1, 1990 and in the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals effective for cost reporting periods beginning on or after October 1, 1990 was the percentage increase in the hospital market basket (that is, 5.2 percent).

In the September 4, 1990 final rule, we also made the following changes that are affected by provisions in Public Law 101-508:

- We based the FY 1991 wage index solely on 1988 wage survey data and implemented a 1-year phase-in of the updated wage index to lessen the impact of the most significant changes. We limited the percentage change in the wage index value to 8 percent plus 50 percent of the difference between the 8 percent threshold and the new wage index value. Home office costs and fringe benefits associated with hospital and home office salaries were included in the updated wage index. Nonhospital costs were excluded from the index.
- We made adjustments to the wage data to reflect the provisions of section 1866(d)(8)(C) of the Act that were added by the section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) concerning wage index values for rural counties that are deemed urban.
- Based on the expiration of the statutory authority, we discontinued the use of the regional floor for prospective payment rates for discharges occurring on or after October 1, 1990.
- We provided for a reduction in payment for inpatient hospital services to account for 100 percent of the reasonable charges for physician assistant services furnished to beneficiaries in a part of the hospital that is subject to the prospective payment system.

C. The January 1991 Notice

Elsewhere in this issue of the Federal Register, we published a notice that announced self-implementing changes resulting from the Continuing Resolution of October 1, 1990 (Pub. L. 101-403) and the enactment of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) that affected payment to prospective payment system hospitals and hospitals excluded from the prospective payment system. That notice announced the following changes in payments under the prospective payment system:

- Section 115(b)(1) Public Law 101-403 extended the regional floor provision through October 20, 1990. (The original statutory authority for use of the regional floor expired on October 1, 1990.) As required by section 115(b)(2) of Public Law 101-403, for this 20-day period, aggregate payments to hospitals were to be budget neutral, that is, estimated aggregate payments with the regional floor were to equal what estimated aggregate payments would have been without the continuation of the regional floor. Therefore, a budget neutrality adjustment factor of .99819 was applied to the payment rates that were effective October 1, 1990 through October 20, 1990. Section 4002(e) of Public Law 101-508 further extended the regional floor provision through discharges occurring before October 1, 1993. This provision was not subject to budget neutrality.
- Section 4002(f) of Public Law 101-508 amended section 9338 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) to eliminate the provision that would allow the Secretary to offset DRG payments for services performed by physician assistants in the part of the hospital that is subject to the prospective payment system
- In general, section 4007 of Public Law 101-508 provided for a freeze in the level of Medicare part A payments for the period October 21, 1990 through December 31, 1990. Specifically, section 4007(a)(1) of Public Law 101-508 stated that the market basket percentage increase that is applicable to prospective payment hospitals was deemed to be 0 percent for discharges occurring on or after October 21, 1990 and before January 1, 1991. The hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals was reduced to remove the market basket percentage increase reflected in the

hospital-specific rate applicable to discharges occurring during that period.

• Section 115(a) of Public Law 101–403 extended the use of the area wage index applicable to prospective payment system hospitals that was in effect on September 30, 1990 (that is, the wage index in use in FY 1990) to discharges occurring on or after October 1, 1990 through October 20, 1990. Section 4007(a)(3) of Public Law 101–508 further extended the use of this wage index for prospective payment hospitals for discharges occurring on or after October 21, 1990 and before January 1, 1991.

II. Summary of the Omnibus Budget Reconciliation Act of 1990

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 was enacted (Pub. L. 101–508). The provisions of sections 4002 (a), (b), (c), (d), and (h) of Public Law 101–508 made the following changes that affect Medicare payments for inpatient hospital services under the prospective payment system effective with discharges occurring on or after January 1, 1991.

• The percentage increase in the standardized amounts applicable to rural hospitals for discharges occurring before October 1, 1991 is the market basket percentage increase minus 0.7 percentage points (that is, 4.5 percent). The percentage increase in the average standardized amounts applicable to large urban hospitals and other urban hospitals is equal to the market basket percentage increase minus 2.0 percentage points (that is, 3.2 percent).

• For discharges occurring on or after January 1, 1991 and before October 1, 1993, the hospital wage index, which is used to adjust payments to hospitals, will be based solely on the 1988 hospital wage survey data with no phase-in period.

• The methodology for determining the wage index applicable to rural counties whose hospitals are deemed urban has been revised.

• The disproportionate share adjustment applicable to certain hospitals that serve a disproportionate share of low income patients has been increased. In addition, the sunset provision that would have ended all disproportionate share adjustments effective October 1, 1995 has been repealed.

Our implementation of these provisions is described below in section III. of this preamble.

III. Provisions of the Final Rule With Comment Period

A. Hospital Wage Index

Section 1886(d)(2)(C)(ii) of the Social Security Act (the Act) required, as part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Act have required that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals. To fulfill both of these requirements, we constructed an index that reflects average hospital wages in each urban and rural area as a percentage of the national average hospital wage.

For purposes of determining the prospective payments to hospitals in FY 1984 and 1985, we constructed the wage index using calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages, and Contributions file for hospital workers. Beginning with discharges occurring on or after May 1, 1986, we have been using a hospital wage index based on HCFA surveys of hospital wage and salary data as well as data on paid hours in prospective payment system hospitals.

In determining prospective payments to hospitals in FY 1990, the wage index was based on wage data from calendar year 1984. Section 6003(h)(6) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1886(d)(3)(E) of the Act to require that wage indexes that are applied to the labor-related portion of the national average standardized amounts of the prospective payment system be updated not later than October 1, 1990, and updated annually beginning October 1, 1993. The September 4, 1990 final rule (55 FR 35990) set forth a revised hospital wage index that was based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. Home office costs and fringe benefits associated with hospital and home office salaries were included in the updated wage index. Nonhospital costs were excluded from the wage index.

In the September 4, 1990 final rule (55 FR 36041), we implemented a one year phase-in of the updated wage index for FY 1991 to lessen the impact of the most significant changes in wage index values. We limited the percentage change in the wage index value to 8 percent plus 50 percent of the difference between the 8 percent threshold and the new wage index value.

Section 115(a) of the Continuing Resolution of October 1, 1990 (Pub. L. 101–403) extended the use of the area wage index applicable to prospective payment system hospitals that was in effect on September 30, 1990 (that is, the wage index in use in FY 1990, which was based on 1984 hospital wage data) to discharges occurring on or after October 1, 1990 and before October 21, 1990. Section 4007(a)(3) of Public Law 101–508 further extended use of the FY 1990 wage index for prospective payment hospitals for discharges occurring on or after October 21, 1990 and before January 1, 1991. These changes were announced in a notice published elsewhere in this issue of the **Federal Register.**

Section 4402(d)(1)(A) of Public Law 101–508 specifies that a wage index based on 1988 hospital wage data will be effective for discharges occurring on or after January 1, 1991 and before October 1, 1993. Also, section 4402(d)(1)(B) of Public Law 101–508 specifies that the Secretary shall apply the wage index without regard to a previous survey of wages and wage-related costs. Therefore, we are revising the wage index to eliminate the one year phase-in period set forth in the September 4, 1990 final rule (55 FR 36041).

In addition, in determining the wage index for discharges occurring on or after January 1, 1991, we have incorporated all corrections of errors that have been identified in the survey wage data since the publication of the September 4, 1990 final rule. We believe it is appropriate to incorporate these changes so that the wage index will be based on the best available data. In this regard, we note that Public Law 101–508 requires only that the wage index effective January 1, 1991 be based on the 1988 wage data. There is no requirement that the same wage data used to construct the wage index in the September 4, 1990 final rule be used to construct the January 1, 1991 wage index. Moreover, since the wage index values that were published in the September 4, 1990 final rule have never gone into effect, we do not consider the corrections we are making to be mid-year corrections.

If we were to treat these corrections as mid-year corrections, we would be required under section 1886(d)(3)(E) of the Act and § 412.63(l)(4) to make a retroactive budget neutrality adjustment to the standardized amounts at the

beginning of FY 1992. This is because, as discussed in the September 4, 1990 final rule (55 FR 36042), when mid-year corrections are made pursuant to § 412.63(l), the correction in the wage index value for the affected area is effective prospectively from the date the revision is made; however, both the corresponding prospective adjustment to the wage index values for all other wage areas (to reflect the effect of the corrected data on the national average hourly wage) and the budget neutrality adjustment to the standardized amounts required by section 1886(d)(3)(E) (to account for the effect on payments of the mid-year corrections), are not made until the beginning of the next fiscal year. In this particular circumstance, we believe it would not make sense to wait until the beginning of FY 1992 before making the adjustment to the wage index values for unaffected areas and the retroactive budget neutrality adjustment. Since we are required by Public Law 101–508 to make a mid-year shift from use of 1984 wage survey data to use of 1988 wage survey data, we believe it is appropriate to make all the wage index corrections and adjustments at the same time. We therefore have done so, and the new national average hourly wage is $13.9602.

We note that Congressional action which extended the use of the wage index based on 1984 data for the first quarter of FY 1991 has a similar effect as a phase-in of the wage index based on 1988 data. That is, to mitigate the swings in wage index values that would otherwise have occurred, Public Law 101–508 has, in effect, provided hospitals a 25 percent/75 percent blend of the 1984 and 1988 wage data over the course of FY 1991.

The wage indexes are shown in Tables 4a through 4e in the Addendum of this final rule with comment period. The September 4, 1990 final rule (55 FR 36109) included Table 4f, which was comprised of wage index values for areas subject to the wage index phase-in. This table is no longer applicable since the phase-in period to lessen the impact of the most significant changes in wage index values has been eliminated by section 4002(d)(1)(B) of Public Law 101–508.

B. Revisions to the Wage Index for Rural Counties Whose Hospitals are Deemed Urban

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Under this provision, as a part of the September 30, 1988 prospective payment system final rule, we classified the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and recomputed the wage index values for the affected MSAs and rural areas.

Because inclusion of the wage data from rural hospitals that are considered to be located in an adjacent MSA under section 1886(d)(8)(B) of the Act resulted in the reduction of the wage index values of several MSAs and rural areas, Congress enacted section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647). Under that provision, which added a new section 1886(d)(8)(C) to the Act, if the inclusion of wage data from rural hospitals now considered to be located in an urban area resulted in a reduction of the wage index value for the affected MSA, or resulted in a reduction of the wage index value for the rural area from which these data were now excluded, then the wage index values for those affected areas were determined as if section 1886(d)(8)(B) of the Act had not been enacted. In addition, the wage index value for hospitals located in rural counties that were deemed urban was determined on a county-specific basis as if the county were a separate urban area. This provision was implemented as part of the September 1, 1989 prospective payment system final rule (54 FR 36476).

For some hospitals in counties redesignated as urban under the provisions of section 1886(d)(8)(B) of the Act, the application of county-specific wage index values for FY 1990 resulted in lower total prospective payments than what those hospitals had received in FY 1989 because those hospitals were now subject to a lower wage index value. For some redesignated hospitals, such as those that had a county-specific wage index value lower than the Statewide rural wage index, the decrease in payment was significant. In fact, some county-specific wage index values were so low that some rural hospitals redesignated as urban hospitals received lower payments than they would have received if they had been designated as rural hospitals.

In order to address the adverse impact on certain redesignated hospitals that resulted from the implementation of section 8403(a) of Public Law 100–647, Congress, in section 6003(h) of Public Law 101–239, revised the methodology for applying the wage index to hospitals affected by section 1886(d)(8)(B) of the Act. Under section 6003(h)(3) of Public Law 101–239, section 1886(d)(8)(C) of the Act was revised with respect to discharges occurring on or after April 1, 1990. That provision revised the application of the wage index to redesignated hospitals based on the hypothetical impact that the wage data from these hospitals would have on the wage index value of the MSA to which they have been redesignated. Therefore, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by one percentage point or less, the MSA wage index value applies to the redesignated hospitals deemed to be a part of that MSA. The MSA wage index value is determined exclusive of the wage data for the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the MSA wage index value by more than one percentage point, the wage index is applied separately to the MSA and to the hospitals deemed to be part of that MSA. In this case, the redesignated hospitals continue to have their wage index determined on a county-specific basis, as if their county were a separate urban area. However, the wage index for such county will not be less than the Statewide rural wage index.
- Rural areas whose wage index values would be reduced by excluding the data for redesignated hospitals continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increased as a result of excluding the wage data for the excluded hospitals continue to have their wage index calculated exclusive of the redesignated hospitals.

Section 4002(h) of Public Law 101–508 amended section 1886(d)(8)(C) of the Act effective for discharges occurring on or after January 1, 1991 by specifying that if including the wage data for the redesignated hospitals reduces the wage index value for an urban area by more than one percentage point, the wage index value for that urban area is to be calculated and applied separately to hospitals located in that urban area (excluding the redesignated hospitals). In lieu of a county-specific wage index, the hospitals that are redesignated are to use the wage index value of the MSA that results from including the wage data of the redesignated hospitals in the determination. However, the wage index value for the redesignated hospitals cannot be less than the Statewide rural wage index value.

The revised wage index values effective for discharges occurring on or after January 1, 1991 are shown in

Tables 4a and 4b of the Addendum. The revised wage index values for the redesignated hospitals are contained in Tables 4c through 4e.

C. Payments for Hospital that Serve a Disproportionate Share of Low-Income Patients (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments to prospective payment hospitals that serve a disproportionate share of low-income patients. Under section 1886(d)(5)(F)(v) of the Act, and under § 412.106(c) of the regulations for discharges occurring on or after April 1, 1990, a hospital qualifies for a disproportionate share adjustment if during the hospital's cost reporting period, the hospital has a disproportionate patient percentage that is at least equal to—

- 15 percent for an urban hospital with 100 or more beds or a rural hospital with 500 or more beds.
- 40 percent for an urban hospital with fewer than 100 beds.
- 45 percent for a rural hospital with 100 or fewer beds that is not a sole community hospital.
- 30 percent for a rural hospital that either has more than 100 beds but fewer than 500 beds or is classified as a sole community hospital.

In addition, a hospital can qualify for a disproportionate share adjustment, if as provided for in § 412.106(c)(2), the hospital has 100 or more beds, is located in an urban area, and receives more than 30 percent of net inpatient revenues from State and local government sources for the care of indigent patients not eligible for Medicare or Medicaid.

Sections 1886(d)(5)(F) (iii) and (iv) of the Act define the allowable disproportionate share adjustments that are added to the Federal portion of Medicare prospective payments for those hospitals described in sections 1886(d)(5)(F) (i) and (v) of the Act that meet the disproportionate share qualifications. For discharges occurring on or after April 1, 1990, those adjustments are as follows:

- A hospital located in an urban area and having 100 or more beds, or a hospital located in a rural area and having 500 or more beds, with a disproportionate patient percentage of greater than 20.2 percent receives a disproportionate share adjustment that will increase the DRG revenue by 5.62 percent plus 65 percent of the difference between its disproportionate patient percentage and 20.2 percent. If the hospital's disproportionate patient percentage is less than 20.2 percent, the hospital's DRG revenue is increased by 2.5 percent plus 60 percent of the difference between its disproportionate patient percentage and 15 percent.
- The disproportionate share adjustment for urban hospitals with fewer than 100 beds is 5 percent.
- A hospital located in a rural area that is classified as both a rural referral center and an SCH receives a disproportionate share adjustment that increases the Federal portion of the hospital's DRG revenue by the greater of 10 percent, or 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent.
- A hospital located in a rural area and classified as a rural referral center receives a disproportionate share adjustment that increases the hospital's DRG revenue by 4 percent plus 60 percent of the difference between its disproportionate patient percentage and 30 percent.
- A hospital located in a rural area and classified as an SCH receives a disproportionate share adjustment that increases the Federal portion of the hospital's DRG revenue by 10 percent.
- For a hospital with fewer than 500 beds located in a rural area, which is not classified as a rural referral center or an SCH, the disproportionate share adjustment is 4 percent.
- The disproportionate share payment adjustment factor is 30 percent for a hospital that qualifies for a disproportionate share adjustment under § 412.106(c)(2), that is, the hospital has 100 or more beds, is located in an urban area, and receives more than 30 percent of net inpatient revenues from State and local government sources for the care of indigent patients not eligible for Medicare or Medicaid.

Section 4002(b)(1)(A) of Public Law 101–508 amended section 1886(d)(5)(F)(vii) of the Act to provide for an increase in disproportionate share payments for urban hospitals with 100 or more beds and rural hospitals with 500 or more beds that have a disproportionate patient percentage greater than 20.2 percent. For discharges occurring on or after January 1, 1991 and before October 1, 1993, these hospitals will receive 5.62 percent plus 70 percent of the difference between the hospital's disproportionate patient percentage and 20.2 percent. For discharges occurring on or after October 1, 1993 and before October 1, 1994, these hospitals will receive 5.88 percent plus 80 percent of the difference between the hospital's disproportionate share percentage and 20.2 percent. Effective with discharges occurring on or after October 1, 1994, these hospitals will receive 5.88 percent plus 82.5 percent of the difference between the hospital's disproportionate share percentage and 20.2 percent.

For urban hospitals with 100 or more beds or rural hospitals with 500 or more beds and a disproportionate share percentage of 20.2 percent or less, section 4002(b)(1) increases the hospitals disproportionate share adjustment to 2.5 percent plus 65 percent of its disproportionate share patient percentage and 15 percent effective with discharges occurring on or after October 1, 1993.

Section 4002(b)(2) of Public Law 101–508 amended section 1886(d)(5)(F)(iii) of the Act to specify that the applicable disproportionate share adjustment for urban hospitals with 100 or more beds receiving more than 30 percent of net inpatient revenues from State and local government sources for the care of indigent patients will be increased from 30 to 35 percent for discharges occurring on or after October 1, 1990. Public Law 101–508 made no change in the disproportionate share adjustment for other hospitals effective January 1, 1991.

Section 4002(b)(3) amended section 1886(d) to eliminate the sunset provision for the disproportionate share adjustment. Prior to the enactment of Public Law 101–508 the disproportionate share adjustment provision was to expire effective with discharges occurring on or after October 1, 1995.

Section 4002(b)(4)(B) of Public Law 101–508 amended section 1886(d)(2)(C)(iv) to provide that the standardized amounts shall not be restandardized to take into account the effect of additional payments made to qualifying disproportionate share hospitals under section 4002(b)(1) of Public Law 101–508.

IV. Changes in the Regulations

We have made the following changes to the regulations based on provisions concerning payment to prospective payment hospitals contained in sections 4002 and 4007 of Public Law 101–508 that were set forth and published elsewhere in this issue of the **Federal Register** or in the preamble of this final rule with comment period.

- Section 412.63 has been amended to provide for the applicable percentage change in the Federal rates for fiscal year 1991 through fiscal year 1995.
- Section 412.73(c) has been amended to provide for the applicable percentage change in the hospital-specific rate for fiscal year 1991 and the following years for hospitals for which a hospital-specific rate based on a fiscal year 1982 base period or fiscal year 1987 base period applies.

• Section 412.106 has been revised to reflect that the disproportionate share adjustment applicable to certain hospitals serving a disproportionate share of low income patients has been increased.

• Section 412.120(c) has been removed since the offset for the services of physician assistants furnished to hospital inpatients was eliminated.

V. Other Required Information

A. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking for a regulation to provide a period for public comment. However we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. In addition, section 1871(b)(2)(B) of the Act provides that the notice of proposed rulemaking is not required if a statute establishes a specific deadline for implementation that is less than 150 days from enactment. Also, section 1871(b)(2)(A) of the Act provides that a notice of proposed rulemaking is not required where a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment. Section 4207(k) of Public Law 101-508 provides that we may issue regulations on an interim or other basis as may be necessary to implement certain provisions of that law. Because the provisions of Public Law 101-508 implemented by this final rule take effect only 57 days after the statute's enactment on November 5, 1990, and because we believe section 4207(k) of Public Law 101-508 allows for a waiver of the notice of proposed rulemaking to implement these provisions, we find good cause to waive the notice of proposed rulemaking. However, we are providing a 60-day comment period for public comment, as indicated at the beginning of this final rule.

In addition, we normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. Under the clear direction contained in Public Law 101-508, the effective date for the provisions included in this final rule is January 1, 1991. In addition, in general, the wage index and disproportionate share provisions implemented in this final rule are beneficial to some hospitals. If we were to provide for a 30-day delay in the effective date for these changes, these hospitals would be deprived of the full benefits of these provisions. Thus, a 30-day delay in the effective date would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This final rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

C. Public Comments

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of all comments received by the date and time specified in the **"DATES"** section of this preamble, we will respond to the comments and issue any appropriate changes in the final rule that implements changes to the inpatient hospital prospective payment system and sets forth the FY 1992 rates, which will be published on approximately September 1, 1991.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAM

Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. In subpart D, § 412.63, paragraph (i) is revised; paragraphs (j), (k), and (l) are redesignated as paragraphs (n), (o), and (p), respectively; and new paragraphs (j), (k), (l), and (m) are added, to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(i) *Applicabler percentage change for fiscal year 1991.* (1) The applicable percentage change for fiscal year 1991 is—

(i) For discharges occurring on or after October 1, 1990 and before October 21, 1990, 5.2 percent;

(ii) For discharges occurring on or after October 21, 1990 and before January 1, 1991, 0.0 percent; and

(iii) For discharges occurring on or after January 1, 1991 and before October 1, 1991—

(A) 4.5 percent for hospitals located in rural areas; and

(B) 3.2 percent for hospitals located in large urban areas and other urban areas.

(2) For purposes of determining the standardized amounts for discharges occurring on or after October 1, 1991, the applicable percentage change for fiscal year 1991 is deemed to have been the percentage change provided for in paragraph (i)(1)(iii) of this section.

(j) *Applicable percentage change for fiscal year 1992.* The applicable percentage change for fiscal year 1992 is the percentage increase in the market basket index for prospective payment hospitals (generally described in § 413.40(c)(3)(ii) of this subchapter)—

(1) Minus 0.6 percentage point for hospitals located in rural areas.

(2) Minus 1.6 percentage points for hospitals located in large urban areas and other urban areas.

(k) *Applicable percentage change for fiscal year 1993.* The applicable percentage change for fiscal year 1993 is the percentage increase in the market basket index for prospective payment hospitals (generally described in § 413.40(c)(3)(ii) of this subchapter)—

(1) Minus 0.55 percentage point for hospitals located in rural areas.

(2) Minus 1.55 percentage points for hospitals located in large urban areas and other urban areas.

(l) *Applicable percentage change for fiscal year 1994.* The applicable percentage change for fiscal year 1994 is the percentage increase in the market basket index for prospective payment hospitals (generally described in § 413.40(c)(3)(ii) of this subchapter)—

(1) Plus 1.5 percentage points for hospitals located in rural areas.

(2) For hospitals located in large urban areas and other urban areas.

(m) *Applicable percentage change for fiscal year 1995.* The applicable

percentage change for fiscal year 1995 is the percentage increase in the market basket index for prospective payment hospitals (generally described in § 413.40(c)(3)(ii) of this subchapter)—

(1) Plus, for hospitals located in rural areas, the percentage increase necessary so that the average standardized amounts computed under paragraphs (c) through (i) of § 412.63 are equal to the average standardized amounts for hospitals located in an urban area other than a large urban area.

(2) For hospitals located in large urban areas and other urban areas.

* * * * *

C. Subpart E is amended as follows:

Subpart E—Determination of Transition Period Payment Rates

1. In § 412.73, the introductory text of paragraph (c)(7)(i) is revised; paragraph (c)(7)(ii) is redesignated as paragraph (c)(7)(iii); new paragraph (c)(7)(ii) is added; paragraph (c)(8) is revised; and paragraph (c)(9) is added to read as follows:

§ 412.73 Determination of the hospital-specific rate based on a Federal fiscal year 1982 base period.

* * * * *

(c) *Updating base-year costs.* * * *

* * * * *

(7) *For Federal fiscal year 1990.* (i) Except as described in paragraph (c)(7)(ii) of this section, for cost reporting periods beginning in Federal fiscal year 1990, the base-period cost per discharge is updated as follows:

* * * * *

(ii) For discharges occurring on or after October 21, 1990 and before January 1, 1991, the base-period cost per discharge, updated as set forth in paragraph (c)(7)(i) of this section, is reduced by 5.5 percent.

* * * * *

(8) *For Federal fiscal year 1991.* (i) Except as described in paragraph (c)(8)(ii) of this section, for cost reporting periods beginning in Federal fiscal year 1991, the base-period cost per discharge is updated by 5.2 percent.

(ii) For discharges occurring on or after October 21, 1990 and before January 1, 1991, the base-period cost per discharge is updated by 0.0 percent.

(iii) For purposes of determining the updated base period costs for cost reporting periods beginning in Federal fiscal year 1992, the update factor for the cost reporting period beginning during Federal fiscal year 1991 is deemed to have been the percentage change provided for in paragraph (c)(8)(i) of this section.

(9) *For Federal fiscal years 1992 and following.* For Federal fiscal years 1992 and following, the update factor is determined using the methodology set forth in paragraphs (j) through (m) of § 412.63.

* * * * *

2. In § 412.75, paragraph (d) is revised to read as follows:

§ 412.75 Determination of the hospital-specific rate based on a Federal fiscal year 1987 base period.

* * * * *

(d) *Updating base-period costs.* For purposes of determining the updated base-period costs for cost reporting periods beginning in Federal fiscal year 1988, the update factor is determined using the methodology set forth in § 412.73 (c)(5) through (c)(9).

* * * * *

D. In subpart G, § 412.106, the introductory text of paragraph (d)(2)(i) is republished; and paragraphs (d)(2)(i)(A), (d)(2)(i)(B), and (d)(2)(v) are revised to read as follows:

Subpart G—Special Treatment of Certain Facilities

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(d) *Payment adjustment.*

* * * * *

(2) *Payment adjustment factors.* (i) If the hospital meets the criteria of paragraph (c)(1)(i) of this section, the payment adjustment factor is equal to one of the following:

(A) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is as follows:

(*1*) For discharges occurring on or after April 1, 1990 and before January 1, 1991, 5.62 percent plus 65 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(*2*) For discharges occurring on or after January 1, 1991 and before October 1, 1993, 5.62 percent plus 70 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(*3*) For discharges occurring on or after October 1, 1993 and before October 1, 1994, 5.88 percent plus 80 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(*4*) For discharges occurring on or after October 1, 1994, 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(B) If the hospital's disproportionate patient percentage is less than 20.2 percent, the applicable payment adjustment factor is as follows:

(*1*) For discharges occurring on or after April 1, 1990 and before January 1, 1993, 2.5 percent plus 60 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(*2*) For discharges occurring on or after January 1, 1993, 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

* * * * *

(v) If the hospital meets the criteria of paragraph (c)(2) of this section, the payment adjustment factor is as follows:

(A) 30 percent for discharges occurring on or after April 1, 1990 and before October 1, 1990.

(B) 35 percent for discharges occurring on or after October 1, 1990.

E. In subpart H, § 412.120, paragraph (c) is removed.

Subpart H—Payments to Hospitals Under the Prospective Payment System

§ 412.120 Reductions to total payments.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.733, Medicare—Hospital Insurance; No. 93.744, Medicare—Supplementary Medicare Insurance)

Dated: December 20, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: December 24, 1990.

Louis W. Sullivan,

Secretary.

Note: The following addendum and appendix will not appear in the Code of Federal Regulations.

Addendum—Schedule of Standardized Amounts Effective With Discharges Occurring On or After January 1, 1991

I. Changes to FY 1991 Prospective Payment Rates

On September 4, 1990, we published a final rule (55 FR 35990) that set forth the methods, amounts, and factors for determining the FY 1991 prospective payment rates. We also established, for cost reporting periods beginning during FY 1991, new target rate percentages for determining the rate-of-increase limits for hospitals excluded from the prospective payment system.

Under that final rule, in accordance with sections 1886(b)(3)(B)(i) and 1886(d)(3)(A) of the Act, the applicable percentage increase in the average

standardized amounts for prospective payment hospitals effective with discharges occurring on or after October 1, 1990 and the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals effective for cost reporting periods beginning on or after October 1, 1990 was the percentage increase in the hospital market basket (that is, 5.2 percent).

Based on the expiration of the statutory authority, we also discontinued use of the regional floor for prospective payment rates for discharges occurring on or after October 1, 1990.

Elsewhere in this issue of the **Federal Register**, we published a notice that announced self-implementing changes that affected payment to hospitals resulting from Public Law 101–403 and Public Law 101–508. In that notice, we published revised standardized amounts that were effective for discharges occurring on or after October 1, 1990 and before October 21, 1990. These revised standardized amounts were the result of two provisions set forth in section 115(b) of Public Law 101–403. Section 115(b)(1) of Public Law 101–403 amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through October 20, 1990. Section 115(b)(2) of Public Law 101–403 requires that, for that 20-day period, estimated aggregate payments to hospitals were to be budget neutral, that is, estimated aggregate payments with the regional floor were to equal what estimated aggregate payments would have been without the continuation of the regional floor. The resulting rates were shown in Tables 1a–i, 1b–i, and 1c–i of that notice. Section 4002(e) of Public Law 101–508 further amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through discharges occurring before October 1, 1993. This provision is not subject to a budget neutrality requirement.

Also addressed in the notice published elsewhere in this issue of the **Federal Register** were the changes made in section 4007 of Public Law 101–508 that provided for a freeze in the level of Medicare Part A payments for the period October 21, 1990 through December 31, 1990. Section 4007(a)(1) of Public Law 101–508 stated that the market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Act) that is applicable to prospective payment hospitals and hospitals excluded from the prospective payment system was deemed to be 0 percent for discharges occurring on or after October 21, 1990 and before January 1, 1991. The revised standardized amounts effective for discharges occurring on or after October 21, 1990 and before January 1, 1991 were contained in Tables 1a–ii, 1b–ii, and 1c–ii of the notice published elsewhere in this issue of the **Federal Register**.

Under section 1886(b)(3)(C)(ii) of the Act, the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals for a given cost reporting period is the hospital-specific rate for the preceding 12-month cost reporting period updated by the applicable percentage increase for discharges occurring in the fiscal year in which the cost reporting period begins. For cost reporting periods beginning in FY 1990 and FY 1991, the applicable hospital market basket percentage increases reflected in the hospital-specific rate were 5.5 percent and 5.2 percent, respectively. However, in accordance with section 4007(a)(1) of Public Law 101–508, for discharges occurring on or after October 21, 1990 through December 31, 1990, the market basket percentage increase was deemed to be 0 percent. Accordingly, the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals was reduced to remove the market basket percentage increase reflected in the hospital-specific rate applicable to discharges occurring during that period as follows:

- For hospitals with cost reporting periods beginning on or after October 1, 1990 and before October 21, 1990, the hospital-specific rate was reduced by 5.2 percent effective for discharges occurring on or after October 21, 1990 and before January 1, 1991.
- For hospitals with cost reporting periods beginning on or after October 21, 1990 and before January 1, 1991, the hospital-specific rate was reduced by 5.5 percent for discharges occurring on or after October 21, 1990 and before the start of the FY 1991 cost reporting period. For discharges occurring after the start of the hospital's FY 1991 cost reporting period, the 5.5 percent reduction was eliminated and the hospital-specific rate was restored to its October 20, 1990 level. No market basket increase was applied to the hospital's FY 1991 hospital-specific rate for discharges occurring before January 1, 1991.
- For hospitals with cost reporting periods beginning on or after January 1, 1991, the hospital-specific rate was reduced by 5.5 percent effective for discharges occurring on or after October 21, 1990 and before January 1, 1991.

Before enactment of Public Law 101–508 the update factor applicable to the hospital specific rate for sole community hospitals and Medicare dependent small rural hospitals was linked to the update factor applied to the standardized amounts under section 1886(b)(3)(B)(i) of the Act. Section 4002(c)(2)(A)(ii) revises section 1886(b)(3)(C)(ii) and (D)(ii) with respect to the update factor applicable to the hospital specific rate for sole community hospitals and Medicare-dependent small rural hospitals and provides for the update under section 1886(b)(3)(B)(ii) of the Act, which is the market basket rate of increase for cost reporting periods beginning in FY 1991. Therefore, except for discharges occurring during the period October 21, 1990 through December 31, 1990 covered by the freeze in Part A payments under section 4007 of Public Law 101–508, the update factor applied to the hospital-specific rate for sole community hospitals and Medicare-dependent small rural hospitals for cost reporting periods beginning in FY 1991 is 5.2 percent.

Section 4002(a) and (c) of Public Law 101–508 amended section 1886(b)(3)(B)(i) of the Act to specify that the applicable update factors to the standardized amounts for discharges occurring on or after January 1, 1991 and before October 1, 1991 are as follows:

- The market basket percentage increase minus 2.0 percentage points (that is, 3.2 percent) for hospitals located in urban areas.
- The market basket percentage increase minus 0.7 percentage points (that is, 4.5 percent) for hospitals located in rural areas.

For purposes of computing payment rates for discharges occurring on or after October 1, 1991, these update factors are deemed to have been in effect for discharges occurring on or after October 1, 1990.

Under the provisions of 4002(a) and (c) of Public Law 101–508, we have recomputed the standardized amounts effective for discharges occurring on or after January 1, 1991. The updated standardized amounts are contained in Tables 1a, 1b, and 1c of section III of this addendum.

II. Other Adjustments to the Average Standardized Amounts

A. Rural Hospitals Deemed to be Urban—Budget Neutrality

Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. Section 1886(d)(8)(C) of the Act specifies that the wage index for those hospitals deemed urban will be determined based on the hypothetical effect their wage

data would have on the wage index of the MSA to which they are redesignated.

Section 1886(d)(8)(D) of the Act specifies two payment conditions that must be met. First, the FY 1991 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions.

The following adjustment factors were applied to the final standardized amounts in the September 4, 1990 final rule and are effective for discharges occurring on or after October 1, 1990 and before January 1, 1991:

Urban: .999339

Rural: .999455

As a result of the updates to the standardized amounts provided for in section 4002 of Public Law 101-508, specifically the update for rural hospitals, which is larger than the update for urban hospitals, and the changes to the application of the wage index to redesignated rural hospitals under section 1886(d)(8)(C) of the Act, it was necessary to recalculate the budget neutrality factors that are required by section 1886(d)(8)(D) of the Act in applying the special provisions for certain rural hospitals that are deemed urban under section 1886(d)(8)(B) of the Act. The budget neutrality factors for the standardized amounts effective for discharges occurring on or after January 1, 1991 are as follows:

Urban: .999022

Rural: .999594

B. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment

Section 1886(d)(4)(C)(iii) of the Act, as amended by section 6003(b) of Public Law 101-239, specifies that beginning in FY 1991, the annual DRG reclassifications and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. In the September 4, 1990 final rule, we normalized the recalibrated DRG weights by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. While this adjustment was intended to ensure that recalibration does not affect total payments to hospitals, our analysis indicated that the normalization adjustment did not necessarily achieve budget neutrality with respect to aggregate payments to hospitals.

Section 1886(d)(3)(E) of the Act, as amended by section 6003(h)(6) of Public Law 101-239, specifies that the hospital wage index must be updated based on new survey data no later than October 1, 1990 and on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that the DRG reclassification changes and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be implemented in a budget neutral manner, we compared aggregate FY 1991 payments to what aggregate payments would have been if we continued to use the FY 1990 relative weights and wage index. Other than the DRG weights and the wage index, FY 1991 payment rules were used to estimate aggregate payments. Due to the interactive effect of the wage index and DRG weights on aggregate payments, we simultaneously compared the effects of changing the DRG weights and the wage index. Based on this comparison of aggregate payments using the FY 1990 relative weights and wage index to aggregate payments using the proposed FY 1991 relative weights and wage index, we computed a budget neutrality adjustment factor equal to .998637 and applied it to the final standardized amounts effective for discharges occurring on or after October 1, 1990 (55 FR 36079). The budget neutrality factor that has been applied to the standardized payment amounts effective for discharges occurring on or after January 1, 1991 is .998526.

In addition, as discussed in the September 4, 1990 final rule (55 FR 36074), we are applying the same adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after January 1, 1991. Unless we apply the same adjustment factor to the hospital-specific rates, we cannot meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the DRG weights and updated wage index. This is because payments to sole community hospitals and Medicare-dependent, small rural hospitals are affected by changes in the DRG weights and in the wage index.

C. Outliers

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas.

Because of the payment changes set forth in this document, the outlier adjustment factors must be revised. The outlier adjustment factor applied to the standardized amounts for discharges on or after October 1, 1990 were as follows:

Urban: .944744

Rural: .977373

The revised outlier adjustments that have been applied to the standardized amounts to establish the payment rates effective for discharges occurring on or after January 1, 1991 are as follows:

Urban: .944078

Rural: .977448

There is no change in the outlier thresholds. The revised standardized amounts effective for discharges occurring on or after January 1, 1991 are shown in Tables 1a, 1b, and 1c of section III of this addendum.

III. Tables

This section contains the tables referred to throughout the preamble to this final rule with comment period and this addendum. For purposes of this final rule with comment period, and to avoid confusion, we have retained the designations of Tables 1a, 1b, 1c that were first used in the April 5, 1988 prospective payment notice (53 FR 11134). The tables are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor, Effective January 1, 1991

Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor, Effective January 1, 1991

Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor, Effective January 1, 1991

Table 4a—Wage Index for Urban Areas

Table 4b—Wage Index for Rural Areas

Table 4c—Wage Index for Rural Counties Whose Hospitals are Deemed Urban—Using Urban Area Wage Index

Table 4d—Wage Index for Rural Counties Whose Hospitals are Deemed Urban—Computed as Being Combined with the Urban Area

Table 4e—Wage Index for Rural Counties Whose Hospitals are Deemed Urban—Using Statewide Rural Wage Index

TABLE 1A.—NATIONAL ADJUSTED STANDARIZED AMOUNTS, LABOR/NONLABOR

[Effective January 1, 1991]

Large Urban		Other Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2480.60	1021.98	2441.33	1005.80	2434.74	784.43

TABLE 1B.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

[Effective January 1, 1991]

	Large Urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2605.03	1067.16	2563.78	1050.26	2699.37	930.96
2. Middle Atlantic (PA, NJ, NY)	2340.38	1011.01	2303.33	995.00	2585.18	880.07
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2498.28	933.05	2458.72	918.26	2471.32	763.14
4. East North Central (IL, IN, MI, OH, WI)	2635.08	1103.96	2593.36	1086.48	2502.54	848.17
5. East South Central (AL, KY, MS, TN)	2397.66	844.86	2359.69	831.49	2449.34	711.64
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2498.99	1005.89	2459.43	989.96	2380.58	760.28
7. West South Central (AR, LA, OK, TX)	2484.61	926.73	2445.27	912.07	2283.07	699.19
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2396.76	992.66	2358.82	976.94	2308.79	804.17
9. Pacific (AK, CA, HI, OR, WA)	2331.39	1133.90	2294.48	1115.95	2245.50	905.93

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

[Effective January 1, 1991]

	Large urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2231.04	464.00	2195.71	456.65	1659.58	357.77
National	2454.71	956.00				

TABLE 4A.—WAGE INDEX FOR URBAN AREAS

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9238
Taylor, TX	
Aguadilla, PR	0.4577
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9459
Portage, OH	
Summit, OH	
Albany, GA	0.8066
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8940
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0144
Bernalillo, NM	
Alexandria, LA	0.8292
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	0.9865

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9257
Blair, PA	
Amarillo, TX	0.8756
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.2009
Orange, CA	
Anchorage, AK	1.4204
Anchorage, AK	
Anderson, IN	0.9602
Madison, IN	
Anderson, SC	0.7272
Anderson, SC	
Ann Arbor, MI	1.1406
Washtenaw, MI	
Anniston, AL	0.7947
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9197

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3961
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8756
Buncombe, NC	
Athens, GA	0.8225
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9615

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0528
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9419
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9684
Kane, IL	
Kendall, IL	
Austin, TX	0.9618
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0889
Kern, CA	
*Baltimore, MD	1.0176
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9082
Penobscot, ME	
Baton Rouge, LA	0.9107
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9484
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9623
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0185
Beaver, PA	
Bellingham, WA	1.0517
Whatcom, WA	
Benton Harbor, MI	0.8157
Berrien, MI	
*Bergen-Passaic, NJ	1.0316
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9343
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8078
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9278
Broome, NY	
Tioga, NY	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Birmingham, AL	0.8787
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8830
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8656
Monroe, IN	
Bloomington-Normal, IL	0.8676
McLean, IL	
Boise City, ID	0.9776
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA.	1.1833
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0169
Boulder, CO	
Bradenton, FL	0.9281
Manatee, FL	
Brazoria, TX	0.9174
Brazoria, TX	
Bremerton, WA	0.9554
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT.	1.2056
Fairfield, CT	
Brownsville-Harlingen, TX	0.8618
Cameron, TX	
Bryan-College Station, TX	0.9508
Brazos, TX	
Buffalo, NY	0.8926
Erie, NY	
Burlington, NC	0.8002
Alamance, NC	
Burlington, VT	0.9377
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4488
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8721
Carroll, OH	
Stark, OH	
Casper, WY	0.8908
Natrona, WY	
Cedar Rapids, IA	0.8925
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8762
Champaign, IL	
Charleston, SC	0.8348
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9712
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9505

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9634
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9216
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7924
Laramie, WY	
*Chicago, IL	1.0539
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0556
Butte, CA	
*Cincinnati, OH-KY-IN	0.9840
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7334
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0760
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9836
El Paso, CO	
Columbia, MO	0.9525
Boone, MO	
Columbia, SC	0.8958
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7497
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9692
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8611
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8204
Allegeny, MD	
Mineral, WV	
*Dallas, TX	0.9438

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7521
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8487
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9684
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8961
Volusia, FL	
Decatur, AL	0.7502
Lawrence, AL	
Morgen, AL	
Decatur, IL	0.8302
Macon, IL	
*Denver, CO	1.0779
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9189
Dallas, IA	
Polk, IA	
Warren, IA	
*Detroit, MI	1.0841
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7570
Dale, AL	
Houston, AL	
Dubuque, IA	0.8391
Dubuque, IA	
Duluth, MN-WI	0.9536
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8494
Chippewa, WI	
Eau Claire, Wi	
El Paso, TX	0.8731
El Paso, TX	
Elkhart-Goshen, IN	0.8966
Elkhart, IN	
Elmira, NY	0.8828
Chemung, NY	
Enid, OK	0.8930
Garfield, OK	
Erie, PA	0.9173
Erie, PA	
Eugene-Springfield, OR	0.9963
Lane, OR	
Evansville, IN-KY	0.9294
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9726
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8372

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Cumberland, NC	
Fayetteville-Springdale, AR	0.8006
Washington, AR	
Flint, MI	1.1566
Genesee, MI	
Florence, AL	0.7694
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8445
Florence, SC	
Fort Collins-Loveland, CO	1.0258
Larimor, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL.	1.0377
Broward, FL	
Fort Myers-Cape Coral, FL	0.9818
Lee, FL	
Fort Pierce, FL	1.1063
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7947
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8934
Okaloosa, FL	
Fort Wayne, IN	0.8919
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9506
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0758
Fresno, CA	
Gadsden, AL	0.8215
Etowah, AL	
Gainesville, FL	0.8816
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9439
Galveston, TX	
Gary-Hammond, IN	0.9872
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9249
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9596
Grand Forks, ND	
Grand Rapids, MI	0.9903
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0011
Cascade, MT	
Greeley, CO	0.9377
Weld, CO	
Green Bay, WI	0.9604
Brown, WI	
Greensboro-Winston-Salem-High Point, NC.	0.8769
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8921
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9176

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Washington, MD	
Hamilton-Middletown, OH	0.9403
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9938
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
*Hartford-Middletown-New Britain-Bristol, CT.	1.1940
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8759
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1603
Honolulu, HI	
Houma-Thibodaux, LA	0.7191
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9797
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9456
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8852
Madison, AL	
*Indianapolis, IN	0.9586
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9547
Johnson, IA	
Jackson, MI	0.9683
Jackson, MI	
Jackson, MS	0.7748
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7926
Madison, TN	
Jacksonville, FL	0.9069
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7168
Onslow, NC	
Jamestown-Dunkirk, NY	0.7750
Chatauqua, NY	
Janesville-Beloit, WI	0.8482
Rock, WI	
Jersey City, NJ	1.0547
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8685

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9085
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0299
Grundy, IL	
Will, IL	
Joplin, MO	0.7896
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1733
Kalamazoo, MI	
Kankakee, IL	0.8505
Kankakee, IL	
*Kansas City, KS-MO	0.9607
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8872
Kenosha, WI	
Killeen-Temple, TX	1.1317
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8667
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9976
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8974
LaCrosse, WI	
Lafayette, LA	0.8243
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8449
Tippecanoe, IN	
Lake Charles, LA	0.8391
Calcasieu, LA	
Lake County, IL	1.0013
Lake, IL	
Lakeland-Winter Haven, FL	0.8187
Polk, FL	
Lancaster, PA	0.9276
Lancaster, PA	
Lansing-East Lansing, MI	1.0243
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7292
Webb, TX	
Las Cruces, NM	0.7925
Dona Ana, NM	
Las Vegas, NV	1.0652
Clark, NV	
Lawrence, KS	0.8954

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Douglas, KS	
Lawton, OK	0.8405
Comanche, OK	
Lewiston-Auburn, ME	0.9075
Androscoggin, ME	
Lexington-Fayette, KY	0.8463
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8108
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8973
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8437
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8709
Gregg, TX	
Harrison, TX	
Loraine-Elyria, OH	0.8968
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2379
Los Angeles, CA	
Louisville, KY-IN	0.9110
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8807
Lubbock, TX	
Lynchburg, VA	0.8561
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8821
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0331
Dane, WI	
Manchester-Nashua, NH	1.0281
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8409
Richland, OH	
Mayaguez, PR	0.4781
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7152
Hidalgo, TX	
Medord, OR	1.0065
Jackson, OR	
Melbourne-Titusville, FL	0.9218
Brevard, FL	
Memphis, TN-AR-MS	0.9078
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0332
Merced, CA	
*Miami-Hialeah, FL	1.0209

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0421
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0397
Midland, TX	
*Milwaukee, WI	0.9738
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.0839
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8336
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1600
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9919
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7879
Ouachita, LA	
Montgomery, AL	0.7754
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8084
Delaware, IN	
Muskegon, MI	0.9537
Muskegon, MI	
Naples, FL	1.0344
Collier, FL	
Nashville, TN	0.9416
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassau-Suffolk, NY	1.2984
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9951
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2119
New Haven, CT	
New London-Norwich, CT	1.1594
New London, CT	
*New Orleans, LA	0.8918
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3487

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark NJ	1.1254
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8398
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA.	0.8532
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4311
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8631
Marion, FL	
Odessa, TX	1.0838
Ector, TX	
Oklahoma City, OK	0.9163
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1023
Thurston, WA	
Omaha, NE-IA	0.9007
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9672
Orange, NY	
Orlando, FL	0.9625
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8131
Daviess, KY	
Oxnard-Ventura, CA	1.2333
Ventura, CA	
Panama City, FL	0.8650
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8557
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8773
Jackson, MS	
Pensacola, FL	0.8641
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8727
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0973

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0449
Maricopa, AZ	
Pine Bluff, AR	0.7888
Jefferson, AR	
*Pittsburgh, PA	1.0148
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0804
Berkshire, MA	
Ponce, PR	0.4611
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9310
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1587
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0100
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0468
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	1.0639
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0250
Utah, UT	
Pueblo, CO	0.8739
Pueblo, CO	
Racine, WI	0.8867
Racine, WI	
Raleigh-Durham, NC	0.9484
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8417
Pennington, SD	
Reading, PA	0.8805
Berks, PA	
Redding, CA	1.0570
Shasta, CA	
Reno, NV	1.1641
Washoe, NV	
Richland-Kennewick, WA	0.9421
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9436

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1174
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8301
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1051
Olmsted, MN	
Rochester, NY	0.9729
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9301
Boone, Il	
Winnebago, IL	
*Sacramento, CA	1.2257
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0138
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9439
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9432
Buchanan, MO	
*St. Louis, MO-IL	0.9407
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0466
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3067
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9952
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8156
Tom Green, TX	
*San Antonio, TX	0.8459
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.1862

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
San Diego, CA	
*San Francisco, CA	1.4568
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4677
Santa Clara, CA	
*San Juan, PR	0.4997
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1792
Santa Barbara, CA	
Santa Cruz, CA	1.2810
Santa Cruz, CA	
Santa Fe, NM	0.9157
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2968
Sonoma, CA	
Sarasota, FL	0.9800
Sarasota, FL	
Savannah, GA	0.8344
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.8970
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0893
King, WA	
Snohomish, WA	
Sharon, PA	0.9079
Mercer, PA	
Sheboygan, WI	0.8889
Sheboygan, WI	
Sherman-Denison, TX	0.9107
Grayson, TX	
Shreveport, LA	0.9318
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8521
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8850
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0087
St. Joseph, IN	
Spokane, WA	1.0713
Spokane, WA	
Springfield, IL	0.9314

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Menard, IL	
Sangamon, IL	
Springfield, MA	1.0336
Hampden, MA	
Hampshire, MA	
Springfield, MO	0.8098
Christian, MO	
Greene, MO	
State College, PA	0.9921
Centre, PA	
Steubenville-Weirton, OH-WV	0.8729
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1636
San Joaquin, CA	
Syracuse, NY	0.9580
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0338
Pierce, WA	
Tallahassee, FL	0.9238
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9206
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8775
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	0.7907
Miller, AR	
Bowie, TX	
Toledo, OH	1.0107
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9285
Shawnee, KS	
Trenton, NJ	1.0058
Mercer, NJ	
Tucson, AZ	0.9610
Pima, AZ	
Tulsa, OK	0.8412
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8538
Tuscaloosa, AL	
Tyler, TX	0.9650
Smith, TX	
Utica-Rome, NY	0.8340
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3229
Napa, CA	
Solano, CA	
Vancouver, WA	1.0820
Clark, WA	
Victoria, TX	0.9012
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9779
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0413
Tulare, CA	
Waco, TX	0.7830
McLennan, TX	
*Washington, DC-MD-VA	1.0962

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas That Qualify as Large Urban Areas are Designated With an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8659
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9767
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL.	1.0155
Palm Beach, FL	
Wheeling, WV-OH	0.7849
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9829
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8188
Wichita, TX	
Williamsport, PA	0.8874
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0890
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8729
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0836
Worcester, MA	
Yakima, WA	1.0131
Yakima, WA	
York, PA	0.9039
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9885
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0187
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8903
Yuma, AZ	

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7096
Alaska	1.3453
Arizona	0.8613
Arkansas	0.6980
California	1.0140
Colorado	0.8425
Connecticut	1.1929
Delaware	0.8589
Florida	0.8748

TABLE 4B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Georgia	0.7743
Hawaii	0.9637
Idaho	0.8970
Illinois	0.7726
Indiana	0.7763
Iowa	0.7522
Kansas	0.7466
Kentucky	0.7809
Louisiana	0.7399
Maine	0.8344
Maryland	0.8077
Massachusetts	1.1677
Michigan	0.8834
Minnesota	0.8325
Mississippi	0.6824
Missouri	0.7227
Montana	0.8271
Nebraska	0.7010
Nevada	0.9721
New Hampshire	0.9566
New Jersey[1]	
New Mexico	0.8313
New York	0.8448
North Carolina	0.7885
North Dakota	0.7734
Ohio	0.8431
Oklahoma	0.7415
Oregon	0.9574
Pennsylvania	0.8656
Puerto Rico	0.4342
Rhode Island[1]	
South Carolina	0.7626
South Dakota	0.7182
Tennessee	0.7353
Texas	0.7575
Utah	0.9000
Vermont	0.9053
Virginia	0.7820
Washington	0.9654
West Virginia	0.8523
Wisconsin	0.8440
Wyoming	0.8474

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—USING URBAN AREA WAGE INDEX

County	Urban area	Wage index
Macoupin Co., IL	St. Louis, MO-IL	0.9407
Mason Co., IL	Peoria, IL	0.8727
Clinton, IN	Lafayette, IN	0.8449
Jefferson Co., KS	Topeka, KS	0.9295
Allegan Co., MI	Grand Rapids, MI	0.9903
Barry Co., MI	Battle Creek, MI	0.9484
Shiawassee Co., MI.	Flint, MI	1.1566
Clinton Co., MO	Kansas City, MO-KS.	0.9607
Cherokee Co., SC	Greenville-Spartanburg, SC.	0.8921
Bedford Co., VA	Roanoke, VA	0.8301
Fredericksburg City, VA.	Washington, DC-MD-VA.	1.0962
Jefferson Co., WI	Milwaukee, WI	0.9738
Jefferson Co., WV	Washington, DC-MD-VA.	1.0962
Walworth Co., WI	Milwaukee, WI	0.9738

TABLE 4D.—WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—COMPUTED AS BEING COMBINED WITH THE URBAN AREA

County	Urban area	Wage index
Limestone Co., AL	Huntsville, AL	0.8439
Marshall Co., AL	Huntsville, AL	0.8439
Charlotte Co., FL	Sarasota, FL	0.9496
Indian River Co., FL	Fort Pierce, FL	1.0333
Christian Co., IL	Springfield, IL	0.9211
Henry Co., IN	Anderson, IN	0.9439
Ionia Co., MI	Lansing-East Lansing, MI.	1.1031
Lenawee Co., MI	Ann Arbor, MI	1.1241
Tuscola Co., MI	Saginaw-Bay City-Midland, MI.	1.0037
Van Buren Co., MI	Kalamazoo, MI	1.1478
Harnett Co., NC	Fayetteville, NC	0.0867
Genesee Co., NY	Rochester, NY	0.9605
Columbiana Co., OH	Beaver County, PA.	0.9087
Lawrence Co., PA	Beaver County, PA.	0.9087

TABLE 4E.—WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—USING STATEWIDE RURAL WAGE INDEX

County	Urban area	Wage index
Cass Co., MI	Benton Harbor, MI	0.8834
Morrow Co., OH	Mansfield, OH	0.8431
Van Wert Co., OH	Lima, OH	0.8431

Appendix—Regulatory Impact Analysis

I. Introduction

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas and hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area. (Section 1886(d)(8)(B) of the Act specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in an adjacent urban area. We have identified 54 rural hospitals, some of which may be considered small, that we have reclassified as urban hospitals. Also, section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of the prospective payment system, we also reclassified these hospitals as urban hospitals.)

It is clear that the changes being implemented in this document will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis, regulatory flexibility analysis, and rural hospital impact statement in accordance with E.O. 12291, the RFA, and section 1102(b) of the Act.

II. Quantitative Impact Analysis of the Mid-Year Policy Changes on Prospective Payment Hospitals

A. Basis and Methodology of Estimates

The data used in developing the following quantitative analysis of changes in payments, presented in Table I below, are taken from FY 1989 billing data and hospital-specific data for FY 1987 and FY 1988. We propose to compare the effects of changes including those changes that were effective October 1, 1991, that were unaffected by Public Law 101-508, such as recalibration, as well as those changes required by Public Law 101-508 that were self-implementing or are being implemented in this document to our estimate of the payment amounts in

effect in FY 1990 for discharges occurring on or after April 1, 1990. Thus, the impact analysis is comparable to that contained in the September 4, 1990 rule except that the FY 1991 payments are those effective for discharges occurring on or after January 1, 1991.

In addition, we have treated all hospitals in our data base as if they have cost reporting periods that coincide with the Federal fiscal year. By establishing the same cost reporting period for all hospitals, we can show the effect of policy changes on payments for comparable 12-month periods. Moreover, our analysis does not take into account any behavioral changes hospitals may adopt in response to the final policy changes being set forth in this document.

The tables and the discussion that follow reflect our best effort to identify and quantify the effects of the mid-year changes being set forth in this document. It should be noted, however, that we could not utilize all the hospitals in the DRG recalibration or outlier data sets for modeling the impact analysis because in some cases the hospital-specific data necessary for constructing our impact model were missing. Data on hospital bed size and type of control were the data elements most frequently missing. The absent data prevented us from properly classifying and displaying these hospitals in the impact analysis. The missing data, however, did not prevent us from using the discharges from these hospitals in calculating the final outlier payments that are included in the final column of Table II showing the combined effects of all implemented changes.

Our ability to quantify the impacts of the implemented changes has been made more problematic this year by the need to account for the expanded inpatient hospital benefits available under the Medicare Catastrophic Coverage Act that are reflected in the FY 1989 billing data for discharges occurring on or after January 1, 1989. Since the expanded benefits were repealed effective for discharges occurring on or after January 1, 1990, we have removed an estimate of the additional outlier payments attributable to the catastrophic benefits from our baseline data before analyzing the impact of the changes being implemented.

The following analysis examines separately the rebasing and revising of the hospital market basket, wage index changes, DRG reclassification and recalibration changes and the effect of additional payments to prospective payment hospitals that serve a disproportionate share of low-income patients. That is, all variables except those associated with the particular provision under examination were held constant so as to display the effects of each provision compared to the baseline (FY 1989) provisions. In the last column (column V), we present the combined effect of all changes being implemented in this rule. That is, column V displays the combined effects of the previous four columns as well as the FY 1991 update factor and the updating of the outlier payment thresholds. As such, this last column is the only one in which the effects of all the quantifiable payment policy changes on simulated FY 1991 payments are reflected.

The following discussion is divided into two parts. The first part describes the individual effects of two major changes being implemented in this document: Wage index changes and the effect of additional payments to prospective payment hospitals that serve a disproportionate share of low-income patients. The individual effects of two other changes that were implemented in the September 4, 1990 rule and were unaffected by Public Law 101–508, namely, rebasing and revising the hospital market basket and DRG reclassification and recalibration changes, were discussed in the earlier document and therefore are not discussed in this document. Columns I–IV of Table I reflect the quantitative impact of each change by various categories of hospitals. The second section discusses the combined effect of all provisions being implemented for FY 1991 and references column V of Table I.

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TABLE I--IMPACT OF MID-YEAR PPS CHANGES BEING IMPLEMENTED EFFECTIVE JANUARY 1, 1991

	Number of Hospitals 1/	Col I Labor Share Change	Col II Wage Index Changes 2/	Col III Reclassification and Recalibration 3/	Col IV Disproportionate Share Change	Col V All Changes 4/
All Hospitals	5,546	0.0	0.0	0.0	0.2	3.7
Urban by Region	3,033	0.0	0.1	0.1	0.2	3.8
New England	178	-0.3	6.0	-0.2	0.1	9.0
Middle Atlantic	475	-0.7	1.2	0.8	0.2	4.9
South Atlantic	438	0.5	2.0	-0.2	0.2	5.8
East North Central	524	0.1	-1.7	0.2	0.1	2.1
East South Central	173	0.6	-0.8	0.1	0.2	3.4
West North Central	193	0.1	-3.6	0.1	0.1	0.0
West South Central	361	0.5	-2.2	0.1	0.3	1.9
Mountain	117	0.2	-0.4	-0.2	0.1	3.1
Pacific	505	-0.3	-0.1	-0.2	0.4	3.1
Puerto Rico	51	1.1	-4.7	0.0	0.1	-0.4
Rural by Region	2,513	0.2	-0.4	-0.8	0.0	3.1
New England	60	0.1	4.5	-0.8	0.0	7.3
Middle Atlantic	90	-0.1	0.9	-0.4	0.0	4.4
South Atlantic	334	0.3	2.0	-0.7	0.0	5.7
East North Central	324	0.1	-1.6	-0.9	0.0	1.7
East South Central	301	0.4	-0.6	-0.8	0.0	3.2
West North Central	574	0.1	-3.4	-1.0	0.0	0.0
West South Central	408	0.3	-1.3	-0.9	0.0	2.3
Mountain	246	0.0	0.5	-0.9	0.0	4.0
Pacific	159	-0.3	-1.0	-0.9	0.0	2.2
Puerto Rico	6	1.5	-12.7	-1.2	0.0	-8.5
Large Urban Areas (population over 1 million)	1,507	-0.3	0.5	0.3	0.2	4.1
Other Urban Areas (population of 1 million or fewer)	1,526	0.3	-0.4	0.0	0.2	3.4
Urban Hospitals	3,033	0.0	0.1	0.1	0.2	3.8
0-99 Beds	723	0.1	-0.4	-0.7	0.0	2.3
100-199 Beds	879	0.0	0.3	-0.5	0.3	3.6
200-299 Beds	637	0.0	0.0	-0.0	0.2	3.5
300-399 Beds	541	0.0	0.2	0.2	0.2	3.6
400 + Beds	212	-0.1	0.4	0.7	0.2	4.6

TABLE I - continued

	Number of Hospitals 1/	Col I Labor Share Change	Col II Wage Index Changes 2/	Col III Reclassification and Recalibration 3/	Col IV Disproportionate Share Change	Col V All Changes 4/
Rural Hospitals	2,513	0.2	-0.4	-0.8	0.0	3.1
0-49 Beds	1,250	-0.1	-1.0	-1.2	0.0	2.4
50-99 Beds	753	0.1	-0.6	-1.0	0.0	2.9
100-149 Beds	261	0.1	-0.1	-0.9	0.0	3.3
150-199 Beds	114	0.3	-0.2	-0.7	0.0	3.1
200 + Beds	120	0.6	-0.2	-0.3	0.0	3.7
Teaching Status						
Nonteaching	4,356	0.1	0.0	-0.5	-0.1	3.3
Resident/Bed Ratio						
Less than 0.25	963	0.0	-0.3	0.2	-0.1	3.3
Resident/Bed Ratio						
0.25 or Greater	227	-0.4	1.0	1.2	-0.4	5.6
Disproportionate Share Hospitals (DSH)						
Non-DSH	3,975	0.1	-0.1	-0.3	0.0	3.2
Urban DSH						
100 Beds or More	1,117	-0.2	0.2	0.5	0.4	4.3
Fewer Than 100 Beds	124	0.1	-0.4	-0.1	0.0	3.0
Rural DSH						
100 Beds or More-not Rural Referral Centers or Sole Community Hospitals	56	0.1	0.2	-0.7	0.0	4.0
Fewer Than 100 Beds not Rural Referral Centers or Sole Community Hospitals	188	0.1	0.1	-1.1	0.0	3.6
Sole Community Hospitals	49	0.0	0.2	-0.8	0.0	4.0
Rural Referral Centers and Sole Community Hospitals or Rural Referral Centers	37	0.8	0.0	-0.2	0.0	3.9
Urban Teaching and DSH						
Both Teaching and DSH	610	-0.2	0.1	0.8	-0.4	4.4
Teaching only	497	0.0	0.0	0.1	0.0	3.4
DSH only	631	0.0	0.4	-0.3	0.5	4.0
Nonteaching and Non-DSH	1,295	0.2	0.0	-0.4	0.0	3.1

TABLE I - continued

	Number of Hospitals 1/	Col I Labor Share Change	Col II Wage Index Changes 2/	Col III Reclassification and Recalibration 3/	Col IV Disproportionate Share Change	Col V All Changes 4/
Other Special Status (rural)						
Sole Community Hospitals (SCHs)	1,330	-0.1	-0.4	-1.0	0.0	2.9
Rural Referral Centers (RRCs)	217	0.7	-0.4	-0.4	0.0	3.2
Sole Community & Rural Referral	27	0.4	1.0	-0.6	0.0	4.4
Medicare-Dependent	557	0.0	-0.9	-1.2	0.0	2.7
Type of Ownership						
Voluntary	3,050	0.0	0.0	0.0	0.1	3.6
Proprietary	873	0.3	0.2	-0.4	0.2	3.7
Government	1,532	0.0	0.0	0.1	0.3	4.1
Medicare Utilization as Percent of Inpatient Days						
0 - 25	373	-0.4	-0.6	1.3	-0.8	4.5
25 - 50	2,932	0.0	0.0	0.1	0.2	3.6
50 - 65	1,695	0.0	0.1	-0.4	0.1	3.4
Over 65	396	0.2	1.1	-0.7	0.0	4.2

1/ Because data necessary to classify some hospitals by category were missing, some hospitals were omitted from the analysis. Therefore, the total number of hospitals in each category may not equal the national total.

2/ The final wage index constructed entirely from 1988 hourly wage data was compared to the current wage index which is based entirely on 1984 hourly wage data. The final wage index also reflects changes required by section 1884(d)(8)(C) of the Act concerning the redesignation of certain rural hospitals as urban.

3/ Recalibration of the DRG weights and classification changes are based on FY 1989 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

4/ This column shows the combined effects of all the previous columns as well as the effects of updating the FY 1990 standardized payment amounts as mandated by section 1886(b)(3)(B)(i) of the Act as amended by Section 4002 of Pub. L. 101-508. The urban standardized amounts were increased by 4.5 percent and the rural standardized by 3.2 percent. The hospital-specific rate for sole community hospitals and Medicare-dependent hospitals was updated by 5.2 percent as required by section 1886(b)(3)(B)(ii). Also, FY 1990 baseline payments reflect an estimate of outlier payments at 5.0 percent in contrast to the 5.1 percent set for the outlier pool. These estimates of outlier payments contain an adjustment to remove the effects of the elimination of the day limitation on inpatient hospital services under Pub. L. 100-360. Because our total FY 1991 estimated payments do not perpetuate this 0.1 percentage point decrease in outlier payments relative to the outlier pool, this column reflects the 0.1 percent increase in total prospective payments necessary to ensure equality between projected outlier payments and the outlier offsets. In addition, this column captures interactive effects that we are not able to quantify.

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B. Individual Effects

1. *Wage index.* Column II of Table I displays the estimated effects of changes to the wage index being implemented in this final rule with comment period. Discussion of the hospital wage index is set forth in section III.B of the preamble.

Nationally, as a result of budget neutrality, the wage index change has no measurable effect on aggregate program payments. Overall, payments to large urban hospitals will increase by 0.5 percent. Payments to other urban hospitals and payments to rural hospitals will each decrease by 0.4 percent.

The effect on hospitals in different geographic areas varies from an average 6.0 percent increase in payments for hospitals in the urban areas of the New England census division to a 4.7 percent reduction in payments for hospitals in the urban areas of Puerto Rico. The 6.0 percent increase in payments to New England urban hospitals represents the largest increase across all hospital categories. Seven of the ten urban census regions will experience reductions in payments.

The range for rural hospitals is from a 4.5 percent increase for hospitals located in the New England census division to a 12.7 percent reduction in payments for hospitals located in the Puerto Rico census division. The 12.7 percent reduction in payments to Puerto Rico rural hospitals represents the largest percentage reduction across all hospital categories. Six of the ten rural census divisions will experience reductions in payments.

All rural hospitals as categorized by bed size will experience reductions in payments. These reductions range from 1.0 percent (0–49 beds) to 0.1 percent (100–149 beds and over 200 beds).

The range for the effect of the wage index change on hospitals categorized by Medicare utilization as a percent of inpatient days is from a 0.6 percent reduction in payments for hospitals with Medicare utilization of 0–25 percent to a 1.1 percent increase in payments for hospitals with Medicare utilization of over 65 percent.

Rural hospitals subject to special payment provisions will experience reductions in payment ranging from 0.2 percent (sole community hospitals) to 0.9 percent (Medicare-dependent hospitals). The only exception to these reductions is those rural hospitals classified as both a sole community hospital and rural referral center. These hospitals will experience a 1.0 percent increase in payments.

2. *Disproportionate share changes.* Column IV of Table I shows the effect of additional payments to urban hospitals with more than 100 beds that serve a disproportionate share of low-income patients and hospitals with disproportionate indigent care revenues. These changes are described in section III.C of the preamble.

Nationally, disproportionate share changes will result in a 0.2 percent increase in payments. It will result in a 0.2 percent increase in payments to large urban and other urban hospitals with more than 100 beds. For urban disproportionate share hospitals with more than 100 beds, the change will result in a 0.4 percent increase in payments. The change will have no effect on rural hospitals.

Urban hospitals in all ten census divisions will experience increases in payment. These payment increases range from a 0.1 percent increase in the New England, East North Central, West North Central, Mountain and Puerto Rico census divisions to a 0.4 percent increase in the Pacific census division.

The largest decrease in payment is found in those hospitals categorized as having less than 25 percent Medicare utilization as a percent of inpatient days. These hospitals will experience an average 0.8 percent decrease.

C. Combined Effects

Column V of Table I shows the combined effects of all the FY 1991 changes we are able to quantify. In addition to the changes described in columns I, II, III, and IV, column V shows the effects of updating the FY 1990 standardized payment amounts as mandated by section 1886(b)(3)(B)(i) of the Act as amended by section 4002 of Public Law 101–508. The rate of increase in the hospital market basket is estimated at 5.2 percent. The urban standardized amounts were increased by the rate of increase in the market basket less 2 percentage points, or 3.2 percent. The rural standardized amount was increased by the market basket rate of increase less .7 percentage points, or 4.5 percent. In accordance with section 1886(b)(3)(B)(ii), the hospital-specific rate for sole community hospitals and small rural Medicare-dependent hospitals was increased by the market basket rate of increase, or 5.2 percent.

Because Column V combines the final FY 1991 payment rates and all other final changes, the effects displayed also include the payment offset for outlier payments required under section 1886(d)(5)(A) of the Act. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

We set the outlier thresholds in the September 4, 1990 rule so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. The model that we use to determine the outlier thresholds necessary to target our desired aggregate outlier payments for FY 1991 employs FY 1989 charges. We adjusted that model to take into account the effect of changes in Medicare coverage for inpatient hospital services during FY 1989 that resulted from the enactment of the Catastrophic Coverage Act of 1988 (Pub. L. 100–360). These catastrophic coverage provisions were effective with discharges occurring on or after January 1, 1989 (the second quarter of FY 1989) and were repealed by the Medicare Catastrophic Coverage Act of 1989 (Pub. L. 101–234) effective for discharges occurring on or after January 1, 1990. We have re-estimated outlier payments based on the changes in the payment rates required by Public Law 101–508. Maintaining the thresholds published in the September 4, 1990 final rule will result in outlier payments equal to 5.2 percent of total prospective payments.

Nationally, the effects of all changes we are implementing are expected to result in a 3.7 percent payment increase. These changes will increase payments to large urban hospitals by 4.1 percent, to other urban hospitals by 3.4 percent, and to rural hospitals by 3.1 percent. All categories of hospitals, with the exception of urban and rural hospitals in the Puerto Rico census division will experience increases in payments. The percentage increases range between 1.7 and 9.0 percent.

The effect on hospitals in different urban areas varies from an average 9.0 percent increase in payments for hospitals in the urban areas of the New England census division to a 0.4 percent decrease in payments for hospitals in the urban areas of the Puerto Rico census division. The 9.0 percent increase represents the largest increase across all hospital categories and is attributable to the wage index change.

The effect of all changes on rural hospitals varies from an average 7.3 percent increase for hospitals in the New England census division to rural

hospitals in Puerto Rico who will experience an average 8.5 percent reduction in payments. This 8.5 percent reduction represents the largest reduction across all hospital categories and is largely explained by the wage index change.

Urban hospitals as categorized by bed size will receive increases in payments ranging from 2.3 to 3.6 percent. The increase in payments to rural hospitals as categorized by bed size will range from 2.4 to 3.7 percent. For both urban and rural hospitals as the number of beds increase, the percentage increase in payments becomes larger.

The increase in payments that will be experienced by hospitals categorized by type of ownership is near the national average, ranging from a 3.6 percent increase in payments for voluntary hospitals to a 4.1 percent increase in payments for proprietary and government hospitals. Rural hospitals subject to special payment provisions will receive increases in payments below the national average of 3.7 percent.

We must point out that there are interactions that result from the combining of the various separate provisions analyzed in the previous columns that we are unable to isolate. Thus, the values appearing in volumn V do not represent merely the additive effects of the previous columns plus the update factors.

Table II presents the projected FY 1991 average payments per case for urban and rural hospitals effective with discharges occurring on or after January 1, 1991 and for the different categories of hospitals shown in Table II, and compares them to the average estimated FY 1990 per case payments for discharges occurring on or after April 1, 1990. As such, this table presents the combined effects of the implemented changes presented in Table I in terms of the average dollar amounts paid per discharge. That is, the percentage change in average payments from FY 1990 to FY 1991 equals the percentage changes shown in the last column of Table I.

TABLE II.—IMPACT OF MID-YEAR PPS CHANGES IN THE PROSPECTIVE PAYMENT SYSTEM FOR FY 1991

		Col. I	Col. II	Col. III
	Number of hospitals	Payment per case, 1990	Payment per case, 1991	All changes [1]
All Hospitals	5,546	4,984	5,167	3.7
Urban by Region	3,033	5,445	5,650	3.8
New England	178	5,601	6,104	9.0
Middle Atlantic	475	5,942	6,234	4.9
South Atlantic	438	5,001	5,292	5.8
East North Central	524	5,328	5,438	2.1
East South Central	173	4,663	4,823	3.4
West North Central	193	5,454	5,453	0.0
West South Central	361	5,030	5,124	1.9
Mountain	117	5,368	5,533	3.1
Pacific	505	6,297	6,491	3.1
Puerto Rico	51	2,190	2,182	- 0.4
Rural by Region	2,513	3,267	3,369	3.1
New England	60	4,007	4,298	7.3
Middle Atlantic	90	3,679	3,841	4.4
South Atlantic	334	3,301	3,488	5.7
East North Central	324	3,315	3,372	1.7
East South Central	301	2,913	3,005	3.2
West North Central	574	3,122	3,123	0.0
West South Central	408	3,011	3,080	2.3
Mountain	246	3,500	3,641	4.0
Pacific	159	4,034	4,120	2.2
Puerto Rico	6	1,537	1,407	8.5
Large Urban Areas	5,546	4,984	5,167	3.7
(Population over 1 million)	1,507	5,937	6,179	4.1
Other Urban Areas:				
(Population of 1 million or fewer)	1,526	4,937	5,103	3.4
Urban Hospitals	3,033	5,445	5,650	3.8
0–99 Beds	723	4,081	4,176	2.3
100–199 Beds	879	4,691	4,858	3.6
200–299 Beds	637	5,151	5,332	3.5
300–399 Beds	541	5,622	5,826	3.6
400 + Beds	212	6,781	7,094	4.6
Rural Hospitals	2,513	3,267	3,369	3.1
0–49 Beds	1,250	2,842	2,909	2.4
50–99 Beds	753	3,052	3,140	2.9
100–149 Beds	261	3,302	3,411	3.3
150–199 Beds	114	3,424	3,531	3.1
200 + Beds	120	3,884	4,027	3.7
Teaching Status:				
Nonteaching	4,356	4,149	4,287	3.3
Resident/Bed Ratio Less than 0.25	963	5,470	5,652	3.3
Resident/Bed Ratio 0.25 or Greater	227	8,348	8,818	5.6
Disproportionate Share Hospitals (DSH):				
Non-DSH	3,975	4,499	4,644	3.2
Urban DSH:				
100 Beds or More	1,117	6,088	6,350	4.3
Fewer Than 100 Beds	124	4,342	4,472	3.0
Rural DSH:				
100 Beds or More-not Rural Referral Centers or Sole Community Hospitals	56	2,965	3,085	4.0
Fewer Than 100 Beds not Rural Referral Centers or Sole Community Hospitals	188	2,640	2,736	3.6

TABLE II.—IMPACT OF MID-YEAR PPS CHANGES IN THE PROSPECTIVE PAYMENT SYSTEM FOR FY 1991—Continued

		Col. I	Col. II	Col. III
	Number of hospitals	Payment per case, 1990	Payment per case, 1991	All changes [1]
Sole Community Hospitals	49	3,241	3,370	4.0
Rural Referral Centers and Sole Community Hospitals or Rural Referral Centers	37	4,027	4,183	3.9
Urban Teaching and DSH:				
Both Teaching and DSH	610	6,727	7,023	4.4
Teaching only	497	5,560	5,752	3.4
DSH only	631	4,887	5,082	4.0
Nonteaching and Non-DSH	1,295	4,523	4,664	3.1
Other Special Status (rural):				
Sole Community (SCHs)	382	3,379	3,498	3.5
Rural Referral Centers (RRCs)	217	3,823	3,944	3.2
Sole Community & Rural Referral Center	27	4,125	4,305	4.4
Medicare-Dependent	557	2,924	3,002	2.7
Type of Ownership:				
Voluntary	3,050	5,151	5,335	3.6
Proprietary	873	4,483	4,647	3.7
Government	1,532	4,588	4,776	4.1
Medicare Utilization as Percent of Inpatient Days:				
0–25	373	6,823	7,130	4.5
25–50	2,932	5,202	5,391	3.6
50–65	1,695	4,373	4,521	3.4
Over 65	396	4,202	4,380	4.2

[1] Percentage changes shown in this column are taken from Table I, column V. Because the dollar amounts shown in this table are rounded to the nearest dollar, percentage changes computed on the basis of these amounts will differ slightly from those displayed in this column.

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federal register

Monday
January 7, 1991

Part III

Federal Retirement Thrift Investment Board

5 CFR Part 1601

Participant Choice of Investment Funds; Revised Interim Rule With Request for Comments

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choice of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Revised interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing in 5 CFR part 1601 revised interim rule governing participants' choices of investment funds. The revised interim rules implement section 3 of the Thrift Saving Plan Technical Amendments Act of 1990 (TSPTAA), which allows Thrift Savings Plan (TSP) participants to invest all or any portion of their account balances in the three TSP investment funds—the Common Stock Index Investment Fund (C Fund), the Fixed Income Investment Fund (F Fund), and the Government Securities Investment Fund (G Fund). The revised interim rules apply to investment of Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions, in accordance with the provisions of 5 U.S.C. 8438, as amended by the TSPTAA. They also reflect other changes in the operation of the TSP.

DATES: Revised interim rules effective December 31, 1990.

These interim rules apply to all TSP open seasons beginning on or after November 15, 1990. Comments must be received on or before March 8, 1991.

ADDRESSES: Comments may be sent to David L. Hutner, Senior Attorney, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, (202) 523-6367.

SUPPLEMENTARY INFORMATION: Interim rules governing participants' choices of investment funds were published in the **Federal Register** on March 29, 1990, as an amendment to title 5 of the Code of Federal Regulations (CFR). The amendment added Part 1601—Participants' Choice of Investment Funds. These revised interim rules, which replace the previous provisions of part 1601, are being published to implement section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), and to reflect other changes in the operation of the TSP.

Subpart A of the revised rule sets forth definitions of terms used in this part. Subpart B of the revised rule deals with participants' choice of funds in which to invest new Employer or Employee Contributions. Rules governing participants' transfers) of existing account balances among the investment funds (interfund transfers are contained in subpart C of the revised rules.

Prior to enactment of the TSPTAA, for FERS participants all Agency Automatic (1%) Contributions, Agency Matching Contributions, and earnings on all Employer Contributions, were required to remain invested in the G Fund through the end of 1992, after which the investment restrictions would have been gradually lifted over a five-year period. FERS Employee Contributions made in 1987 were required to be invested in the G Fund, and the investment restrictions on Employee Contributions were to be gradually removed over a five-year period ending in 1992. Pursuant to section 2 of Public Law 100-366, which amended 5 U.S.C. 8438(e)(A), all earnings on FERS Employee Contributions became unrestricted. The entire account balances of CSRS participants were required to remain invested in the G Fund at all times.

Section 3 of the TSPTAA, which was enacted on July 17, 1990, removed the investment restrictions that applied under prior law, for both FERS and CSRS participants. Section 3 of the TSPTAA was made effective as of the second election period after enactment (i.e., the election period commencing on July 1, 1991) or at such earlier date as the Executive Director may prescribe in regulations. By publishing these regulations, the Executive Director is prescribing December 31, 1990 as the effective date of section 3 of the TSPTAA.

Section 1601.1 contains definitions of terms used in part 1601.

Section 1601.2 sets forth the manner and timing of participants' choice of investment funds in which to have their new Employee and Employer Contributions invested. Paragraph 1601.2(a) sets forth the general rule that, beginning with the first full pay period in January 1991, FERS and CSRS participants may invest all or any portion of their new Employee Contributions in any of the three TSP investment funds. For FERS participants, the lifting of the investment restrictions also applies to new Employer Contributions.

Paragraph 1601.2(b) requires participants to submit an Election Form (Form TSP-1) to their employing agencies in order to select the investment funds in which Employee and Employer Contributions to their accounts are to be invested, and sets forth rules applicable to allocation elections. Paragraph 1601.2(b)(1) provides that allocation elections made on the Election Form will be applied to all three sources of contributions—Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions. Participants may not make different allocation elections for each source of contributions.

Paragraph 1601.2(b)(2) requires that allocation elections be made as a percentage of contributions per pay period, and that these percentages be only in 5 percent increments. The sum of the percentages elected for the three investment funds must equal 100 percent.

Paragraph 1601.2(b)(3) states that, with one exception, every Election Form must include an allocation election. The purpose of this requirement is to ensure that at any given time a participant's contribution election and allocation election can both be determined from the same Election Form. Thus, if a FERS or CSRS participant submits an Election Form to start, or change the amount of, his or her Employee Contributions, that participant must also complete the section of the Election Form that requires an allocation election. Otherwise, the Election Form will not be accepted by the employing agency. If the participant does not wish to change his or her prior allocation election, he or she must fill in the same percentages on the new Election Form that were elected on the previous Election Form. Similarly, if a FERS participant submits an Election Form to terminate contributions, he or she must also make an allocation election that will be applied to his or her Agency Automatic (1%) Contributions (which continue despite the termination of Employee Contributions). The only exception to the requirements that an allocation election be made when an Election Form is submitted applies to a CSRS participant who has elected to terminate Employee Contributions. Because CSRS participants do not receive Employer Contributions, there is no need for the CSRS participant to make an allocation election when he or she terminates Employee Contributions.

The requirements of paragraph 1601.2(b)(4) and 1601.2(b)(5) serve a similar purpose to that of paragraph 1601.2(b)(3)—to ensure that a participant's election of a whole dollar amount or percentage of basic pay to be contributed, and the allocation election, can both be determined from the same Election Form. Thus, participants may not submit an Election Form which

contains only an allocation election. A FERS participant must also either elect a whole dollar amount or percentage of basic pay to be contributed, elect to terminate contributions, or indicate that he or she is not currently making Employee Contributions and does not choose to begin making Employee Contributions at that time. In the last two situations, the allocation election will be applied to the Agency Automatic (1%) Contributions. If a FERS participant is currently making Employee Contributions in an amount or percentage he or she does not want to change, but does want to change his or her allocation election, the participant must also indicate on the Election Form the same amount or percentage that he or she had previously elected. CSRS participants must, on any Election Form that they submit, elect a whole dollar amount or percentage of basic pay to be contributed, or elect to terminate contributions. Since CSRS employees receive no Employer Contributions, if a CSRS participant is not currently contributing and does not wish to begin contributing, there is no need to submit an Election Form, unless the employing agency requires all employees to have a TSP election on file.

Paragraph 1601.2(b)(6) retains the requirement of the previous rule that all participants who elect to contribute to the C Fund and/or the F Fund must sign an acknowledgment of risk statement. This requirement now applies to CSRS participants as well.

Paragraph 1601.2(b)(7) requires employing agencies to reject and return to participants those Election Forms that fail to comply with the requirements of paragraphs (b)(1) through (b)(6).

Paragraph 1601.2(b)(8) indicates that an election to terminate Employee Contributions will be made effective as of the last day of the pay period during which the employing agency accepts the Election Form, so that the Employee Contributions will be terminated with respect to basic pay earned in the following pay period. Where the termination is made by a FERS participant, the allocation election on the Election Form will be applied to subsequent Agency Automatic (1%) Contributions and will be made effective as of the beginning of the pay period following the pay period during which the Election Form was accepted by the employing agency.

Paragraph 1601.2(b)(9) provides that the Agency Automatic (1%) Contributions of a FERS participant who has no allocation election in effect must be reported by the employing agency for investment in the G Fund. This will generally occur where a FERS participant has never elected to make Employee Contributions and has not submitted an Election Form in order to make an allocation election.

Paragraph 1601.2(b)(10) continues the provision of the previous rule that an Election Form remains effective until superseded by a subsequent Election Form or the participant separates from service. An exception to this provision is contained in the transition rule of paragraph 1601.2(c).

Paragraph 1601.2(c) contains a transition rule that affects FERS participants who have been contributing to the C Fund or F Fund prior to the first full pay period starting on or after January 1, 1991. If such participants do not make a new allocation election that is accepted by the employing agency and made effective as of the first full pay period starting on or after January 1, 1991, all subsequent contributions to their accounts must be reported by the employing agency for investment in the G Fund unless and until a new allocation election is made effective. This transition rule will eliminate the requirement that contributions for some employees be allocated differently for the different sources of contributions. At the same time, the transition rule ensures that no participants are given a greater exposure to the C or F Funds than they chose on their pre-1991 allocation election, which applied only to their Employee Contributions. If such participants wish to continue contributing to the C and/or F Funds, they must submit a new Election Form, which will apply to all three sources of contributions. Because CSRS participants have been required to invest all of their Employee Contributions in the G Fund, their contributions will continue to be reported for investment by the employing agency in the G Fund until they make an allocation election.

Paragraph 1601.2(d) provides that all contributions made pursuant to 5 U.S.C. 8432(c)(3) must be reported by the employing agency for investment in the G Fund. All such contributions may, however, be reinvested in any of the investment funds through the interfund transfer process described in subpart C.

Section 1601.3 provides that where employing agency errors cause money to be invested in an incorrect investment fund, the error shall be corrected exclusively through the lost earnings procedures described in 5 CFR part 1606. Effective January 1, 1991, employing agencies may no longer correct such errors by removing the money from the incorrect investment fund using a negative adjustment record and redepositing the money to the correct investment fund.

Section 1601.4 describes those participants who are eligible to make interfund transfers, i.e., redistribution of their account balances among the three investment funds. Paragraph 1601.4(b) states the general rule that, effective December 31, 1990, FERS and CSRS participants are no longer subject to the investment restrictions that applied under the previous rule. In conjunction with paragraph 1601.2(a), this paragraph establishes December 31, 1990 as the effective date of section 3 of the TSPTAA.

Paragraph 1601.4(c) continues the requirement from the previous rule that participants receiving equal payments withdrawals must have their entire account balances invested in the G Fund. Therefore, these participants are ineligible to make interfund transfers.

Section 1601.5 describes procedures by which participants may elect to make interfund transfers. Paragraph 1601.5(a) sets forth the general requirement that participants submit Interfund Transfer Request forms (Form TSP–30) to the TSP recordkeeper. Participants may no longer use the forms preprinted with their name, address and Social Security number that were formerly provided to them by the TSP recordkeeper and are no longer required to use preprinted forms. Interfund Transfer Request forms will be available to participants through their employing agencies and the TSP recordkeeper.

Paragraph 1601.5(b) retains the requirement from the previous rule that the percentages selected on the Interfund Transfer Request form be in 5 percent increments and that the sum of the percentages selected for the three investment funds equal 100 percent. Paragraph 1601.5(b) also retains the rule that interfund transfers affect only money in a participant's account as of the effective date of the interfund transfer, and that new contributions to the participant's account will continue to be invested pursuant to elections made on Form TSP–1. Paragraph 1601.5(c) provides that the percentages selected on the form will be applied to the participant's entire account balance, including all three sources of contributions, as of the effective date of the transfer.

Paragraph 1601.5(d) retains the requirement that a participant who chooses to invest any money in the C Fund or F Fund must sign an acknowledgment of risk statement. This requirement now applies to both CSRS and FERS participants.

Paragraph 1601.5(e) sets out criteria that must be met in order for an Interfund Transfer Request form to be processed. Paragraph 1601.5(f) states that if any of those criteria are not met, the form will be rejected and have no effect. The participant will be provided with a brief statement of the reason that the form was rejected, where feasible. In some cases notice of rejection is not feasible, such as where the Social Security number and date of birth filled out on the form do not match an account in the TSP database, and other information on the form does not make it clear where or to whom the notice should be sent.

Section 1601.6 establishes the timing and effective dates of interfund transfers. Pursuant to policies established by the Federal Retirement Thrift Investment Board (Board), paragraph 1601.6(a) provides that the maximum number of interfund transfers a participant may have made effective in any calendar year has been increased from two to four. Moreover, as reflected in paragraph 1601.6(b)(2), interfund transfer requests are no longer limited to certain periods of the year. After December 31, 1990, eligible participants may submit Interfund Transfer Request forms at any time during the year. Interfund transfers will be effective as of the end of each month of the year. The effective date of an interfund transfer will be controlled by the date of receipt of the Interfund Transfer Request form by the TSP recordkeeper. The revised rules thus have eliminated the requirement that Interfund Transfer Request forms be received by the TSP recordkeeper during specified periods of time. However, because the change to monthly processing of interfund transfers will commence with transfers effective as of the end of Januray 1991, the first sentence of paragraph 1601.6(b) contains a transitional rule for the open season commencing on November 15, 1990. Interfund Transfer Request forms received after November 15, 1990, and on or before January 15, 1991, excluding special forms described in paragraph 1601.6(c), will be effective as of the end of January 1991.

Paragraph 1601.6(b)(2) also provides that Interfund Transfer Request forms must be received by the 15th day of a month (or next business day if the 15th day is not a business day) to be effective as of the end of the month of receipt. If that deadline is not met, the form will be effective as of the end of the following month.

Paragraph 1601.6(b)(3) provides that where more than one Interfund Transfer Request form is received within a time frame that would enable them to be processed effective as of the end of the same month, the form with the latest date of signature will be processed and the others will be superseded.

Paragraph 1601.6(b)(4) provides the method and time limits for canceling a properly completed Interfund Transfer Request form that has been received by the TSP recordkeeper.

Paragraph 1601.6(b)(5) establishes that interfund transfers will be processed after other transactions that are effective as of the end of the same month for which the interfund transfer is processed, and that interfund transfers will reflect the effects of those other transactions.

Paragraph 1601.6(c) reflects a two-phase removal of the investment restrictions authorized by section 3 of the TSPTAA. Participants who had money invested in the C Fund and/or the F Fund as of the end of November 1990 will be permitted to make an interfund transfer effective as of the end of December 1990. Participants eligible for this interfund transfer were so notified by the Board, and were informed that the deadline for receipt of the Special Interfund Transfer Request form (TSP–30–S) was December 17, 1990. The special interfund transfers will be effective as of the end of December 1990, and thus will not count against the limit of four interfund transfers per participant that can be made effective for 1991.

Paragraph 1601.6(d) requires the TSP recordkeeper to provide participants with confirmation of interfund transfers that have been processed.

Section 1601.7 provides that errors in processing interfund transfers will be corrected in accordance with 5 CFR part 1605.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect on internal Federal Government procedures relating to selection of investment funds by participants in the Thrift Savings Plan.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations apply to all open seasons commencing on or after November 15, 1990. It is necessary that these regulations be in place promptly to provide necessary guidance to employing agencies and TSP participants, and to maximize benefits available to participants.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Part 1601 of Title 5 of the Code of Federal Regulations is revised to read as follows:

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

Subpart A—Definitions

Sec.

1601.1 Definitions.

Subpart B—Investing New Contributions

1601.2 Investing new contributions in the TSP investment funds.

1601.3 Erroneous investment of contributions.

Subpart C—Interfund Transfers

1601.4 Eligibility to redistribute money among the three investment funds.

1601.5 Method of requesting an interfund transfer.

1601.6 Timing and effective dates of interfund transfers.

1601.7 Error correction.

Authority: 5 U.S.C. 8351, 8438, 8474 (b)(5) and (c)(1).

Subpart A—Definitions

1601.1 Definitions.

Acccount balance means the amount of money in a participant's Thrift Savings Plan account as of the effective date of an interfund transfer;

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Allocation election means an election by a participant of the percentages of new contributions to his or her account that are to be invested in the C Fund, F Fund and/or G Fund;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

Calendar year means the period from and including January 1 through and including December 31 of any year;

CSRS means the Civil Service Retirement System established by Subchapter III of Chapter 83 of Title 5, U.S.C., and any equivalent Federal Government retirement plans;

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS or an equivalent Federal Government retirement plan, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, 5 U.S.C. 8440a, or 5 U.S.C. 8440b.

Election period means the last calendar month of an open season and is the earliest period in which a choice to make or change an election (other than an election to terminate contributions) during that open season can become effective;

Election Form means Form TSP–1;

Employee Contributions means any contributions made pursuant to 5 U.S.C. 8432(a), 5 U.S.C. 8351, 5 U.S.C. 8440a, or 5 U.S.C. 8440b.

Employer Contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

FERS means the Federal Employees' Retirement System established by Chapter 84 of Title 5, U.S.C., and any equivalent Federal Government retirement plans;

FERS employee or *FERS participant* means any employee or participant covered by FERS or an equivalent Federal Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the redistribution of a participant's existing account balance among the three investment funds;

Interfund Transfer Request means Form TSP–30;

Investment fund means the C Fund, the F Fund, or the G Fund;

Open season means the period during which employees may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue (without losing the right to recommence contributions the next open season) the amount of Employee Contributions currently being contributed to the Thrift Savings Plan, or to allocate new Employee and Employer Contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an account in the Thrift Savings Fund or who would have an account but for an employing agency error;

Source of contributions means Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. As of the date of publication of this Part 1606, the TSP recordkeeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Investing New Contributions

§ 1601.2 Investing new contributions in the TSP investment funds.

(a) *Removal of investment restrictions.* Pursuant to section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101–335, beginning with the first full pay period starting on or after January 1, 1991, all FERS and CSRS participants may invest all or any portion of their new Employee Contributions in the C Fund, the F Fund, and/or the G Fund. FERS participants may also invest their new Agency Automatic (1%) Contributions and Agency Matching Contributions in the C Fund, the F Fund, and/or the G Fund.

(b) *Allocation elections.* Each participant may indicate his or her choice of investment funds by completing an Election Form (TSP–1). The Election Form must be accepted by the employing agency in accordance with this part and with regulations then governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600) and will be processed as provided in those regulations. The following rules apply to allocation elections:

(1) The percentages elected by a participant for investment of new contributions in the C Fund, F Fund and/or G Fund must be applied to Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions. Different percentage elections may not be made for different sources of contributions;

(2) Contributions may be directed to be invested in the C Fund, F Fund and/or G Fund only as a percentage of contributions to the TSP each pay period, and the allocation percentages may only be in 5 percent increments. The sum of the percentages elected for the three investment funds must equal 100%;

(3) Except in the case of a CSRS participant who has submitted an Election Form which contains an election to terminate contributions, an allocation election must be made on every Election Form in order for that Election Form to be accepted by the employing agency;

(4) In order to be accepted by the employing agency, an Election Form submitted by a FERS participant must:

(i) Contain an election to contribute a whole dollar amount or a percentage of basic pay each pay period; or

(ii) Contain an election to terminate Employee Contributions; or

(iii) Indicate that the participant has not been making Employee Contributions and that the participant is not choosing to start making Employee Contributions on that Election Form;

(5) In order to be accepted by the employing agency, an Election Form submitted by a CSRS employee must:

(i) Contain an election to contribute a whole dollar amount or a percentage of basic pay each pay period; or

(ii) Contain an election to terminate Employee Contributions;

(6) Any participant who elects to invest any contributions in the C Fund and/or F Fund must sign the acknowledgement on the Election Form that the investment is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. If the acknowledgement of risk section of the Election Form is not signed when required, the Election Form will not be accepted;

(7) If an Election Form completed by a participant does not comply with all of the provisions of paragraphs (b)(1) through (b)(6) of this section, the Election Form will have no effect and must be returned to the participant by the employing agency. Except as provided in paragraph (c) of this section, no changes in the investment of new contributions will be made effective unless a properly completed Election Form is accepted in accordance with this Part and the regulations governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600).

(8) An election to terminate Employee Contributions must, in accordance with 5 CFR 1600.7, be made effective so that the Employee Contributions will be terminated with respect to basic pay

earned in the pay period following the pay period in which the employing agency accepts the Election Form. In the case of termination by a FERS participant, the allocation election on the Election Form must be made effective with respect to Agency Automatic (1%) Contributions for the pay period following the pay period in which the employing agency accepted the Election Form.

(9) All Agency Automatic (1%) Contributions made on behalf of FERS participants who do not have an allocation election in effect must be reported by the employing agency for investment in the G Fund;

(10) Except as provided in paragraph (c) of this section, once an Election Form becomes effective, it remains effective until superseded by a subsequent Election Form or until the employee separates from service.

(c) Transition rule. Beginning with the first full pay period starting on or after January 1, 1991, all new contributions to any participant's account which are made pursuant to an Election Form that was made effective prior to the first full pay period starting on or after January 1, 1991, must be reported by the employing agency for investment in the G Fund unless the participant has made a different allocation election during the open season commencing November 15, 1990 and ending on January 31, 1991, which is effective as of the first full pay period starting on or after January 1, 1991. Where contributions to a participant's account are invested in the G Fund pursuant to this paragraph, new contributions to the participant's account must continue to be reported by the employing agency for investment in the G Fund unless and until a new allocation election is made effective. For open seasons subsequent to the open season commencing November 15, 1990 and ending on January 31, 1991, a participant who does not wish to change his or her current allocation election does not need to submit a new Election Form.

(d) *Contributions for pre-1987 service.* Any other provision of this section notwithstanding, any Agency Automatic (1%) Contributions made pursuant to 5 U.S.C. 8432(c)(3) must be reported by the employing agency for investment in the G Fund, regardless of any allocation election that may be in effect at the time the contribution is made.

§ 1601.3 Erroneous investment of contributions.

Where employing agency errors have caused money to be invested in an incorrect investment fund, correction of such error must be accomplished exclusively through the procedures described in 5 CFR part 1606.

Subpart C—Interfund Transfers

§ 1601.4 Eligibility to redistribute money among the three investment funds.

(a) Subpart C of this part applies only to redistributing participants' existing account balances among the C Fund, F Fund, and G Fund. Subpart C of this part does not apply to participants' choice of the investment funds in which new contributions are to be invested; those choices are covered in subpart B of this part.

(b) *Removal of investment restrictions.* Pursuant to section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101–335, starting December 31, 1990 FERS and CSRS participants may, in accordance with this part, invest all or any portion of their account balances in the C Fund, F Fund, or G Fund. Interfund transfer elections will be applied to participants' Employee Contributions, Agency Automatic (1%) Contributions, Agency Matching Contributions, and earnings attributable to all three sources of contributions.

(c) *Participants receiving equal payments.* The account balance of a participant who has begun withdrawing his or her account balance in one or more equal payments under 5 U.S.C. 8433 (b)(3) or (c)(3) will be invested entirely in the G Fund (5 CFR 1650.10(d)). Such a participant is therefore ineligible to make interfund transfers.

§ 1601.5 Method of requesting an interfund transfer.

(a) To make an interfund transfer, a participant must submit a properly completed Interfund Transfer Request form (TSP–30), to the TSP recordkeeper. Participants who do not wish to make an interfund transfer do not need to submit an Interfund Transfer Request form.

(b) Participants must use an Interfund Transfer Request form to designate the percentages of his or her account balance (as of the day the interfund transfer request is made effective, as provided in § 1601.6) that are to be invested in the C Fund, F Fund, and/or G Fund, respectively. The percentages selected by the participant must be in 5 percent increments and must total 100 percent. Submission of an Interfund Transfer Request form will have no effect on the investment funds in which subsequent contributions to the TSP will be invested, and such subsequent contributions will continue to be reported for investment by the employing agency in accordance with participants' elections under subpart B of this part.

(c) The percentages elected on the Interfund Transfer Request form will be applied to the participant's account balance attributable to each source of contributions as of the effective date of the interfund transfer, as determined in accordance with § 1601.6 of this part.

(d) Any participant who chooses, on an Interfund Transfer Request form, to invest any portion of his or her account in the C Fund and/or the F Fund must, in addition to signing and dating the Interfund Transfer Request form, sign the section of the Interfund Transfer Request form that contains an acknowledgement that the investment is made at the participant's risk, that the participant is not protected by the Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. If the acknowledgement of risk is not signed when required, the Interfund Transfer Request form will not be processed.

(e) An Interfund Transfer Request form that has been submitted to the TSP recordkeeper will not be processed if:

(1) It is not signed and dated;

(2) The acknowledgement of risk section of the form has not been signed when required;

(3) The participant has designated dollar amounts rather than percentages, has designated percentages in increments other than 5 percent, or if the total of the percentages selected for the three investment funds does not total 100 percent;

(4) It is not legible;

(5) It has not been properly completed in accordance with the instructions on the form;

(6) The participant is not eligible to make an interfund transfer;

(7) It does not comply with such other requirements as the Executive Director may prescribe; or

(8) The Social Security number or date of birth provided by the participant on the form does not match an account in the TSP database;

(f) If an Interfund Transfer Request form is rejected for any of the reasons stated in paragraph (e) of this section, the form will have no effect. When feasible, the participant will be provided with a brief written statement of the reason the form was rejected.

§ 1601.6 Timing and effective dates of interfund transfers.

(a) A participant may have no more than four interfund transfers made

effective during any calendar year. For purposes of this limitation, an interfund transfer made effective as of the end of December shall count against the limit for the calendar year in which that December falls.

(b) *Effective dates.* (1) Properly completed Interfund Transfer Request forms (TSP–30) received by the TSP recordkeeper after November 15, 1990 and on or before January 15, 1991 will be effective as of the end of January 1991, unless they are cancelled or superseded by a subsequent form received by January 15, 1991. Forms received after January 15, 1991 will be made effective in accordance with the provisions of paragraphs (b)(2) through (b)(4) of this section.

(2) Properly completed Interfund Transfer Request forms received by the TSP recordkeeper on or before the 15th day of a month (or by the next business day if the 15th day is not a business day) shall be effective as of the end of the month during which the form was received. Properly completed Interfund Transfer Request forms received by the TSP recordkeeper after the 15th day of a month (or after the next business day if the 15th day is not a business day) will be effective as of the end of the month following the month during which the form was received.

(3) If more than one Interfund Transfer Request form that complies with the requirements of § 1601.5 for the same participant is received by the recordkeeper after the 15th day of one month (or after the next business day if the 15th is not a business day), but on or before the 15th day of the next month (or the next business day if the 15th is not a business day), the form with the latest date of signature will be made effective and the other forms will be superseded.

(4) A participant may cancel an Interfund Transfer Request by submitting to the recordkeeper a letter requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the 15th day of the month as of the end of which the interfund transfer is to be effective (or by the next business day if the 15th day is not a business day).

(5) Account balances that are redistributed effective as of the end of a given month will reflect the effects of all other account activity posted to the account effective during or at the end of the month.

(c) *Special interfund transfer opportunity.* Accounts of participants who had a portion of their accounts invested in the C Fund or F Fund as of the end of November 1990 and who submitted properly completed Special Interfund Transfer Request forms (TSP–30–S) that were received by the TSP recordkeeper on or before December 17, 1990, will be redistributed in accordance with the percentages elected on the Special Interfund Transfer Request form, effective as of the end of December 1990. The allocation percentages elected will be applied to the participant's account balance attributable to each source of contributions as of the end of December 1990.

(d) Participants will be provided with written confirmation of interfund transfers that have been made effective pursuant to this Part.

§ 1601.7 Error Correction.

Errors in processing interfund transfers will be corrected in accordance with the Error Correction Regulations found at 5 CFR Part 1605.

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federal register

Monday
January 7, 1991

Part IV

Federal Retirement Thrift Investment Board

5 CFR Part 1603

Vesting; Amendment to Interim Rule with Request for Comments

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1603

Vesting

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: The amendment to the revised interim rule changes the definition of "separation from government service" from being a separation of more than 3 days, to a separation of more than 30 days. As a result of the amendment, the Agency Automatic (1%) Contributions of participants not eligible for basic retirement benefits who separate for 30 days or less will not be forfeited pursuant to 5 U.S.C. 8432(g). Also, participants who separate for 30 days or less will not be permitted to withdraw their TSP accounts.

DATES: This amendment is effective as of January 1, 1991. This amendment applies to participants who leave government service on or after January 1, 1991. Comments must be received on or before March 8, 1991.

ADDRESSES: Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis (202) 523-6367.

SUPPLEMENTARY INFORMATION: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to the interim regulation found in 5 CFR part 1603 concerning the definition of separation from government service.

The existing interim rule defines "separation from government service" as a separation of more than 3 days. The amendment changes the definition of "separation from government service" to any separation of more than 30 days. The amendment will provide added flexibility for those participants who are not eligible for basic retirement benefits (generally those with less than 5 years of civilian service) and who wish to maintain their accounts in the TSP despite a very short break in service. This added flexibility is even more important for employees who are not vested in the Government Basic (1%) Contributions (for most employees, those who have less than 3 years of Federal civilian service; less than 2 years of Federal civilian service in certain cases) because they will not forfeit those contributions unless they are separated for more than 30 days.

The change from a required separation of more than 3 days to more than 30 days is also consistent with 5 U.S.C. 8342(a)(1) (A) and (B) and 8424(a)(1) (A) and (B), under which employees must be separated for 31 days before they may receive a refund of their own contributions to the FERS or CSRS basic annuity benefit.

Participants who separate for 30 days or less will not be able to withdraw their TSP accounts. This is consistent with the character of the TSP as a tax-deferred, long-term savings plan for retirement purposes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures relating to TSP participants who separate from government service.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary that this amendment be in place at the earliest date for the direction and guidance of participants as they make employment decisions which may affect their participation in and withdrawal from the TSP.

List of Subjects in 5 CFR Part 1603

Employment benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

For the reasons set out in the preamble, part 1603 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1603—[AMENDED]

1. The authority citation for part 1603 continues to read as follows:

Authority: 5 U.S.C. 8474 (b)(5) and (c)(1).

2. Section 1603.1 is amended by revising the meaning of the term "separation from government service" to read as follows:

§ 1601.3 Definitions.

* * * * *

Separation from government service means any separation of more than 30 days and includes separation resulting from the death of the employee.

* * * * *

[FR Doc. 90-30634 Filed 12-31-90; 12:14 pm]

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federal register

Monday
January 7, 1991

Part V

Federal Retirement Thrift Investment Board

5 CFR Part 1606

Lost Earnings Attributable To Employing Agency Errors; Interim Rule With Request for Comments

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1606

Lost Earnings Attributable To Employing Agency Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with requet for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing in 5 CFR part 1606 interim rules governing lost earnings attributable to employing agency errors. The interim rules implement section 2 of the Thrift Savings Plan Technical Amendments Act of 1990 (the TSPTAA), Public Law 101-335, which added section 8432a to title 5 of the United States Code. Section 8432a of 5 U.S.C. requires the Executive Director to prescribe regulations under which employing agencies shall be required to pay lost earnings resulting from employing agency errors.

DATES: Interim rules effective December 31, 1990. These interim rules apply to lost earnings attributable to imploying agency errors made before, on, or after the effective date of these interim rules. Comments must be received on or before March 8, 1991.

ADDRESSES: Comments may be sent to David L. Hutner, Senior Attorney, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, (202) 523-6367.

SUPPLEMENTARY INFORMATION: The general purpose of this part 1606 is to implement section 2 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101-335, which was enacted on July 17, 1990. Pursuant to 5 U.S.C. 8432a, which was added to the United States Code by section 2 of the TSPTAA, the Executive Director is responsible for issuing regulations under which employing agencies shall be required to pay to the Thrift Savings Fund lost earnings resulting from employing agency errors. The general purpose of this part 1606 is stated in § 1606.1.

Section 1606.2 contains definitions of terms used in part 1606.

Section 1606.3 contains the general rule, subject to certain exceptions contained elsewhere in part 1606, that where an employing agency error causes lost earnings, the responsible employing agency must pay the amount necessary to restore the lost earnings to the account of the participant(s) involved. The amount of lost earnings will be computed by the Thrift Savings Plan (TSP) recordkeeper on the basis of information provided by the employing agency, such as the amount of the error, the dates involved, and the type of error that occurred. The employing agency must also provide the TSP recordkeeper with proper certification or authorization to charge the employing agency for the amount of lost earnings it is required to pay in accordance with this part. Where the employing agency maintains a Treasury account, that account will be charged directly for the appropriate amount. For the few employing agencies that do not maintain Treasury accounts against which the charge can be made directly, the Board will develop procedures for charging the employing agency and receiving payment from the agency.

Section 1606.4 states the applicability of this part 1606. Paragraph 1606.4(a) states generally that any employing agency error that prevents money that would otherwise have been invested in the Thrift Savings Fund from being so invested may fall within the scope of this part, if not excluded elsewhere in this part. Similarly, any employing agency error that causes money to be invested in an incorrect investment fund is covered by this part unless excluded elsewhere. Paragraph (b) makes clear that the coverage of this Part includes back pay awards or other retroactive pay adjustments caused by employing agency errors, for which TSP contributions are required to be made. Generally, § 1606.6 will apply to situations described in paragraph (b).

Paragraph 1606.4(c) makes clear that, as provided in section 2 of the TSPTAA, the lost earnings provisions are retroactive, and cover all employing agency errors that have affected TSP accounts, regardless of when the error was made.

Paragraph 1606.4(d) contains *de minimis* rules. There is both a dollar-based rule and a time-based rule. Because the TSP recordkeeper will be required to perform separate computations of lost earnings for each source of contributions (Employee Contributions, Agency Matching Contributions, or Agency Automatic (1%) Contributions), the *de minimis* rules apply separately to each source of contributions. Where an employing agency error involves less than one dollar with respect to any source of contributions in a participant's account, lost earnings will not be payable. For example, if an employing agency error causes a six-month delay in submission of a $.70 Agency Matching Contribution and a $.50 Agency Automatic (1%) Contribution, no lost earnings would be payable. If the amount were $1.10 for the Agency Matching Contribution, then lost earnings would be payable with regard to that amount, but not with regard to the $.50 Agency Automatic (1%) Contribution. Where the employing agency error affected more than one pay period, the one dollar minimum applies separately to each pay period.

Paragraph 1606.4(d)(2) provides that where an employing agency error involved delay in submitting contributions or loan allotments, no lost earnings will be payable unless the contributions or loan allotments are received by the TSP recordkeeper more than 30 days after the pay date associated with the pay period for which the loan allotment or contribution should have been made. The 30-day rule serves several purposes. First, it provides a grace period during which employing agencies may promptly correct routine errors without incurring liability for lost earnings. Second, since TSP earnings are allocated monthly, an individual participant account does not lose earnings unless the employing agency error causes a contribution to be invested during a month subsequent to the one during which it would have been invested had the error not occurred. Thus, the 30-day rule relieves the employing agency and the TSP recordkeeper from the unnecessary expenditure of resources that would result from computing lost earnings of zero. Third, it is expected that even where the error crosses months, the lost earnings computed on the basis of a delay of 30 days or less will, in the vast majority of cases, result in a very small amount of lost earnings. Where the 30-day requirement is met, the earnings computation commences with the pay date for the pay period involved, not the expiration of the 30-day grace period.

Paragraph 1606.4(d)(3) provides a similar 30-day rule for any errors other than those involving delay in submission of contributions of loan allotments.

Paragraph 1606.4(d)(4) provides that the 30-day rule does not apply where, due to employing agency error, money has been invested in an incorrect investment fund. As provided in paragraph 1606.7(b), the lost earnings process will, effective January 1, 1991, be the exclusive method for correcting investment of contributions in erroneous investment funds. Subject to the one dollar requirement of paragraph (d)(1), contributions invested in an erroneous investment fund should be corrected as promptly as possible, regardless of whether the amount of lost earnings

computed is very small, or even zero (where the error does not cross months). Since the lost earnings computation will be necessary in order to move the contributions to the correct investment fund, there would be no purpose served by requiring the employing agency to wait at least 30 days before submitting the lost earnings record.

Paragraph 1606.4(e) provides that no lost earnings are payable with respect to Agency Automatic (1%) Contributions made pursuant to 5 U.S.C. 8432(c)(3) (first conversion money). Participants receiving such contributions also receive statutorily prescribed interest on those contributions through the date they are paid. Thus, lost earnings would not be appropriate.

Paragraph 1606.4(f) states that contributions made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C) (second conversion money) will be subject to lost earnings if received by the TSP recordkeeper after April 30, 1987. Such contributions were statutorily required to be received by the TSP recordkeeper by April 16, 1987. With respect to second conversion money, paragraph (f) supersedes the 30-day rule.

Subpart B contains rules applicable to delayed or erroneous contributions, which it is expected will constitute the vast majority of errors requiring payment of lost earnings. The provisions of subparts B and C in particular must be read in conjunction with the definition of "timely" contained in § 1606.2 and the *de minimis* rules contained in paragraph 1606.4(d). Although contributions may not have been received within the 12-day "timeliness" requirement, no lost earnings will be payable unless the 30-day *de minimis* rule is met. The 30-day grace period should not be construed, however, as a relaxation of the requirement that agencies submit their contributions to the TSP recordkeeper in a timely manner. The Board has urged employing agencies to ensure that their contribution data are received by the TSP recordkeeper no later than two business days before the applicable pay date, so that they can be processed and posted to participants' accounts on the applicable pay date. The vast majority of contribution tapes are received within that timeframe, and it is expected that employing agencies will continue their high level of performance in this regard.

Section 1606.5 covers the situation where a participant receives pay, but TSP contributions associated with that pay are either not timely deducted (in the case of employee contributions) or are not timely submitted to the TSP recordkeeper (in the case of employer contributions or employee contributions that were deducted from pay). This and all other sections of this part are subject to the *de minimis* rules. Paragraph 1606.5(a) states that where Agency Automatic (1%) Contributions are not timely submitted, the late contributions will be subject to lost earnings. The employing agency must submit a lost earnings record for each pay period for which the Agency Automatic (1%) Contribution was not timely made. Paragraph 1606.5(a)(1) describes generally the information that must be included in the lost earnings record. A second lost earnings record is required where the belated contribution was submitted to a different investment fund than the one to which it would have been submitted had the contribution been timely submitted to the TSP recordkeeper. Since under part 1605 delayed contributions must be submitted to the investment funds selected on the participant's TSP Election Form (Form TSP–1) in effect at the time the delayed contribution is submitted, this will occur where the participant has changed the Form TSP–1 allocation election between the date the contribution should have been made and the date that it was actually made. The Board has, through the TSP bulletin process, provided employing agencies with detailed instructions concerning the format of the lost earnings records and the procedures to be followed in submitting lost earnings records to the TSP recordkeeper.

Under paragraph 1606.5(a)(2), the TSP recordkeeper will compute the amount of lost earnings based on the information provided by the employing agency on the lost earnings record. In essence, for each lost earnings record the recordkeeper will compute the amount of earnings the contribution would have earned had it been timely submitted to the TSP recordkeeper, and will also compute the amount of money that was actually earned by the belated contribution since it was contributed. The difference will be the lost earnings, which may be either positive or negative. Under paragraph (3), where the earnings are positive they will be credited to the participant's account; any negative amounts that are computed will be removed from the participant's account. In either case, the account will be placed in the position it would have attained had the error not occurred.

The lost earnings computations will be based on the actual monthly factors used to allocate earnings to participant accounts each month for each investment fund. The calculations will track the contributions through any interfund transfers that have been made effective for the participant's account during the relevant period of time, and will use the earnings factors for the appropriate investment funds. In addition, the recordkeeper will determine, on the date of the processing of the lost earnings record, the investment fund in which the money would be invested had the contribution been timely submitted. The recordkeeper will also determine the investment fund in which the money is actually invested. Paragraph 1606.5(a)(4) requires the recordkeeper to adjust the participant's account by moving the money to the investment fund in which it would be invested had the error not occurred.

Paragraph 1606.5(b) covers cases where Employee Contributions are deducted from participants' pay, but are not timely submitted to the TSP recordkeeper. Paragraph 1606.5(c) covers cases where participants receive pay and have Employee Contributions deducted, but the agency does not timely submit the Agency Matching Contributions. In both situations, the procedures described in paragraphs 1606.5(a)(1)–(4) are applied.

Paragraph 1606.5(d) covers any situation where a participant receives pay from which Employee Contributions should have been deducted, but were not deducted due to employing agency error. In accordance with 5 U.S.C. 8432a(a)(2), no lost earnings are payable with respect to these Employee Contributions, regardless of whether the participant makes up those contributions in later pay periods. In this situation, the participant had the use of the money that should have been deducted from his or her pay, and requiring the employing agency to pay lost earnings would result in a windfall to the participant. If the participant does make up the missed Employee Contributions, however, lost earnings are payable with respect to the associated Agency Matching Contributions.

Where a participant does not receive all of the basic pay to which he or she is entitled due to an employing agency error, and therefore does not receive all TSP contributions to which he or she is entitled, § 1606.6 requires lost earnings to be paid with respect to all three sources of contributions (for FERS participants) and for the Employee Contributions (for CSRS participants). Unlike the situation described in paragraph 1606.5(d), the participant does not have the use of the money during the period of delay, so lost earnings are appropriate on the Employee Contributions.

Section 1606.7 requires payment of lost earnings where, due to employing agency error, money is invested in an incorrect investment fund. Paragraph 1606.7(a) provides for procedures similar to those described in § 1606.5(a)(1)–(4). The general approach is to calculate the amount of earnings that would have resulted had the money been properly invested, and the amount of earnings that actually resulted from the erroneous investment, with the difference (which may be positive or negative) representing lost earnings. As in § 1606.5, the account will also be adjusted to reflect the proper investment funds at the time the lost earnings record is processed.

Prior to January 1, 1991, employing agencies were permitted to correct submissions of contributions to erroneous investment funds by removing money from the erroneous investment fund using a negative adjustment record and then redepositing the money to the correct investment fund. However, since the participant, unbeknownst to the employing agency, may have redistributed his or her account through the interfund transfer process after the erroneous investment of the contribution, the employing agency "correction" of the investment fund error may not have actually resulted in a proper investment of the participant's account in accordance with his or her investment decisions. Thus, paragraph 1606.7(b) prohibits an employing agency from attempting to correct an erroneous investment of contributions. Rather, beginning January 1, 1991, the correction will be accomplished exclusively through the lost earnings process, which will, in essence, recreate the participant's account as it would have been had the employing agency error not occurred. Where, prior to January 1, 1991, the employing agency has "corrected" an investment fund error, paragraph 1606.7(a)(1) requires the lost earning record to indicate the date of the correction, so that the lost earnings calculation performed by the TSP recordkeeper can take that "correction" into account.

Section 1606.8 covers situations where, subject to the 30-day *de minimis* rule, an entire payroll submission is not timely received by the TSP recordkeeper. With respect to such payroll submissions received on or after January 1, 1991, the TSP recordkeeper will automatically generate lost earnings records for each payment record contained on the late payroll submission, including all three sources of contributions. Employee Contributions are included because the participant did not have the use of the money that was deducted from his or her pay as of the pay date. The procedures described in paragraphs 1606.5(a) (2)–(4) apply to the lost earnings records generated by the TSP recordkeeper. For payroll submissions received on or after January 1, 1991, the authorization to charge the employing agency for the lost earnings will be included on the journal voucher submitted with the payroll submission. With respect to late payroll submissions received prior to January 1, 1991, lost earnings records will not be generated by the TSP recordkeeper until the recordkeeper receives authorization from the employing agency to do so, including proper authorization to charge the lost earnings to the employing agency.

Subpart C covers lost earnings situations not involving delayed or erroneous contributions. Section 1606.9 covers delayed submission of loan allotments. Lost earnings are only payable with respect to loan allotments where the loan allotment has been deducted from the participant's pay but not timely submitted to the TSP recordkeeper, although the *de minimis* rules of paragraph 1606.4(d) apply. In this situation, the participant has not had the use of the money that was withheld from his or her pay. As provided in paragraph 1606.9(b), lost earnings are not payable where the employing agency erroneously fails to deduct loan allotments from a participant's pay. In such cases, the participant has use of the money, and payment of lost earnings would result in a windfall to the participant. The effect of the erroneous failure to deduct loan allotments is governed by the provisions of part 1655.

Paragraph 1606.9(a)(2) provides that, unlike the case of delayed or erroneous contributions, lost earnings on delayed loan allotments will be computed at the G Fund rates of return for each month involved. Since the employing agency does not allocate loan allotments among the three TSP investment funds, the employing agency cannot indicate on the lost earnings record the investment funds in which the computation should begin. Moreover, it has been determined that it would not be administratively feasible for the TSP recordkeeper to make a retroactive determination of the investment funds in which the loan allotments would have been invested had they been timely received.

Section 1606.10 establishes a miscellaneous category for situations not specifically addressed elsewhere in this part, but where employing agency errors cause lost earnings to occur. It is anticipated that such situations will be relatively rare. Where they do occur, the employing agency and the Board staff must consult in order to determine the proper method for the lost earnings to be charged to the appropriate employing agency and credited to the appropriate participant account. The procedures used to accommodate these miscellaneous situations will be, to the extent administratively feasible, consistent with the procedures and principles described specifically in other sections of this part.

Subpart D contains some general provisions concerning lost earnings records. Section 1606.11 covers submission of lost earnings records. As previously noted, the Board has issued detailed instructions to employing agencies through the TSP bulletin process concerning the format and use of lost earnings records. Paragraph 1606.11(a) requires the employing agencies to follow such instructions.

Paragraph 1606.11(b) contains the general requirement that a separate lost earnings record be submitted for each pay period affected by an employing agency error. For example, if no Agency Automatic (1%) Contributions were made to a participant's account for three consecutive pay periods due to an employing agency error, and the makeup contributions for all three pay periods were deposited to the participant's account three months later, three separate lost earnings records would be required. One lost earnings record will be used for all three sources of contributions with respect to the same pay period. Lost earnings records relating to loan allotments cannot also relate to contributions.

Paragraph 1606.11(c) provides that a participant may not have the benefit of hindsight in selecting an investment fund in which money would have been invested had an error not occurred. Thus, where, as the result of an employing agency error contributions were not timely made, the employing agency must rely only on an allocation election (on Form TSP–1) made by the participant prior to the date the contribution should have been made in determining the investment fund in which the contribution should have been invested. If such an applicable allocation election was not made by the participant prior to the date the contribution should have been made, the lost earnings record submitted by the employing agency must indicate that the contribution should have been invested in the G Fund.

For example, in June 1992 an agency may erroneously classify a FERS employee as CSRS. Based on that misclassification, the employee may elect not to contribute to the TSP, and thus will not submit an allocation election. At the beginning of October 1992, upon being advised of the error, the participant may wish, pursuant to part 1605, to make up the missed Employee Contributions. The participant would be entitled to lost earnings on the Agency Matching Contributions associated with those make-up Employee Contributions. However, since there was no allocation election in effect when the contributions should have been made during June 1992 through September 1992, the employing agency must indicate on the lost earnings to occur is ultimately responsible for paying the lost earnings records that all of the Agency Matching Contributions would have been made to the G Fund. Similarly, the lost earnings record for the belated Agency Automatic (1%) Contributions must also indicate that the contributions should have been made to the G Fund. The participant may not, with the benefit of hindsight, have lost earnings calculated based on an investment fund chosen in October 1992 as the one in which he or she would have invested his or her contributions during June through September 1992. Pursuant to paragraph 1606.5(a), no lost earnings would be payable with respect to the make-up Employee Contributions.

On the other hand, an employing agency may properly make Employee Contributions for a FERS participant from June through September 1992, but fail to make the associated Agency Matching Contributions. If the employing agency makes up the missed Agency Matching Contributions at the beginning of November 1992, the lost earnings records should indicate that the Agency Matching Contributions should have been invested in accordance with the allocation election in effect during June through September 1992. In the latter case, the participant does not have the benefit of hindsight, since the allocation election was made before June, when the Agency Matching Contributions would have begun had the error not occurred. Similarly, where employing agencies report contributions for investment in an incorrect investment fund, the correct investment fund indicated on the lost earnings record must be determined from the participant's Form TSP–1 allocation election that was in effect at the time the contributions were made.

Paragraph 1606.11(d) provides that employing agencies may not submit lost earnings records unless and until the principal amount involved has been invested in the Thrift Savings Fund. Where delayed contributions are involved, the delayed payment record and the lost earnings record may be submitted simultaneously. Under this section and § 1606.15 of this part, a participant is not entitled to recover lost earnings on delayed contributions where the participant is unable to have those contributions corrected because time limits contained in part 1605 have elapsed.

Paragraph 1606.11(e) provides for reversal of erroneously submitted lost earnings records. The detailed instructions concerning lost earnings that the Board has provided to employing agencies through the TSP bulletin process include procedures for reversing erroneous lost earnings transactions.

Section 1606.12 provides that the employing agency committing the error that causes lost earnings to occur is ultimately responsible for paying the lost earnings. However, the section also recognizes that in some cases the employing agency that submits the payment records for which lost earnings must be paid is not the agency that committed the error. In such cases, this section requires the agency that submitted the payment records to submit the lost earnings records (and thus be charged for the lost earnings), and provides that reimbursement may be sought from the agency that committed the error. For example, when a participant transfers from Agency A to Agency B, there may be an error in the information transmitted by Agency A to Agency B. As a result of the erroneous information provided by Agency A, Agency B may fail to make timely TSP information provided by Agency A, Agency B may fail to make timely TSP contributions or may make erroneous TSP contributions. In such cases, because Agency B submitted the payment records containing the contributions for which lost earnings are payable, Agency B must submit the lost earnings records. Agency B may then seek reimbursement from Agency A.

Subpart E addresses processing of lost earnings records. Section 1601.13 contains general rules for calculating and crediting lost earnings to participant accounts. Paragraph 1606.13(a) provides that lost earnings records will be processed once per month, in connection with the mid-month processing cycle. Paragraph 1606.13(b) provides that lost earnings records that have been received by the TSP recordkeeper, edited, and accepted for processing by the next-to-last business day of a month will be processed in the next mid-month processing cycle. Lost earnings records that are not accepted by the TSP recordkeeper until the last business day of a month will be held in suspense until the second mid-month processing cycle following acceptance. The next-to-last business day cutoff is required so that the Board may determine the amounts of money to be moved among the investment funds as of the end of the month.

Paragraph 1606.13(c) provides that investment gains and losses computed for a lost earnings record will be netted against each other within a source of contributions and across investment funds, but that gains and losses for different sources of contributions will not be netted against each other. In essence, each source of contributions will be treated as a separate contribution, although the three sources of contributions may be included on the same lost earnings record.

Paragraph 1606.13(d) describes the beginning and ending dates for the calculations of lost earnings. Because the TSP is a monthly valued plan, and earnings are allocated only on a monthly basis, the computations must begin with the month an error occurred and must end as of the end of the month prior to the mid-month processing cycle during which the lost earnings records are being processed.

Paragraph 1606.13(e) states the general rule that negative lost earnings are removed from the participant's account and used to offset TSP administrative expenses. This is consistent with the general approach of this part, which is to recreate, to the extent feasible, participant accounts as they would have been had the employing agency error not occurred. This general rule is consistent with similar provisions in paragraphs 1606.5(a)(3) and 1606.7(a)(3).

Paragraph 1606.13(f) provides that the lost earnings calculations must take account of the investment restrictions in effect prior to December 31, 1990. The investment restrictions were removed effective December 31, 1990, pursuant to section 3 of the TSPTAA and 5 CFR part 1601.

Subpart F provides procedures for participants to file claims for recovery of lost earnings with their employing agencies. Section 1606.14 requires employing agencies to establish a claim procedure, including the right of an employee to appeal the initial determination on his or her claim. The requirements of paragraph 1606.14(a) are virtually identical to the requirements found in 5 CFR 1605.8, and it is anticipated that many agencies will find

it convenient to establish one claim procedure for handling claims under this part and part 1605. Paragraph (b) makes it clear that employing agencies are not required to wait for a participant claim in order to pay lost earnings.

Section 1606.15 contains time limits for participants to file claims for lost earnings. Generally, participants will have one year from receipt of the earliest of the TSP Participant Statement, the TSP Loan Statement, the employing agency earnings and leave statement, or other document that indicates that the employing agency error has affected the participant's account. Where such receipt occurred prior to January 1, 1991, the participant must file the claim for lost earnings within one year from January 1, 1991.

Paragraph 1606.15(b) reiterates the rule of paragraph 1606.11(d) that lost earnings will not be payable with respect to delayed contributions unless and until the delayed contributions have been made. Where the participant cannot require correction of the contributions because of the expiration of time limits contained in part 1605, and the employing agency does not voluntarily correct the contributions pursuant to 5 CFR 1605.8(c), no lost earnings will be payable. Part 1606 does not extend the time limits for obtaining correction under part 1605. If a participant waived correction of contributions, and cannot now obtain correction due to the time limits contained in part 1605, no lost earnings are now payable, even though lost earnings may not have been authorized at the time the participant waived correction of the contributions under part 1605.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Government procedures relating to the Thrift Savings Plan, and will require payments to the Thrift Savings Fund only by employing agencies of Federal Government employees.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3). I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations require employing agencies to pay lost earnings resulting from employing agency errors. Prompt implementation of the regulations will provide necessary guidance to employing agencies and TSP participants.

List of Subjects in 5 CFR part 1606

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add part 1606 to chapter VI to read as follows:

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

Subpart A—General Provisions

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 General rule.
1606.4 Applicability.

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

1606.5 Failure to timely make or deduct TSP contributions when participant received pay.
1606.6 Agency delay in paying employee.
1606.7 Contribution to incorrect investment fund.
1606.8 Late payroll submissions.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

1606.9 Loan allotments.
1606.10 Miscellaneous lost earnings.

Subpart D—Lost Earnings Records

1606.11 Agency submission of lost earnings records.
1606.12 Agency responsibility.

Subpart E—Processing Lost Earnings Records

1606.13 Calculation and crediting of lost earnings.

Subpart F—Participant Claims for Lost Earnings

1606.14 Employing agency procedures.
1606.15 Time limits on participant claims.

Authority: 5 U.S.C. 8432a, 8474 (b)(5) and (c)(1).

PART 1606—LOST EARNINGS ATTRIBUTABLE TO EMPLOYING AGENCY ERRORS

Subpart A—General Provisions

§ 1606.1 Purpose.

The purpose of this part 1606 is to implement section 2 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), Public Law 101-335, enacted July 17, 1990. The TSPTAA amended chapter 84 of title 5, United States Code by inserting section 8432a, authorizing the Executive Director to prescribe regulations pursuant to which employing agencies shall be required to pay to the Thrift Savings Fund amounts representing lost earnings caused by employing agency errors relating to the Thrift Savings Plan (TSP) described in subchapter III of chapter 84.

§ 1606.2 Definitions.

The following definitions apply for purposes of this part:

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1);

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Board means the Federal Retirement Thrift Investment Board;

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by Subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS or an equivalent Federal Government retirement plan, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, under 5 U.S.C. 8440a, or under 5 U.S.C. 8440b.

Employee Contributions means any contributions made under 5 U.S.C. 8432(a), under 5 U.S.C. 8351, under 5 U.S.C. 8440a(a), or under 5 U.S.C. 8440b(a);

Employer Contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

Employing agency means any entity that provides or has provided pay to an employee or member, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions or loan payments made by or on behalf of that employee or member, or any other entity that has employed an employee or member and has provided information that affects or has affected that employee's or member's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

FERS means the Federal Employees' Retirement System established by

chapter 84 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS or an equivalent Federal Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the three TSP investment funds;

Investment fund means the C Fund, the F Fund, or the G Fund;

Loan allotment means TSP loan payments that are deducted from a participant's paycheck to be deposited to that participant's TSP account;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would be invested had an error not occurred;

Negative adjustment record means a data record submitted by an employing agency indicating money to be removed from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan, or to allocate prospective contributions to the Thrift Savings Plan among the investment funds;

Participant means any person with an account in the Thrift Savings Fund, or who would have an account in the Thrift Savings Fund but for an employing agency error;

Payment record means a data record submitted by an employing agency indicating contributions to be deposited to a participant's account;

Payroll submission means an entire submission of one or more TSP payment records (whether submitted on magnetic tape, diskette, or paper forms such as Form TSP-5, Employee Data/Payment/Adjustment Record Input Form), accompanied by a Form TSP-2, Certification of Transfer of Funds and Journal Voucher;

Received, with respect to TSP records or information provided by an employing agency, means receipt by the TSP recordkeeper of records or information that can be accepted and processed. For purposes of this definition, TSP records that are received by the TSP recordkeeper, but subsequently are deleted by the TSP recordkeeper because an error in the data prevented the record from processing, will not be deemed to have been received by the TSP recordkeeper;

Source of contributions means either Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions;

Submission or *submitted* means a transfer of data which has been received by the TSP recordkeeper;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan, *TSP*, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*;

Timely, with respect to loan allotments or TSP contributions other than those made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C), means receipt of TSP payment records or loan allotments by the TSP recordkeeper no later than 12 days after the end of the pay period for which the contribution should have been made. With respect to TSP contributions made pursuant to 5 U.S.C. 8432(c)(1)(B) and (C), timely means receipt of TSP payment records by the TSP recordkeeper on or before April 16, 1987;

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. As of the date of publication of this part 1606, the TSP recordkeeper is the National Finance Center, Office of Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

§ 1606.3 General rule.

Except as otherwise provided, employing agencies shall pay to the Thrift Savings Fund any amount, computed by the TSP recordkeeper in a manner consistent with this part 1606, that is required to restore to the TSP account of the participant or participants involved earnings lost as a result of an employing agency error. Where lost earnings are required, the employing agency must, in accordance with this part 1606 and any instructions provided by the Board or the TSP recordkeeper, submit to the TSP recordkeeper all information and certification that is required to enable the TSP recordkeeper to compute the amount of lost earnings payable by the employing agency, and to charge that amount to the appropriate employing agency.

§ 1606.4 Applicability.

(a) *In general.* Except as otherwise provided, the provisions of this part 1606 apply in any case where, due to employing agency error, the Thrift Savings Fund has not invested or had the use of money that would have been invested in the Thrift Savings Fund had the employing agency error not occurred, or where the money would have been invested in a different investment fund had the error not occurred.

(b) *Back pay awards and other retroactive pay adjustments.* The application of this part 1606, as described in paragraph (a) of this section, includes TSP contributions derived from payments associated with back pay awards or other retroactive pay adjustments that are based on a determination that the employing agency paid a participant less than the full amount of basic pay to which the participant was entitled.

(c) *Timing of errors.* This part 1606 applies regardless of whether the employing agency error that caused the effects described in paragraph (a) of this section occurred prior to, at, or after the inception of the TSP.

(d) *De minimis rules.* Notwithstanding paragraphs (a) through (c) of this section or any other provision of this part 1606:

(1) Lost earnings shall not be payable where the amount of money for a source of contributions in a participant's account that is not invested in the Thrift Savings Fund due to an employing agency error, or that is invested in the wrong investment fund due to an employing agency error, is less than one dollar ($1.00) for that source of contributions. Where the employing agency error caused delayed or erroneous contributions for more than one pay period, this paragraph shall apply separately to each pay period involved.

(2) Where the employing agency error caused delay in submission of TSP payment records or loan allotments, lost earnings shall not be payable unless the belated contributions or loan allotments were received by the TSP recordkeeper more than 30 days after the pay date associated with the pay period for which the contributions or loan allotments would have been submitted had the employing agency error not occurred.

(3) For employing agency errors not covered by paragarph (d)(2) of this section, lost earnings shall not be payable unless, as the result of an employing agency error, money was not invested in the Thrift Savings Fund for a

period extending more than 30 days after the date it would have been invested had the error not occurred.

(4) The 30-day requirements contained in paragraphs (d)(2) and (d)(3) of this section do not apply where, due to employing agency error, money in a participant's account has been invested in an incorrect investment fund.

(e) *Contributions for pre-1987 service.* This part does not apply to errors involving employing agency delay in submitting contributions required by 5 U.S.C. 8432(c)(3).

(f) *Contributions for service in January through March 1987.* Notwithstanding any other provision of this section, lost earnings shall be payable with respect to contributions made pursuant to 5 U.S.C. 8432(c)(1) (B) or (C) if the payment records containing those contributions were received by the TSP recordkeeper after April 30, 1987.

Subpart B—Lost Earnings Attributable to Delayed or Erroneous Contributions

§ 1606.5 Failure to timely make or deduct TSP contributions when participant received pay.

(a) If a participant receives pay, but as the result of an employing agency error all or any part of the Agency Automatic (1%) Contributions associated with that pay to which the participant is entitled are not timely received by the TSP recordkeeper, then the belated contributions shall be subject to lost earnings. In such cases:

(1) The employing agency must, for each pay period involved, submit to the TSP recordkeeper a lost earnings record indicating the pay date for which the belated contribution would have been made had the error not occurred, the investment fund to which the belated contribution would have been deposited had the error not occurred, the amount of the belated contribution, and the pay date for which the belated contribution was actually made. If the belated contribution was actually deposited to an investment fund different from the investment fund to which it would have been deposited had the contribution been timely submitted, then the employing agency must submit an additional lost earnings record indicating the amount of the belated contribution, the pay date for which it was actually made, the investment fund to which it would have been deposited had the error not occurred, and the investment fund to which it was actually deposited;

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which the belated contributions and associated earnings would currently be invested had the error not occurred. In performing the computation of lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper must take into consideration any interfund transfers made effective on or after the pay date for which the belated contribution would have been made if the error had not occurred, and which were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA.

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the TSP account of the participant involved. If the lost earnings computed are negative, the amount computed will be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the belated contributions and associated earnings would currently be invested if the error had not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of the associated Agency Matching Contributions to which the participant is entitled were not timely received by the TSP recordkeeper, then the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Agency Matching Contributions.

(c) If a participant receives pay from which Employee Contributions were properly deducted, but as the result of an employing agency error all or any part of those Employee Contributions were not timely received by the TSP recordkeeper, the belated contributions will be subject to lost earnings. In such cases, the procedures described in paragraphs (a)(1) through (a)(4) of this section will apply to the belated Employee Contributions.

(d) If a participant receives pay from which Employee Contributions should have been deducted, but as the result of employing agency error all or any part of those deductions were not made, then even if the participant makes up those Employee Contributions pursuant to part 1605, the belated Employee Contributions shall not be subject to lost earnings. However, where the participant does make up the Employee Contributions pursuant to part 1605, the Agency Matching Contributions associated with those belated Employee Contributions (which must be made in accordance with part 1605) will be subject to lost earnings. With respect to such belated Agency Matching Contributions the procedures described in paragraphs (a)(1) through (a)(4) of this section shall apply.

§ 1606.6 Agency delay in paying employee.

Where, as the result of an employing agency error, a participant does not timely receive all or any part of the basic pay to which he or she is entitled, and as a result of that delay in receiving pay all or any part of the Employee Contributions, Agency Automatic (1%) Contributions, or Agency Matching Contributions are not submitted when they would have been had the employing agency error not occurred, all such belated Employee Contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions shall be subject to lost earnings. The procedures described in paragraphs (a)(1) through (a)(4) of § 1606.5 shall apply to all such belated contributions.

§ 1606.7 Contributions to incorrect investment fund.

(a) Where, as the result of an employing agency error, money was deposited to a participant's TSP account in an incorrect investment fund(s), the erroneous contribution shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the contributions submitted to the incorrect investment fund(s), the pay date for which it was submitted, the investment fund(s) to which it would have been deposited had the employing agency error not occurred, and the investment fund(s) to which it was actually deposited. If the employing agency has, prior to January 1, 1991 or in contravention of paragraph (b) of this section, removed the contribution from the incorrect investment fund(s) using a negative adjustment record and redeposited the money to the investment fund(s) in which it would have been

invested had the error not occurred, the employing agency must also indicate on the lost earnings record when these actions were taken.

(2) The TSP recordkeeper shall compute the amount of lost earnings associated with each lost earnings record submitted by the employing agency pursuant to paragraph (a)(1) of this section, and shall also determine the investment fund or funds in which erroneously invested contributions and associated earnings would currently be invested had the error not occurred. In computing lost earnings and determining the appropriate investment fund or funds, the TSP recordkeeper shall take into consideration any interfund transfers that were made effective on or subsequent to the date erroneous contribution was made, and that were made effective prior to the end of the month preceding the month during which the lost earnings record is processed. With respect to the period prior to December 31, 1990, the TSP recordkeeper shall also take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA;

(3) Where the lost earnings computed in accordance with paragraph (a)(2) of this section are positive, the TSP recordkeeper shall charge the amount of lost earnings computed to the appropriate employing agency and shall credit that amount to the account of the participant involved. If the lost earnings computed are negative, the amount computed shall be removed from the participant's account and used to offset TSP administrative expenses;

(4) The TSP recordkeeper shall adjust the participant's account to reflect the investment funds in which the erroneous contributions and associated earnings would currently be invested had the error not occurred, as determined in accordance with paragraph (a)(2) of this section.

(b) The provisions of part 1605 notwithstanding, effective January 1, 1991, where employing agency error had caused money to be deposited to a TSP account in an incorrect investment fund, the employing agency may not remove the erroneously invested money from the incorrect investment fund(s) using a negative adjustment record and redeposit the money in the investment fund(s) in which it would have been invested had the error not occurred. Rather, the correction must be accomplished solely through the procedures described in paragraph (a) of this section.

§ 1606.8 Late payroll submissions.

(a) *Payroll submissions received on or after January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper on or after January 1, 1991 and more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP-2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The TSP Recordkeeper shall generate a lost earnings record for each payment record contained in the late payroll submission. The lost earnings records generated by the TSP Recordkeeper shall reflect that the contributions on the payment records should have been made on the pay date associated with the payroll submission, that the contributions should have been deposited to the investment funds(s) indicated on the payment records, and that the contributions were actually made on the date the late payroll submission was processed.

(2) The procedures applicable to lost earnings records submitted by employing agencies set forth in paragraphs (a)(2) through (a)(4) of § 1606.5, shall be applied to lost earnings records generated by the TSP Recordkeeper pursuant to paragraph (a)(1) of this section.

(b) *Payroll submissions received before January 1, 1991.* All contributions on payment records contained in a payroll submission received from an employing agency by the TSP Recordkeeper before January 1, 1991 but more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP-2, Certification of Transfer of Funds and Journal Voucher), shall be subject to lost earnings, as follows:

(1) The employing agency shall, pursuant to instructions provided to employing agencies by the Board, submit to the TSP recordkeeper authorization for lost earnings to be computed on all contributions on the payment records contained in the payroll submission;

(2) The procedures set forth in paragraphs (a)(1) and (a)(2) of this section shall apply.

Subpart C—Lost Earnings Not Attributable to Delayed or Erroneous Contributions

§ 1606.9 Loan allotments.

(a) Loan allotments deducted from a participant's pay but not timely received by the TSP recordkeeper due to employing agency error shall be subject to lost earnings. In such cases:

(1) The employing agency must submit a lost earnings record indicating the amount of the loan allotment, the pay date for which the loan allotment was actually submitted, and the pay date for which the loan allotment should have been submitted;

(2) The TSP recordkeeper shall compute lost earnings on the belated loan allotment using the G Fund rates of return for each month of the calculation;

(3) The amount of lost earnings calculated shall be deposited in the participant's account pro rata among the three investment funds on the basis of the balances of the three investment funds in the participant's account as of the end of the second month preceding the month during which the lost earnings record is processed.

(b) Loan allotments not deducted from a participant's pay due to employing agency error will not be subject to lost earnings.

§ 1606.10 Miscellaneous lost earnings.

Where lost earnings result from employing agency errors not specifically covered by this subpart or subpart B, the employing agency must consult with the Board or TSP Recordkeeper to determine the manner in which the employing agency shall submit lost earnings records or other data necessary to facilitate the payment of lost earnings.

Subpart D—Lost Earnings Records

§ 1606.11 Agency submission of lost earnings records.

(a) All lost earnings records required to be submitted pursuant to this part must be submitted to the TSP Recordkeeper in the manner and format prescribed in instructions provided to employing agencies by the Board or TSP recordkeeper.

(b) Where this part requires submission of lost earnings records, the employing agency must submit a separate lost earnings record for each pay period affected by the error. A lost earnings record may include all three sources of contributions, or it may include loan allotments, but may not include both loan allotments and contributions.

(c) Where this part requires the employing agency to indicate on a lost earnings record the investment fund to which a contribution would have been deposited had an employing agency error not occurred, that determination must be made solely on the basis of a

properly completed allocation election on a Form TSP–1 that was accepted by the employing agency *before* the date the contribution should have been made, and that was still in effect as of that date. Where no such allocation election was in effect as of the date the contribution would have been made had the error not occurred, the lost earnings record submitted by the employing agency must indicate that the contributions should have been made to the G Fund. Under no circumstances may a participant or employing agency choose, after the date a contribution should have been made or the date that it was made to an erroneous investment fund, the investment fund to which the contribution would have been made had the employing error not occurred.

(d) With respect to employing agency errors that cause money not to be invested in the Thrift Savings Fund, lost earnings records may not be submitted until the money to which the lost earnings relate has been invested in the Thrift Savings Fund. Where the employing agency error involved delayed TSP contributions, not lost earnings shall be payable unless and until the associated payment records are submitted in accordance with the provisions of 5 CFR part 1605. Lost earnings records and the delayed payment records to which they relate may be submitted simultaneously;

(e) Where an employing agency erroneously submits a lost earnings record that is processed by the TSP recordkeeper, the employing agency must subsequently submit a lost earnings record indicating that the previous lost earnings transaction should be reversed.

§ 1606.12 Agency responsibility.

(a) The employing agency whose error caused the delayed or erroneous investment of money in the Thrift Savings Fund shall, in a manner consistent with paragraph (b) of this section, be ultimately responsible for payment of any lost earnings resulting from that error.

(b) The employing agency that submitted payment records or loan allotments that are subject to lost earnings shall be responsible for submitting lost earnings records relating to those submissions, and any lost earnings calculated shall be charged to that employing agency. Where another employing agency committed the error that caused the delayed or erroneous submission by the first employing agency, the employing agency that was charged for the lost earnings may seek reimbursement from the other employing agency.

Subpart E—Processing Lost Earnings Records

§ 1606.13 Calculation and crediting of lost earnings.

(a) Lost earnings records submitted or generated pursuant to this Part shall be processed by the TSP recordkeeper during a mid-month processing cycle;

(b) Lost earnings records received, edited, and accepted by the TSP recordkeeper by the next-to-last business day of a month shall be processed in the next month's mid-month processing cycle. Lost earnings records that are received, edited, and accepted on the last business day of a month shall be processed in the second mid-month processing cycle following acceptance;

(c) In calculating lost earnings for a participant's account attributable to any lost earnings record, investment gains and losses calculated in different investment funds but within one source of contributions shall be offset against each other to obtain a net investment gain or loss for that source of contributions. Gains and losses for different sources of contributions shall not be offset against each other;

(d) Where the *de minimis* rule of paragraph (d)(1) of § 1606.3 of this Part is met with regard to delayed contributions or loan allotments, the calculation of lost earnings shall commence with the pay date for the pay period for which the contributions would have been made had the employing agency error not occurred. With regard to lost earnings not related to delayed contributions or loan allotments, lost earnings shall commence with the month during which the employing agency error caused the failure to invest in the Thrift Savings Fund money that would have been invested had the employing agency error not occurred, or with the month that the money was invested in an incorrect investment fund. Lost earnings calculations shall conclude as of the end of the month prior to the month during which the lost earnings records are processed;

(e) *Negative lost earnings.* Notwithstanding any other provision of this Part, where the net lost earnings computed in accordance with this Part on any lost earnings record are less than zero within a source of contributions, the employing agency account shall not be charged or credited with respect to that source of contributions. The amount of the negative lost earnings shall be removed from the participant's account and applied against TSP administrative expenses;

(f) With respect to the period prior to December 31, 1990, in calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account the investment restrictions that were effective under 5 U.S.C. 8438 prior to the effective date of section 3 of the TSPTAA.

(g) In calculating lost earnings or determining the investment fund in which money would have been invested had an employing agency error not occurred, the TSP recordkeeper shall take into account interfund transfers processed on or subsequent to the date the error affected the participant's account, and which were effective prior to the end of the month preceding the month during which the lost earnings record is processed.

Subpart F—Participant Claims For Lost Earnings

§ 1606.14 Employing agency procedures.

(a) Each employing agency must provide procedures for participants to file claims for lost earnings under this part. The employing agency procedures must include the following provisions:

(1) The employing agency shall review each claim and provide the participant with a decision within 30 days of its receipt of the participant's written claim. The employing agency's decision to deny a claim in whole or in part shall be in writing and shall contain the following information—

(i) The employing agency's determination on the claim and the reasons for it, including any appropriate references to applicable statutes or regulations;

(ii) A description of any additional material or information which, if provided to the employing agency, would enable the employing agency to grant the participant's claim; and

(iii) A description of the steps the participant must take if he or she wishes to appeal and initial denial of the claim, including the name and title of the employing agency official to whom the appeal may be taken;

(2) Within 30 days of receipt of the employing agency decision denying the claim, a participant may appeal the employing agency decision. The appeal must be in writing and must be addressed to the employing agency official designated in the initial employing agency decision. The appeal may contain any documents and comments that the employee deems relevant to the claim;

(3) The employing agency must take a decision on the participant's appeal not later than 30 days after it receives the appeal. The agency's decision on the appeal must be written in an understandable manner and must include the reasons for the decision as well as any appropriate references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30-day time period, or if the appeal is denied in whole or in part, the participant will have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency in the appropriate Federal district court pursuant to 5 U.S.C. 8477. There is no administrative appeal to the Board of an agency final decision.

(b) Where it is determined that lost earnings resulted from an employing agency error, nothing in this part shall be deemed to preclude an employing agency from paying lost earnings in the absence of a claim from the employee.

§ 1606.15 Time limits on participant claims.

(a) Participant claims for lost earnings pursuant to § 1606.14 of this part must be filed within one year of the later of:

(1) January 1, 1991, or

(2) The participant's receipt of the earliest of the TSP Participant Statement, TSP Loan Statement, employing agency earnings and leave statement, or any other document that indicates that the employing agency error has affected the participant's TSP account;

(b) Nothing in this section changes the provision of paragraph (d) of § 1606.11 that no lost earnings shall be payable with respect to delayed contributions unless and until the contributions are submitted to the TSP recordkeeper in accordance with 5 CFR part 1605, nor does anything in this section extend any time limits for correcting contributions under 5 CFR part 1605. Thus, notwithstanding paragraph (a) of this section, if a participant is unable to have contributions corrected due to time limits contained in 5 CFR part 1605, no lost earnings shall be payable with respect to those contributions.

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Monday,
January 7, 1991

Part VI

Federal Retirement Thrift Investment Board

5 CFR Part 1650

Automatic Cashout Regulations; Interim Rule With Request for Comments

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Automatic Cashout Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing interim regulations in 5 CFR part 1650, subpart C, § 1650.9, concerning automatic cashouts. The Executive Director is also publishing an interim regulation in 5 CFR part 1650, § 1650.23, making a conforming change to the rules concerning spousal rights. In addition, the Executive Director is redesignating subparts C–J, which consisted of §§ 1650.9–1650.52 of part 1650 as subparts D–K, consisting of §§ 1650.10–1650.52. Finally, the Executive Director is changing the internal section references in part 1650 to conform with the redesignated section numbers.

Public Law 101–335 amended 5 U.S.C. 8433(h) to require that a single payment be made automatically to any participant who separates from Government service with a nonforfeitable account balance of $3,500 of less unless that participant makes a withdrawal election for which the participant is eligible. Public Law 101–335 also amended 5 U.S.C. 8435 to allow participants with nonforfeitable account balances of $3,500 or less to make a withdrawal election without requiring notification to, or the consent or waiver of, a spouse or former spouse. Section 1650.9 sets forth the procedure for implementing the automatic cashout as prescribed in Public Law 101–335. Section 1650.22 explains that spousal notification and waiver requirements are not applicable to an automatic cashout or any withdrawal election when the participant's nonforfeitable account balance is $3,500 or less.

DATES: These interim rules are effective January 7, 1991. Comments must be received on or before March 8, 1991.

ADDRESSES: Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis (202) 523–6367.

SUPPLEMENTARY INFORMATION: 5 CFR 1650.9 describes the automatic cashout procedures established by the Board for participants in the Thrift Savings Plan.

Paragraph (a) explains that a participant who is separated from Government service and has a nonforfeitable account balance of $3,500 or less and who does not make a withdrawal election for which he or she is eligible will receive the nonforfeitable account balance of his or her account in a single payment.

Paragraph (b) states that all affected participants will be notified of the proposed automatic cashout and will be given sufficient time to make a withdrawal election.

Paragraph (c) explains that even if a participant's nonforfeitable account balance is $3,500 or less at the time of notification, if it is greater than $3,500 at the time the account would otherwise be disbursed, the participant will not receive the automatic cashout and will be required to make a withdrawal election.

Paragraph (d) provides that spousal waiver and notification requirements are not applicable to the automatic cashout or any other withdrawal when the nonforfeitable account balance is $3,500 or less.

Paragraph (e) establishes January 31, 1991, as the date this section becomes effective for all TSP withdrawals.

5 CFR 1650.23 explains that spousal notification and waiver requirements are not applicable to an automatic cashout or any withdrawal election when the participant's nonforfeitable account balance is $3,500 or less.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to accounts with nonforfeitable account balances of $3,500 or less.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that in view of the requirements of Public Law 101–335 good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations describe the procedures scheduled to be implemented in February 1991 for making automatic cashout payments to separated participants with nonforfeitable account balances of $3,500 or less. These regulations also explain changes regarding spousal rights.

List of Subjects in 5 CFR Part 1650

Employment benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1650—[AMENDED]

1. The authority citation for part 1650 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), 8474(c)(1) and Sec. 6, Pub. L. 101–335, 104 Stat. 322.

2. Subparts C–J, consisting of §§ 1650.9–1650.52 of part 1650 are redesignated as shown in the table below to take into account the addition of new §§ 1650.9 and 1650.23:

Old designations	New designations
Subpart C, § 1650.9	Subpart D, § 1650.10
Subpart D, § 1650.10	Subpart E, § 1650.11
Subpart E, §§ 1650.11–1650.14.	Subpart F, §§ 1650.12–1650.15
Subpart F, §§ 1650.15–1650.21.	Subpart G, §§ 1650.16–1650.22
Subpart G, §§ 1650.22–1650.24.	Subpart H, §§ 1650.24–1650.26
Subpart H, §§ 1650.25–1650.41.	Subpart I, §§ 1650.27–1650.43
Subpart I, §§ 1650.42–1650.45.	Subpart J, §§ 1650.44–1650.47
Subpart J, §§ 1650.50–1650.52.	Subpart K, §§ 1650.50–1650.52

3. As a result of this redesignation, references in part 1650 are changed as follows:

§ 1650.2 [Amended]

3–1. In § 1650.2, the reference in the definition of "Qualifying court order" to "§ 1650.27" is changed to "§ 1650.29".

§ 1650.4 [Amended]

3–2. In § 1650.4, the reference to "subpart F" is changed to "subpart G".

3–3. In § 1650.4, the reference to "§ 1650.9(b)" is changed to "§ 1650.9".

§ 1650.5 [Amended]

3–4. The first sentence of § 1650.5, the reference to "subpart F" is changed to "subpart G".

3–5. In the first sentence of § 1650.5, the reference to "§ 1650.9(b)" is changed to "§ 1650.9".

3–6. In the first sentence of § 1650.5, the reference to "§ 1650.14" is changed to "§ 1650.15".

3–7. In paragraph (a) of § 1650.5, the reference to "subpart E" is changed to "subpart F".

3–8. In paragraph (b) of § 1650.5, the reference to "subpart E" is changed to "subpart F".

§ 1650.7 [Amended]

3–9. In § 1650.7, the reference to "subpart E" is changed to "subpart F".

3–10. In § 1650.7, the reference to "§ 1650.43" is changed to "§ 1650.45".

§ 1650.8 [Amended]

3–11. In paragraph (a)(3) of § 1650.8, the reference to "subpart F" is changed to "subpart G".

§ 1650.10 [Amended]

3–12. In redesignated § 1650.10, the reference to "subpart F" is changed to "subpart G".

§ 1650.11 [Amended]

3–13. In paragraph (a) of redesignated § 1650.11, the reference to "subpart F" is changed to "subpart G".

§ 1650.12 [Amended]

3–14. In redesignated § 1650.12, the reference to "subpart F" is changed to "subpart G".

§ 1650.13 [Amended]

3–15. In paragraph (b)(5) of redesignated § 1650.13, the reference to "§ 1650.13" is changed to "§ 1650.14".

§ 1650.17 [Amended]

3–16. In paragraph (a) of redesignated § 1650.17, the reference to "§ 1650.19" is changed to "§ 1650.20".

3–17. In paragraph (b) of redesignated § 1650.17, the reference to "§ 1650.19" is changed to "§ 1650.20".

§ 1650.22 [Amended]

3–18. In paragraph (a) of redesignated § 1650.22, the reference to "§ 1650.20" is changed to "§ 1650.21".

§ 1650.25 [Amended]

3–19. In paragraph (a) of redesignated § 1650.25, the reference to "§ 1650.22(b)" is changed to "§ 1650.24(b)".

3–20. In paragraph (a) of redesignated § 1650.25, the reference to "§ 1650.22(a)(2) through (6)" is changed to "§ 1650.24(a)(2) through (6)".

3–21. In paragraph (b) of redesignated § 1650.25, the reference to "§ 1650.28" is changed to "§ 1650.30".

3–22. In paragraph (b) of redesignated § 1650.25, the reference to "§ 1650.14" is changed to "§ 1650.15".

§ 1650.26 [Amended]

3–23. In paragraph (b) of redesignated § 1650.26, the reference to "§ 1650.18" is changed to "§ 1650.19".

3–24. In paragraph (c) of redesignated § 1650.26, the reference to "§ 1650.22(a)(2) through (6)" is changed to "§ 1650.24(a)(2) through (6)".

3–25. In paragraph (d) of redesignated § 1650.26, the reference to "§ 1650.22(a)(2) through (6)" is changed to "§ 1650.24(a)(2) through (6)".

§ 1650.28 [Amended]

3–26. In paragraph (d) of redesignated § 1650.28, the reference to "§§ 1650.27 through 1650.30" is changed to "§§ 1650.29 through 1650.32".

§ 1650.30 [Amended]

3–27. In paragraph (a) of redesignated § 1650.30, the reference to "§ 1650.30" is changed to "§ 1650.32".

3–28. In paragraph (b) of redesignated § 1650.30, the reference to "§ 1650.30" is changed to "§ 1650.32".

§ 1650.31 [Amended]

3–29. In paragraph (d) of redesignated § 1650.31, the reference to "§ 1650.27" is changed to "§ 1650.29".

3–30. In paragraph (e)(5) of redesignated § 1650.31, the reference to "§ 1650.30" is changed to "§ 1650.32".

3–11. In paragraph (f)(2) of redesignated § 1650.31, the reference to "paragraph (a) of § 1650.28" is changed to "paragraph (a) of § 1650.30".

3–32. In paragraph (f)(3) of redesignated § 1650.31, the reference to "paragraph (b) of § 1650.28" is changed to "paragraph (b) of § 1650.30".

§ 1650.43 [Amended]

3–33. In paragraph (c) of redesignated § 1650.43, the reference to "§ 1650.27(e)" is changed to "§ 1650.31(a)".

§ 1650.47 [Amended]

3–34. In redesignated § 1650.47, the reference to "§§ 1650.43 and 1650.44" is changed to "§§ 1650.45 and 1650.46".

4. A new subpart C consisting of § 1650.9 is added to read as follows:

Subpart C—Automatic Cashouts

§ 1650.9 $3,500 automatic cashout.

(a) A participant who separates from government service, whether or not entitled to basic retirement benefits, will receive the nonforfeitable balance of his or her account automatically in a single payment, referred to as an "automatic cashout," if:

(1) His or her nonforfeitable account balance is $3,500 or less at the time the account is disbursed; and

(2) The participant has not elected one of the withdrawal options for which he or she is eligible as described in §§ 1650.10–1650.15.

(b) If the participant has not completed an election for which he or she is eligible, the participant will be sent a notice of the proposed automatic cashout in sufficient time to choose another withdrawal election.

(c) If a separated participant's nonforfeitable account balance is $3,500 or less at the time the participant is notified of the proposed automatic cashout, but it exceeds $3,500 at the time the account would otherwise be disbursed, the automatic cashout will not be made and the participant will be required to make a withdrawal election.

(d) The spousal waiver and notification requirements described in subpart G of this part are not applicable to the automatic cashout or to any other withdrawal election when the participant's nonforfeitable account balance is $3,500 or less.

(e) *Applicability.* This subpart shall apply to all withdrawal payments of $3,500 or less made after January 31, 1991.

§ 1650.10 [Amended]

5. Newly redesignated § 1650.10, paragraph (b) is removed, and the designation (a) is also removed.

6. New § 1650.23 is added to redesignated subpart G to read as follows:

§ 1650.23 Withdrawal elections not requiring spousal notification or waiver.

(a) The spousal notification and waiver requirements described in §§ 1650.18, 1650.19, 1650.20, 1650.21 are not applicable to an automatic cashout described in § 1650.9 or to any withdrawal election when the participant's nonforfeitable account balance is $3,500 or less.

(b) Applicability. This section shall apply to all withdrawal payments of $3,500 or less made after January 31, 1991.

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Part VII

Department of Justice

Immigration and Naturalization Service

8 CFR Part 3, et al.

Temporary Protected Status; Interim Rule with Request for Comments

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 240, 274a, and 299

[INS Number: 1400-90]; [DOJ Order Number: 1465-91]

Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements a new section, 244A of the Immigration and Nationality Act, established by section 302, and implements section 303, of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990. This interim rule sets forth the procedures for making application for Temporary Protected Status and provides, in accordance with those provisions, an opportunity for eligible individuals to temporarily remain in, and work in the United States, until it is safe for them to return to their homeland. In addition to the procedures for applying for Temporary Protected Status, this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

DATES: This interim rule is effective January 2, 1991. Written comments on this rule must be received on or before February 6, 1991.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5304, 425 I St., NW., Washington, DC 20536. All comment letters should reference the INS and DOJ control numbers of this rule.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, Suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 756-6470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 7048, Washington, DC 20536, telephone number 202-514-2895; or Michael Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Room 7122, Washington, DC 20536, telephone number 202-514-3240.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the President signed the comprehensive Immigration Act of 1990 (IMMACT), which contains provisions that afford temporary protection in the United States to individuals of designated foreign states that are experiencing on-going civil strife, environmental disaster, or other harmful conditions, who also satisfy the eligibility requirements set forth in sections 302 and 303 of IMMACT. Section 303 affords such protection (Temporary Protected Status, TPS) specifically to nationals of El Salvador, who may begin to register on January 2, 1991. The Attorney General is authorized to designate other countries under section 302. This regulation sets forth procedures for establishing eligibility for the benefits conferred under sections 302 and 303 of IMMACT.

The regulation provides definitions of statutory terms and describes eligibility requirements, the applicability of grounds of inadmissibility, and the method of adjudicating and appealing decisions made by district directors. It provides for the confidentiality of information provided by the alien and establishes the terms of employment authorization, travel abroad, maintenance of status and departure after the termination of the designation of a foreign country. It establishes procedures for registration and re-registration for benefits and the requirements for and manner of withdrawal of status. It provides for a *de novo* determination of eligibility in deportation or exclusion proceedings after the denial or withdrawal of an alien's Temporary Protected Status by the Service. It also provides that where an alien has been granted Temporary Protected Status and is subsequently placed in deportation or exclusion proceedings, the alien automatically loses Temporary Protected Status upon the entry of a final order of deportation or exclusion.

Sections 240.1 through 240.19 of this regulation implement procedures for the granting, denial, or the withdrawal of temporary treatment benefits and/or Temporary Protected Status of foreign nationals of any designated foreign state, including El Salvador, except as otherwise provided by §§ 240.40 through 240.47, which provide special procedures for nationals of El Salvador pursuant to section 303 of IMMACT. Conforming amendments to parts 3, 103, 274a and 299 relating to procedures regarding confidential information, employment authorization, fees, and forms, respectively, are also included in this interim rule.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows:

El Salvador has been designated for TPS by section 303 of IMMACT, effective November 29, 1990, the date of enactment. The initial six-month registration period for Salvadorans who wish to apply for such benefits begins on January 2, 1991, the first business day of such period, and ends on June 30, 1991.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget, and clearance numbers are provided in 8 CFR 299.5.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

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

8 CFR Part 240

Administrative practice and procedure, Immigration.

CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 8, chapter I, of the Code

of Federal Regulations, is amended as follows:

1. A new part 240 is added to read as follows:

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

Subpart A—General Provisions

Sec.
240.1 Definitions.
240.2 Eligibility.
240.3 Applicability of grounds of inadmissibility.
240.4 Ineligible aliens.
240.5 Temporary treatment benefits for eligible aliens.
240.6 Application.
240.7 Filing the application.
240.8 Appearance.
240.9 Evidence.
240.10 Decision by the district director or Administrative Appeals Unit (AAU).
240.11 Renewal of application; appeal to the Board of Immigration Appeals.
240.12 Employment authorization.
240.13 Termination of temporary treatment benefits.
240.14 Withdrawal of Temporary Protected Status.
240.15 Travel abroad.
240.16 Confidentiality.
240.17 Annual registration.
240.18 Issuance of charging documents; detention.
240.19 Termination of designation.
240.20–240.39 [Reserved]

Subpart B—Temporary Protected Status for Salvadorans

240.40 General.
240.41 Definitions.
240.42 Eligibility.
240.43 Ineligibility.
240.44 Semiannual Registration.
240.45 Employment authorization.
240.46 Travel abroad.
240.47 Departure at time of termination of designation.

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

Subpart A—General Provisions

§ 240.1 Definitions.

As used in this part:

Act means the Immigration and Nationality Act, as amended by the Immigration Act of 1990.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Charging document means Form I–221 (Order to Show Cause and Notice of Hearing) or Form I–122 (Notice to Applicant for Admission Detained for Hearing before Immigration Judge).

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244A of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

(1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Prima facie means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility under section 244A(c) of the Act.

Register means to properly file, with the district director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244A(b) of the Act.

Service means the Immigration and Naturalization Service.

State means any foreign country or part thereof as designated by the Attorney General pursuant to section 244A(b) of the Act.

§ 240.2 Eligibility.

Except as provided in §§ 240.3 and 240.4, an alien may in the discretion of the district director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national of a state designated under section 244A(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 240.3;

(e) Is not ineligible under § 240.4; and

(f) Timely registers for Temporary Protected Status.

§ 240.3 Applicability of grounds of inadmissibility.

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I–601 (Application for waiver of grounds of excludability).

(c) *Grounds of inadmissibility that may not be waived.* The Service may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (9) and (10) (relating to criminals);

(2) Paragraph (23) (relating to drug offenses), except as it relates to a single offense of simple possession of 30 grams or less of marijuana;

(3) Paragraphs (27) and (29) (relating to national security); or

(4) Paragraph (33) (relating to those who assisted in the Nazi persecution).

§ 240.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien:

(a) Has been convicted of any felony or two or more misdemeanors committed in the United States, or

(b) Is an alien described in section 243(h)(2) of the Act.

§ 240.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by the Attorney General, a national of a state designated by the Attorney General shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244A of the Act. This application may be filed without fee. Temporary treatment benefits shall terminate unless the registration fee is paid within the first thirty days of the registration period designated by the Attorney General. If the registration fee is paid within such thirty day period, temporary treatment benefits shall continue until terminated under § 240.13. The denial of temporary treatment benefits prior to the registration period designated by the Attorney General shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under § 240.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

§ 240.6 Application.

An application for Temporary Protected Status shall be made in accordance with § 103.2 of this chapter except as provided herein. Each application must be filed with proper fee by each individual seeking Temporary Protected Status. Each application must consist of a completed Form I–104, Form I–765, Form I–821, two completed fingerprint cards (Form FD–258) for every applicant who is fourteen years of age or older; two identification photographs (1½" × 1½"), and, supporting evidence as provided in § 240.9.

§ 240.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the district director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General.

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 240.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given the opportunity to submit an application for Temporary Protected Status to the district director under § 240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under §§ 240.3(c) or 240.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

§ 240.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of documents relating to the application, and the decision of the district director.

§ 240.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of:

(i) Passport;

(ii) Birth certificate accompanied by photo identification; and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of the following:

(i) Employment records, which may consist of pay stubs, W–2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested by the Immigration and Naturalization Service. Such letters from employers must include:

(A) Alien's address(es) at the time of employment;

(B) Exact period(s) of employment;

(C) Period(s) of layoff; and

(D) Duties with the company.

(ii) Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing the dates during which the applicant received service;

(iii) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance;

(iv) Hospital or medical records showing medical treatment or hospitalization of the applicant or his or her children, showing the name of the medical facility or physician as well as the date(s) of the treatment or hospitalization;

(v) Attestations by churches, unions, or other organizations of the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official whose title is also shown;

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during the membership period;

(E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the attestor knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim, which may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Correspondence between the applicant and other persons or organizations;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and/or

(L) Any other relevant document.

(3) *Evidence of eligibility under section 244A(c)(2) of the Act.* An applicant has the burden of showing that he or she is eligible for benefits under this part. Proof of eligibility shall be provided by the applicant in the form requested by the Service.

(b) *Sufficiency of evidence.* The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

(c) *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will constitute an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

§ 240.10 Decision by the district director or Administrative Appeals Unit (AAU).

(a) *Temporary treatment benefits.* The district director shall grant temporary treatment benefits to the applicant if the applicant establishes *prima facie* eligibility for Temporary Protected Status in accordance with § 240.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, the district director may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility in §§ 240.2, 240.3, and 240.4.

(c) *Denial by district director.* The decision of the district director to deny Temporary Protected Status or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal, within fifteen (15) days, a decision denying Temporary Protected Status. To exercise such right, the alien shall file notice appeal with the appropriate district director. If an appeal is filed, the administrative record shall be forwarded to the AAU for review and decision, pursuant to authority delegated in § 103.1(f)(2), except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or excludability which renders the alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right to appeal the district director's decision denying Temporary Protected Status as provided in this subsection. The decision shall also apprise the alien of his or her right to a *de novo* determination of his or her eligibility for Temporary Protected Status in deportation or exclusion proceedings pursuant to §§ 240.11 and 240.18.

(d) *Decision by AAU.* The decision of the AAU shall be in writing served in person, or by mail to the alien's most recent address provided to the Service, and, if the appeal is denied, the decision shall state the reason(s) for the denial.

(1) If the appeal is dismissed by the AAU under § 240.18(b), the decision shall also apprise the alien of his or her right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings.

(2) The district director may issue a charging document if no charging document is presently filed with the Office of the Immigration Judge.

(3) If a charging document has previously been filed or is pending before the Immigration Court, either party may move to recalendar the case after the decision by the AAU.

(e) *Grant of temporary treatment benefits.* (1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall be furnished, in English, and in the official language of the designated state, with a notice of the registration requirements for Temporary Protected Status, and a notice of the following benefits:

(i) Temporary stay of deportation; and

(ii) Temporary employment authorization.

(2) Unless terminated under § 240.13, temporary treatment benefits shall remain in effect until a final decision has been made on the application for Temporary Protected Status.

(f) *Grant of Temporary protected status.* (1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an employment authorization document.

(2) The alien shall be provided with a notice in English and in the official language of the designated state of the following benefits:

(i) The alien shall not be deported while maintaining Temporary Protected Status;

(ii) Employment authorization;

(iii) The privilege to travel abroad with the prior consent of the district director as provided in § 240.15;

(iv) For the purposes of adjustment of status under section 245 of the Act and change of status under section 248 of the Act, the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains Temporary Protected Status.

(3) The benefits contained in the notice are the only benefits the alien is entitled to while in Temporary Protected Status.

(4) Such notice shall also advise the alien of the following:

(i) The alien must remain eligible for Temporary Protected Status;

(ii) The alien must register annually with the district office where the application for Temporary Protected Status was filed; and

(iii) The alien's failure to comply with paragraphs (f)(4) (i) and (ii) of this section will result in the withdrawal of Temporary Protected Status, including work authorization, and may result in the alien's deportation from the United States.

§ 240.11 Renewal of application; appeal to the Board of Immigration Appeals.

If a charging document is served to the alien with a notice of denial or withdrawal of Temporary Protected Status, an alien may renew the application for Temporary Protected Status in deportation or exclusion proceedings. The decision of the immigration judge as to eligibility for Temporary Protected Status may be

appealed to the Board of Immigration Appeals pursuant to § 3.3 of this chapter. The provisions of this section do not extend the benefits of Temporary Protected Status beyond the termination of a state's designation pursuant to § 240.19.

§ 240.12 Employment authorization.

(a) Upon approval of an application for Temporary Protected Status, the district director shall grant an employment authorization document valid during the initial period of designation for the foreign state involved (and any extensions of such period) or twelve (12) months, whichever is shorter.

(b) If the alien's Temporary Protected Status is withdrawn under § 240.14, employment authorization expires upon notice of withdrawal or on the date stated on the employment authorization document, whichever occurs later.

(c) If Temporary Protected Status is denied by the district director, employment authorization shall terminate upon notice of denial or at the expiration of the employment authorization document, whichever occurs later.

(d) If the application is renewed or appealed in deportation or exclusion proceedings, or appealed to the Administrative Appeals Unit pursuant to § 240.18(b), employment authorization will be extended during the pendency of the renewal and/or appeal.

§ 240.13 Termination of temporary treatment benefits.

(a) Temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for Temporary Protected Status.

(b) Temporary treatment benefits terminate, in any case, sixty (60) days after the date that notice is published of the termination of a state's designation under section 244A(b)(3) of the Act.

§ 240.14 Withdrawal of Temporary Protected Status.

(a) *Authority of district director.* The district director may withdraw the status of an alien granted Temporary Protected Status under section 244A of the Act at any time upon the occurrence of any of the following:

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

(2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 240.15;

(3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

(b) *Decision by district director.* (1) Withdrawal of an alien's status under paragraph (a) of this section shall be in writing and served in person or by mail to the alien's most recent address provided to the Service. If the ground for withdrawal is § 240.14(a)(3), the notice shall provide that the alien has fifteen (15) days within which to provide evidence of good cause for failure to register. If the alien fails to respond within fifteen (15) days, Temporary Protected Status shall be withdrawn without further notice.

(2) Withdrawal of the alien's Temporary Protected Status under paragraph (b)(1) of this section may subject the applicant to exclusion or deportation proceedings under section 236 or section 242 of the Act as appropriate.

(3) If the basis for the withdrawal of Temporary Protected Status constitutes a ground of deportability or excludability which renders an alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s) with notice of the right of a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings. If the basis for withdrawal does not constitute such a ground, the alien shall be given written notice of his or her right to appeal to the AAU. Upon receipt of an appeal, the administrative record will be forwarded to the AAU for review and decision pursuant to the authority delegated under § 103.1(f)(2).

(c) *Decision by AAU.* If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 240.10(d).

(d) *Issuance of charging document.* (1) The district director shall issue a charging document in the case of any alien, notwithstanding the prior grant of Temporary Protected Status, if the basis for deportability or excludability constitutes a statutory ground of ineligibility for Temporary Protected Status under § 240.3(c) or § 240.4.

(2) In the case of any such alien who is placed in deportation or exclusion proceedings, Temporary Protected Status is automatically withdrawn upon the entry of a final order of deportation or exclusion. If the alien has been previously granted Temporary Protected Status, the charging document shall constitute notice to the alien that the alien's status in the United States is subject to withdrawal, with the right of a *de novo* determination of eligibility for Temporary Protected Status in such deportation or exclusion proceedings.

§ 240.15 Travel abroad.

(a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of section 244A(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the district director. Such permission to travel shall be requested pursuant to the Service's advance parole provisions contained in § 212.5(e) of this chapter. There is no appeal from a denial of advance parole.

(b) Failure to obtain advance parole prior to the alien's departure may result in the withdrawal of Temporary Protected Status and/or the institution of deportation or exclusion proceedings against the alien.

§ 240.16 Confidentiality.

The information contained in the application and supporting documents submitted by an alien shall not be released in any form whatsoever to a third party requester without a court order, or the written consent of the alien. For the purpose of this provision, a third party requester means any requester other than the alien, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for purposes of enforcement of the Act or in any criminal proceeding.

§ 240.17 Annual registration.

(a) Aliens granted Temporary Protected Status must register annually with the district office where the application was filed. Such registration may be accomplished by mailing completed Forms I-104, I-765, I-821, and two identification photographs (1½" x 1½") within the thirty day period prior

to the anniversary of the grant of Temporary Protected Status and no later than the anniversary of such grant for each year of the alien's Temporary Protected Status.

(b) Unless the Service determines otherwise, registration by mail shall suffice to meet the alien's registration requirements. However, as part of the registration process, the Service may request that an alien appear in person at the nearest district office to register. In such cases, failure to appear without good cause shall be deemed a failure to register under this chapter and an alien may be considered in violation of the registration requirements notwithstanding the fact that an alien may have registered by mail.

(c) Failure to register without good cause will result in the withdrawal of the alien's Temporary Protected Status.

§ 240.18 Issuance of charging documents; detention.

(a) A charging document may be issued against an alien granted Temporary Protected Status on grounds of deportability or excludability which would have rendered the alien statutorily ineligible for such status pursuant to § 240.10(c)(1). Aliens shall not be deported for a particular offense for which the Service has expressly granted a waiver. If the alien is deportable on a waivable ground, and no such waiver for the charged offense has been previously granted, then the alien may seek such a waiver in deportation or exclusion proceedings. The charging document shall constitute notice to the alien that his or her status in the United States is subject to withdrawal and a final order of deportation or exclusion shall constitute a withdrawal of such status.

(b) The filing of the charging document with the Office of the Immigration Judge renders inapplicable any other administrative review of eligibility for Temporary Protected Status. The alien shall have the right to a *de novo* determination of his or her eligibility for Temporary Protected Status in the deportation or exclusion proceedings. Review by the Board of Immigration Appeals shall be the exclusive administrative appellate review procedure. If an appeal is already pending before the Administrative Appeals Unit, the district director shall notify the Administrative Appeals Unit of the filing of the charging document, in which case the pending appeal shall be dismissed and the record of proceeding returned to the district where the charging document was filed.

(c) Upon denial of Temporary Protected Status by the Administrative Appeals Unit, the Administrative Appeals Unit shall immediately forward the record of proceeding to the district director having jurisdiction over the alien's place of residence. The district director shall, as soon as practicable, file a charging document with the Office of the Immigration Judge if the alien is then deportable or excludable under section 241(a) or section 212(a) of the Act, respectively.

(d) An alien who is determined by the Service to be deportable or excludable upon grounds which would have rendered the alien ineligible for such status as provided in paragraph (a) of this section and whose Temporary Protected Status has been withdrawn may be detained under the provisions of this chapter pending deportation or exclusion proceedings. Such alien may be removed from the United States upon entry of a final order of deportation or exclusion.

§ 240.19 Termination of designation.

Upon the termination of designation of a state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the **Federal Register**, or on the last day of the most recent extension of designation by the Attorney General, automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a state's designation is not subject to appeal.

§§ 240.20–240.39 [Reserved]

Subpart B—Temporary Protected Status for Salvadorans

§ 240.40 General.

Except as provided in this part, the provisions of part 240 of this chapter shall apply to nationals of El Salvador.

§ 240.41 Definitions.

Continuously physically present as used in section 303 of the Act, means actual physical presence of a Salvadoran in the United States since September 19, 1990. Any departure, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

§ 240.42 Eligibility.

Any alien who is a national of El Salvador, except an alien who is ineligible for Temporary Protected Status pursuant to § 240.43, may be granted Temporary Protected Status in the discretion of the district director if the alien:

(a) Establishes to the satisfaction of the district director, by evidence as provided for under § 240.9, that he or she is a national of El Salvador;

(b) Establishes that he or she has been continuously physically present in the United States since September 19, 1990, as defined in § 240.41;

(c) Establishes that he or she is admissible as an immigrant, except as provided under section 244A(c)(2) of the Act; and

(d) Registers for Temporary Protected Status during the period from January 2, 1991 until June 30, 1991.

§ 240.43 Ineligibility.

An alien is ineligible for Temporary Protected Status under this section if the alien:

(a) Has not established to the satisfaction of the district director that he or she is a national of El Salvador;

(b) Has not been continuously physically present in the United States since September 19, 1990, as defined in § 240.41;

(c) Has been convicted of any felony or 2 or more misdemeanors committed in the United States;

(d) Is an alien described in section 243(h)(2) of the Act, or

(e) Is inadmissible based upon a non-waivable ground of inadmissibility pursuant to section 244A(c)(2)(A)(iii) of the Act.

§ 240.44 Semiannual registration.

Salvadorans granted Temporary Protected Status shall register in accordance with § 240.17. However, registration under this part shall take place semiannually, within the thirty (30) day period prior to the end of each six month period.

§ 240.45 Employment authorization.

Employment authorization shall be granted upon the registration of the eligible alien in increments of six months, as reflected on the employment authorization document, until June 30, 1992. Employment authorization may be renewed by an eligible alien upon re-registration for Temporary Protected Status within the thirty (30) day period prior to the expiration of each six month registration period.

§ 240.46 Travel abroad.

Permission to travel abroad may be granted under § 240.15. Salvadorans must also demonstrate to the satisfaction of the district director that emergency and extenuating circumstances beyond the control of the alien require the departure of the alien for a brief, temporary trip abroad.

§ 240.47 Departure at time of termination of designation.

(a) At the registration which occurs at the end of the second six month period as provided for under sections 244A(c)(3)(C) and 303(c)(3) of the Act, the Service shall serve on the alien a charging document, consistent with the Act, which establishes a date for deportation proceedings which is after June 30, 1992. The charging document will be cancelled by the Service if El Salvador is subsequently designated under section 244A(b) of the Act.

(b) If an alien provided with a charging document under paragraph (a) of this section fails to appear at such deportation proceedings, the alien may be ordered deported in absentia as provided for under section 242(b) of the Act.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2 Reorg. Plan No. 2 of 1950.

3. Section 3.1 is amended by adding a new paragraph (b)(10) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in Part 240 of this chapter.

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

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

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

§ 103.1 [Amended]

5. Section 103.1 is amended by removing the word "and" at the end of paragraph (f)(2)(xxxii), and by removing the period at the end of paragraph (f)(2)(xxxiii) and adding, in its place, the word "; and".

6. Section 103.1 is further amended by adding a new paragraph (f)(2)(xxxiv) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxiv) Application for Temporary Protected Status under part 240 of this title.

§ 103.2 [Amended]

7. Section 103.2(b)(3)(i) is amended by revising the reference at the end of the first sentence to read "paragraphs (b)(3)(ii), (iii), and (iv) of this section."

8. Section 103.2 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(3) * * *

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(3)(iv) of this section.

* * * * *

9. Section 103.7(b)(1) is amended by adding, in proper numerical sequence, the Form I-104 to the list of forms.

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I-104. For filing Alien Address Report Card as an application for Temporary Protected Status under Section 244A of the Act, as amended by the Immigration Act of 1990, to be remitted in the form of a cashier's check, certified bank check or a money order. A fee of seventy-five dollars ($75.00) for each application by a national of El Salvador or a fee to be determined at the time of the Attorney General's designation of the foreign state for each application will be required at the time of filing with the Immigration and Naturalization Service.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

10. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

In § 274a.12, the introductory text of paragraph (a) is revised to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes and, except for paragraph (a)(12) of this section, specific employment authorization need not be requested: * * *

* * * * *

12. Section 274a.12 is amended by replacing the "." at the end of paragraph (a)(11) with a ";", and by adding a new paragraph (a)(12), reserving paragraph (c)(18), and adding a new paragraph (c)(19) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(a) * * *

(12) An alien granted Temporary Protected Status under section 244A of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service.

* * * * *

(c) * * *

(18) [Reserved];

(19) An alien applying for Temporary Protected Status pursuant to section 244A of the Act shall apply for employment authorization only in accordance with the procedures set forth in part 240 of this chapter.

* * * * *

PART 299—IMMIGRATION FORMS

13. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

14. Section 299.1 is amended by adding, in proper numerical sequence, two Service forms, I-104 and I-821, to read as follows:

§ 299.1 Prescribed Forms.

* * * * *

I-104 (12-3-90)—Alien Address Report Card. * * *

I-821 (12-27-90)—Temporary Protected Status Eligibility Questionnaire.

* * * * *

§ 299.5 [Amended]

15. Section 299.5 is amended by adding, in proper numerical sequence in the table,

"I-821 . . . . Temporary Protected Status Eligibility Questionnaire . . . . 1115-0170".

Dated: January 2, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-290 Filed 1-3-91; 1:52 pm]

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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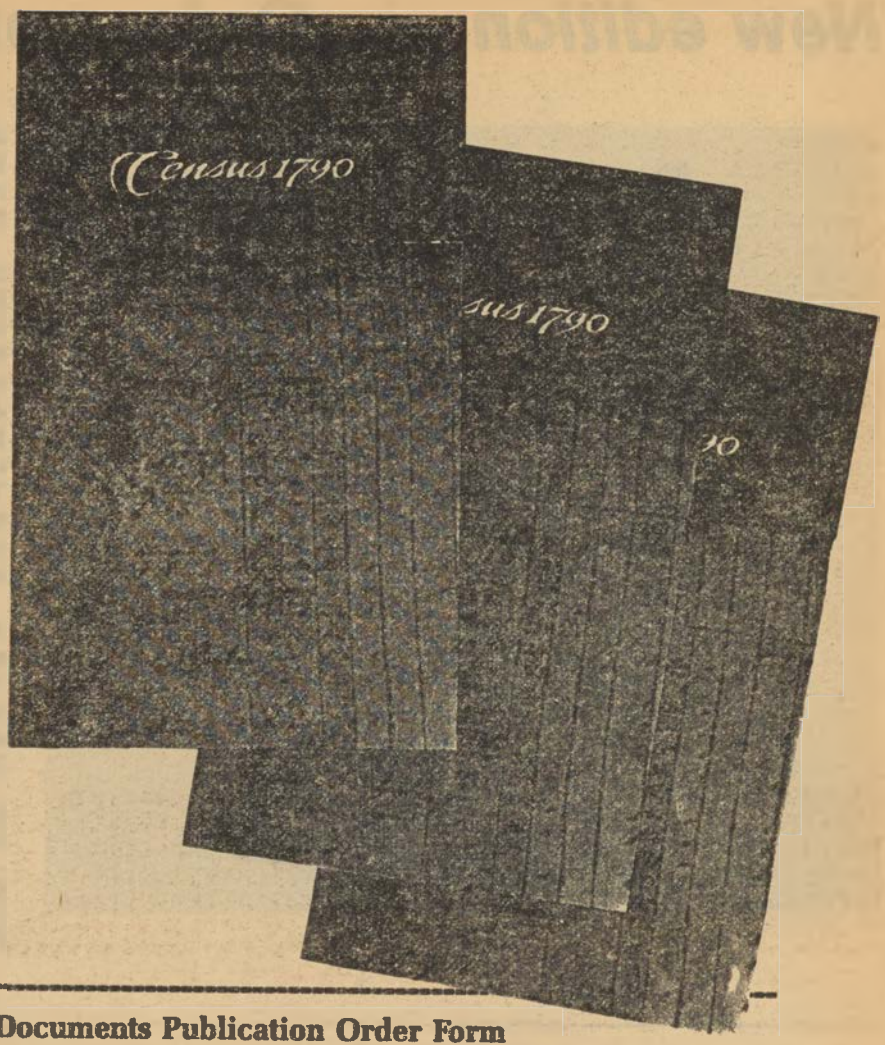

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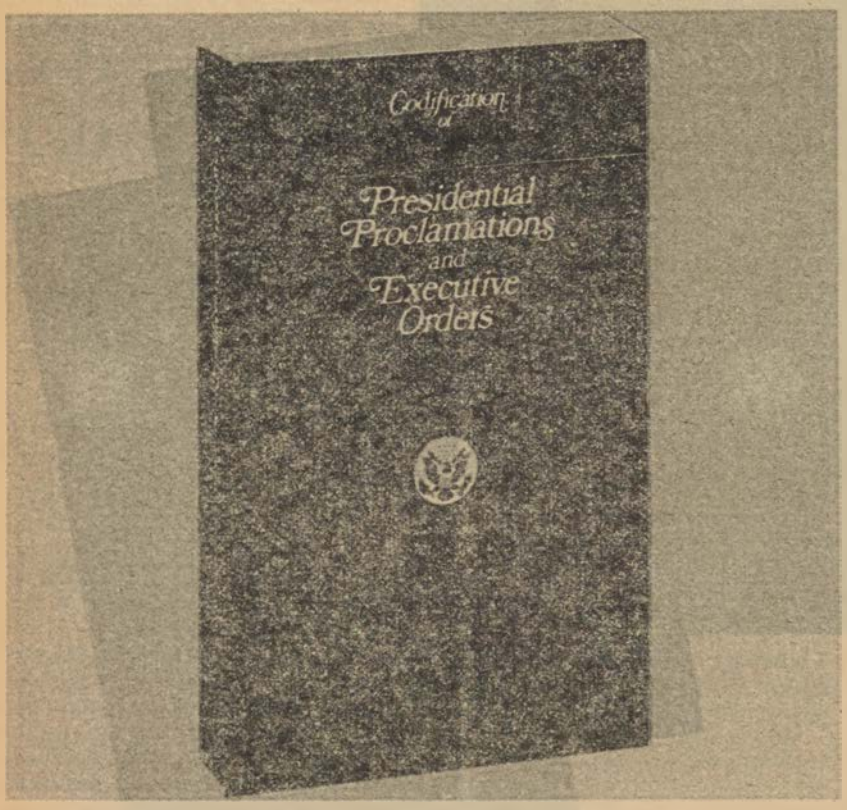

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