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

WHO: The Office of the Federal Register.

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

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

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

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WHERE: Federal Building,
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WHEN: March 5, at 9:00 a.m.
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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR, Parts 301–322, 325, 327, 329, 331, 335, 350, and 381

[Docket No. 89–011F]

Code of Federal Regulations; Authority Citations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is revising the authority citations for 9 CFR parts 301–350, and part 381. This action does not represent a change in agency policy and does not increase any burdens on the public.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–8168.

SUPPLEMENTARY INFORMATION: Due to amendments to the Federal Meat Inspection Act and the Poultry Products Inspection Act by the Humane Methods of Slaughter Act of 1978, the 1981 and 1985 Farm Bills, and the Futures Trading Act of 1986, the authority citations for 9 CFR Chapter III, parts 301–350, and part 381 need to be updated. At this time, the Administrator wishes to make an overall correction to those citations.

FSIS has determined that this final rule does not change the statutory authority applicable to the regulations issued by FSIS. In some instances, FSIS is removing references to statutory authority that are inapplicable to any of the sections in that part. In others, the agency is adding references to authority that are applicable to one or more sections in that part. Because the changes that FSIS is making are not substantive but merely describe already applicable authority, the Administrator of FSIS finds that there is good cause not to engage in notice and public comment procedures or to delay the effective date of these amendments (5 U.S.C. 553 (b)(3)(B) and (d)(3)). FSIS is merely conforming the form and placement of authority citations to requirements established by the Administrative Committee of the Federal Register in 1 CFR 21.40, et. al., (5 U.S.C. 553) and correcting inaccuracies in its regulatory citations.

Because the revisions are of a housekeeping nature and are either republications or corrections of current citation, the revisions are not subject to Executive Order 12291.

Final Rule

As set forth above, parts 301–350 and part 381 of 9 CFR chapter III, are as set forth below.

List of Subjects

9 CFR Parts 301–322, 325, 327, 329, 331, 335 and 350

Meat inspection, Authority citations.

9 CFR part 381

Poultry products inspection, Authority citations.

PARTS 301, 318, 319, and 325—[AMENDED]

1. The authority citations for part 301, 318, 319, and 325 are revised to read as follows and the authority citations following the sections within the parts are removed:

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

PARTS 302–306, 308–312, 314–316, 320–321 and 329—[AMENDED]

2. The authority citations for parts 302, 303, 304, 305, 306, 308, 309, 310, 311, 312, 314, 315, 316, 320, 321, 329 are revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

PART 313—[AMENDED]

3. The authority citation for part 313 is revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 7 U.S.C. 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

PART 307—[AMENDED]

4. The authority citation for part 307 is revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 7 U.S.C. 394, 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

PARTS 317, 327, 331, and 335—[AMENDED]

5. The authority citations for part 317, 327, 331, and 335 are revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

PART 322—[AMENDED]

6. The authority citation for part 322 is revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

PART 350—[AMENDED]

7. The authority citation for part 350 is revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

PART 381—[AMENDED]

8. The authority citation for part 381 is revised to read as follows and the authority citations following the sections within the parts are removed:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

Done at Washington, DC, on January 23, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–2070 Filed 1–28–91; 8:45 am]
BILLING CODE 3410–DM–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) adopts final regulations concerning the computation and payment of premiums. In the regulations, 12 CFR part 1410, the Corporation interprets the premium calculation formulas included in the Farm Credit Act of 1971 (Act), clarifies the methodology to be used in calculating premiums to be paid to the Corporation by insured Farm Credit System (System) banks, defines certain terminology, prescribes the form and content of certified statements, and establishes the date and place for filing certified statements and for payment of premiums.

EFFECTIVE DATE: This regulation is effective February 28, 1991.

FOR FURTHER INFORMATION CONTACT:

Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4367, TDD (703) 883–4455,

or

James M. Morris, Senior Attorney, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4020, TDD (703) 883–4455.

SUPPLEMENTARY INFORMATION: On September 28, 1990, the Farm Credit System Insurance Corporation (Corporation) published for comment proposed regulations (55 FR 39634) relating to the computation and payment of premiums by Farm Credit banks pursuant to title V, part E of the Farm Credit Act of 1971 (Act). The comment period ended on October 29, 1990.

The Corporation received 14 letters commenting on the proposed regulations. Views were expressed by the Farm Credit Council (FCC), Farm Credit Leasing Services Corporation (FCL), seven Farm Credit Banks (FCB), the National Bank for Cooperatives (CoBank), the St. Paul Bank for Cooperatives, the Springfield Bank for Cooperatives, the Federal Intermediate Credit Bank (FICB) of Jackson, and a production credit association and a Federal land credit association. The FCC's comments were submitted on behalf of its membership and the FCL, the Federal Farm Credit Banks Funding Corporation (Funding Corporation) and the Farm Credit System Financial Assistance Corporation (FAC).

The following is a summary of the comments received on the proposed regulations, an analysis of the issues raised and an explanation of any changes made in adopting the final regulations.

A. Section 1410.2(f)—Definition of "Loan"

Section 1410.2(f) of the regulations defines the term "loan," as it is used to identify the types of assets which provide the basis for the computation of premiums. The definition is similar to that contained in Farm Credit Administration (FCA) financial reporting regulations. The Jackson FICB, approving the approach taken in the proposed definition of "loan," stated that it is appropriate for the proposed definition to include leases and contracts of sale. The Jackson FICB pointed out that financing leases and contracts of sale are funded through issuance of insured obligations and increase the secure base amount. The Jackson FICB stated that excluding these assets from the calculation of premiums would "certainly" encourage a greater use of leases rather than loans.

Other commenters took issue with several aspects of the proposed definition of "loan." The FCL suggested that the definition should exclude "operating loans" which stockholder banks make to FCL under the Stockholders' Agreement. The FCL asserted that this arrangement was not intended to create "common lending relationships," but rather "advances" to affiliated companies.

In response to this comment the Corporation notes that although FCL argued that it is inconsequential whether these contributions are classified as debt or equity, the transactions between the insured banks and the FCL are in form and substance loans. Operating loans made under the Stockholders' Agreement involve the transfer of money coupled with an obligation to repay the money with interest and are therefore indistinguishable from other loans which generate premiums. Therefore, no change has been made in the definition in response to this comment.

The FCC asserted that leases should be excluded from the definition of "loans" subject to premiums. The FCC maintained that, since other sections of the Act refer separately to loans and leases, references to loans in section 5.55(a) should not include leases. The FCL and two FCBs, including the Texas FCB, joined in this comment.

In response to this comment, the Corporation notes that the definition includes only "lease financings," leases which transfer substantially all the benefits and risks of ownership to the lessees and are accounted for by Farm Credit institutions in the same manner as loans. See, e.g., 12 CFR 621.2(a)(13). Lease financings are the functional equivalent of loans, and should be subject to premiums. This is reflected in the fact that sections 1.11(c)(2) and 3.7(a) of the Act limit the authority to make such leases only to "persons eligible for credit under (Title I or II of the Act)" or to those "eligible to borrow from the bank."

Section 5.55 of the Act generally relates the payment of premiums on the use of the proceeds of insured obligations to the risk posed by such uses. It provides that each Farm Credit bank's annual premium is to be based on its "annual average principal outstanding" on loans, multiplied by varying percentages applicable to accrual loans, nonaccrual loans, the guaranteed portion of Federal Government-guaranteed loans in accrual status and the guaranteed portion of State government-guaranteed loans in accrual status. Since a lease financing is a method of financing that is virtually indistinguishable from a loan for earning a return on funds provided by insured obligations, *see M & M Leasing Corp.* v. *Seattle First National Bank,* 563 F.2d 1377 (9th Cir. 1977), *cert. denied,* 436 U.S. 956 (1978), the purpose of assessing premiums related to the risks inherent in the use of proceeds would be served by treating such lease financings as loans subject to the application of the premium factor.

One comment which disagreed with the assessment of premiums on lease financings referred to a legal opinion of the FCA concerning interpretation of part E of title IV of the Act issued to determine permissible powers of service corporations under section 4.25 of the Act. The opinion referred to was limited to a determination that section 4.25, in providing that no service corporation had authority "to extend credit," did not prohibit a service corporation from engaging in leasing activity. While the opinion recognized that certain leases can be the "functional equivalent" of lending, it concluded that System institutions' leasing authority was not encompassed within the prohibition against "extension of credit" in section 4.25. The question addressed by the premium regulations being adopted at present is whether lease financings held by insured banks are assets which should be included in computing premiums, i.e., whether they are within the meaning of the word "loan" in

section 5.55 of part E of title V of the Act.

It is necessary to interpret the premium calculation formulas included in sections 5.55 and 5.56 in the context of the Act as a whole, which establishes a plan for insuring payment of principal and interest on insured obligations of the Farm Credit banks. In order to provide such insurance, the Corporation is authorized to collect premiums from banks which have issued insured obligations. Each bank is required by section 4.3(c) of the Act to have, at the time of issuance of any insured bond, "notes and other obligations representing loans made under [the Act]" in an amount equal to the bonds or other similar obligations outstanding for which the bank is primarily liable.

At present Schedule RC–J of the FCA Uniform Financial Reports of Condition and Performance (Call Reports), which is used as a measure of whether the Farm Credit banks have adequate collateral to support issuance of bonds and other obligations, permits banks to use lease financings and contracts of sale as collateral. The Corporation believes that it was appropriate for the definition of "loans" to provide that lease financings, which are used as collateral to support the issuance of insured obligations, and are funded with the proceeds of insured obligations be considered loans for purposes of computing premiums. Therefore, the definition of "loans" has not been revised to exclude "lease financings."

One FCB asserted that, in defining the term "loan," the proper focus is proper implementation of the plain language of the statute unless that language is clearly contrary to the underlying purposes of the statute as evidenced in the relevant legislative history.

The Corporation believes that this comment was intended to refer to a January 5, 1990 letter from that FCB which asserted that the "plain meaning" of the words "loans made" in section 5.55 precludes calculating the premium of a bank based on all of its loans, including purchased loans. The Corporation believes that there is no "plain meaning" of the words "loans made" as they are used in section 5.55. The word "made" in this context could be read broadly to indicate any situation in which the bank is assuming the financial risk of a loan or could be read narrowly to mean only loans which were originated by the bank. If Congress had wished to adopt one meaning or another it could have explicitly adopted the latter reading by using the word "originate" in section 5.55, as it did in section 1.10 of the Act, or it could have explicitly adopted the first reading by inserting the words "loan volume" in section 5.55, as it did in section 5.56(c) of the Act. The plain meaning rule is inapplicable where provisions are subject to more than one interpretation or are ambiguous, or where a claim of "plain meaning" would produce a futile or unreasonable result plainly at variance with the policy of the legislation as a whole. So long as Farm Credit banks are treating loans which they have purchased as "loans made under this Act," eligible to serve as collateral for the issuance of insured bonds under section 4.3, it is appropriate and consistent to include such loans in the calculation of premiums for insuring payment of principal and interest on those bonds.

The assessment of premiums on loans purchased also relates premiums to the risk of the use of the proceeds of the insured obligations. Placing the premium obligation on the institution that presently holds the loan is consistent with the objective of creating an incentive for careful administration of loans. Treating the premium as the obligation of the institution which originated the loan would lessen the incentive for good loan administration, since the premiums of the bank holding the loan would be unaffected by its classification, while the premiums of the bank which originated the loan would be affected by the quality of the loan administration of the bank now holding the loan. The same reasoning applies to loans which Farm Credit institutions sell to lenders that are not Farm Credit institutions. See Act, section 1.5(16).

Finally, the exclusion of loans purchased from premiums might undercut the secondary market provisions which were added to the Act at the same time as the sections setting forth the calculation of premiums. For example, if loans sold to a certified facility operating in connection with the Federal Agricultural Mortgage Corporation were considered "made" by the Farm Credit bank which originated the loan, banks would continue to pay premiums on loans which have been sold to certified facilities without recourse, and may indeed have been sold outside the Farm Credit System. If the loans were sold and the insured bonds which had originally funded them were retired with the proceeds, the bank would continue to pay premiums on the loans, even though the premiums were intended to protect against default on bonds which had been retired.

In addition, the FCC and the Texas FCB asserted that contracts of sale should not be subject to premiums since under such contracts the bank acts "as a seller and not as a lender." Although contracts of sale may be entered into with persons who are not "eligible" borrowers, the Corporation continues to believe that it is appropriate to include such contracts of sale in the definition of "loan" in § 1410.2(f), for purposes of the calculation of premiums because contracts of sale are, in terms of funding requirements and risk of loss, equivalent to a loan.

The FCC also commented that FCA Call Reports require inclusion of the FAC Stock Receivable in the Notes Receivable caption. It requested clarification that the FAC Stock Receivable would not be considered "notes receivable" for purposes of the definition of "loan".

The Corporation agrees that the FAC Stock Receivable should not be considered "notes receivable" for purposes of premium calculation. FCA's inclusion of the FAC Stock Receivable in the "Notes Receivable" section of the Call Reports was to facilitate financial reporting and does not affect the meaning of the term "notes receivable" in the § 1410.2(f) definition of "loan."

B. Section 1410.2(f)—Loans Sold Subject to Recourse

The definition of "loan" contained in § 1410.2(f), as proposed, would require that loans sold subject to full or partial recourse be considered loans of the selling entity to the extent that the seller bears the risk.

The FCC commented that it generally agrees with the proposal that, for calculation of premiums, loans sold by System entities that are subject to recourse should be considered loans of the selling entity to the extent that such entity bears the risk. FCC suggested that generally accepted accounting principles (GAAP) be used to determine when the selling entity retains such risk and that such a standard could be applied consistently among System institutions, since they are required to prepare GAAP financial statements.

The FCC states that loss-sharing/recourse arrangements in loan participations vary widely. As a result, they believe it will be necessary to carefully evaluate loss-sharing arrangements on a loan-by-loan basis in calculating the amount of the loan which is subject to the premium factor, and ask that the regulation be clarified to reflect that fact.

The Corporation is aware that loss-sharing agreements and other recourse arrangements vary widely and recognizes that each loan under such an arrangement will need to be reviewed individually and a determination made as to who bears the risk and the extent

of that risk. In applying the definition of loan set forth in § 1410.2(f), identification of loans sold subject to recourse is similar to the identification of asset sales subject to recourse which each System institution is required to make in connection with FCA regulations concerning capital adequacy. See 12 CFR 615.5210(e)(3)(ii)(D)(*3*). In computing its premiums under § 1410.3, each bank should identify the same loans which have been identified for capital adequacy purposes. However, the bank which calculates its premium on the basis of the selling institution's loans will include in the calculation of its premium only the portion of each loan for which the seller bears the risk. The remaining part of the loan will be included in premium calculations of the bank which calculates its premiums on the basis of the purchasing institution's loans. Since the amount of premiums to be paid to the Corporation is partially related to risks to the Insurance Fund represented by the System's loans, it is appropriate that the premium corresponding to a loan on which there is recourse be divided to the extent different institutions bear the risk of loss on the loan. The documentation maintained pursuant to § 1410.7 should include documentation regarding the extent to which each institution bears the risk of loss on the loan, which will determine how that loan will be included in the banks' premium calculations.

The FCC also commented that it assumes that the Corporation will, in the future, wish to consider the treatment of loans sold into the secondary market and that they assume that the Corporation will be guided by the FCA's regulations in this area. The Corporation may consider secondary market issues in the future. If it does adopt regulations in that area, the Corporation will consider FCC's comment at that time.

C. Section 1410.3(b)—Calculation of 1989 Premiums

Section 5.56(c) of the Act provides that the initial premium, payable in 1990, is to be "based on the application of section 5.55 to the accruing loan volume of the bank for calendar year 1989." Section 5.56(c) provides a specific exception to the general rule provided in section 5.55(a). Section 1410.3(b) of the regulation implements section 5.56(c) by providing for calculation of initial 1989 premiums on only accrual loans. Four (4) FCBs expressed their agreement with § 1410.3(b).

However, three banks took issue with this aspect of the proposed regulation. The commenters asserted that there is no authority for the Corporation to exempt nonaccrual loans from 1989 premium payments. They distinguished the word "accruing," which appears in section 5.56(c), from the word "accrual," which is used elsewhere in the Act, claiming that Congress meant "accruing" to be read to describe increases or growth of loan volume. One commenter asserted that "no rational distinction can be made nor can any Congressional intent be gleaned from the statute or its legislative history to support the exclusion of nonaccrual loans from calculation of the initial premium, when such loans are clearly included in all other years."

The Corporation believes that the reasonable reading of the words of section 5.56(c) is to limit the premium base for 1989 to loans which are "accruing," or increasing, i.e., "accrual loans." It is a basic rule of statutory construction that effect must be given, if possible, to every word of a statute. There is no satisfactory explanation for the presence of the word "accruing" in section 5.56(c), other than to provide a special rule for calculation of the initial 1989 premium by distinguishing loans which are accruing from nonaccrual loans.

Although section 5.56(c) of the Act refers to the section 5.55 formulas and the section 5.56(a) certification requirements, which include loans that are in nonaccrual status, section 5.56(c) expressly states that such formulas and certification requirements are to be applied to the "accruing loan volume" of the insured banks.

Premiums for other years are not specifically modified by a particular subsection of the Act. Although the legislative history does not elaborate upon the rationale for section 5.56(c), it appears that Congress provided in that subsection a reasonable means of "phasing-in" premiums, imposing premiums only upon accrual loans in 1989, and upon all loans in years thereafter. Therefore, § 1410.3(b) of the regulation is adopted as proposed.

D. Section 1410.2(b)(2)—Calculation of 1990 Premiums

Section 1410.2(b)(2), requires that "average principal outstanding" for calendar years 1990 and thereafter be computed using balances as of the close of each day. The FCC and one FCB, noting that "1990 is nearly over," recommended that the average annual principal outstanding for calendar year 1990 be computed on the basis of month-end balances, as is the case for 1989, rather than daily balances. The Corporation notes that all System institutions are required to compute their capital ratio based upon average daily balances. See 12 CFR 615.5210. Further, System institutions have, since the beginning of 1990, provided information concerning average daily balances in connection with FCA Call Reports. Accordingly, § 1410.2(b) is being adopted as proposed.

E. Section 1410.3(d)—Reduction of Premiums When Insurance Fund Exceeds Secure Base Amount

Section 1410.3(d) governs the reduction of premiums when the aggregate amount in the Insurance Fund exceeds the secure base amount. Although stating that it believes the regulation to be clear already, the FCC suggested that the section be revised to indicate that the premium reduction required would have to be applied "across-the-board in the same proportion to all banks."

The Corporation believes that the recommended change is inappropriate, since the words of § 1410.3(d), which track the words of section 5.55(b) of the Act, are clear.

The FCC also recommended that § 1410.3(d) be revised to indicate that the Corporation must announce any reduction in premiums no later than December 31 of the year immediately preceding the year in which premiums are to be accrued. The Corporation notes that section 5.55(b) of the Act does not require that the reduction be determined at the end of the preceding year. Section 5.55(b) of the Act does provide that the reduction be "determined by the Corporation * * * to ensure that the aggregate of amounts in the Insurance Fund after such premiums are paid is not less than the secure base amount at such time." The determination required by section 5.55(b) would be possible at the end of the year upon whose loan volume the premium is to be calculated, approximately 1 month prior to the payment of premiums, but, if possible, would be extremely difficult to make approximately 13 months in advance. Since section 5.55(b) does not require announcement of the reduction earlier, § 1410.3(d) does not require announcement of the reduction until the December immediately preceding payment of premiums. While the Corporation will not be required to announce any such reduction until December 31 of the year prior to the January in which such premiums are to be paid, the Corporation will not delay an announcement if it can be made sooner.

As the FCC points out, any premium reduction may have a significant impact

on the amount of the premium payable that had been accrued by a System bank. If the reduction is announced at the end of the year, amounts accrued for premiums could then be reduced, causing the bank's earnings to be improved. If the Corporation were required by regulation to announce a reduction at the time which FCC suggests, the Corporation would need to reserve the right to adjust the reduction if it appeared that the aggregate of amounts in the Insurance Fund after such premiums were paid would be less than the secure base amount at such time. This might result in an increase in the premiums and the accrued amounts, resulting in an adverse impact upon the bank's earnings late in the year. Accordingly, § 1410.3(d) is adopted as proposed.

F. Section 1410.3(a)—Determination of Principal Outstanding

Section 1410.3(a) as proposed provides that, for purposes of calculating a bank's premium, the computation of the bank's "principal outstanding" is based on (a) all loans made by a direct lending association which were able to be made because such association is receiving or has received funds provided through the bank; (b) loans made by any other financing institution (OFI) which were able to be made because such OFI is receiving or has received funds provided through the bank; and (c) loans made by the bank other than loans to direct lending associations or OFIs.

Comments on this issue were received from seven FCBs, the FICB of Jackson, CoBank, and the two BCs. All commenters, except for one FCB, requested that § 1410.3 be clarified. Comments were divided between two groups of commenters, with the primary question being whether principal outstanding upon which the premium is calculated includes or excludes loans made by the direct lending associations with their "own funds" (capital and retained earnings). Two commenters did not express a position regarding the premium base for loans made by OFIs. All other commenters agreed that the portion of the premium base applicable to OFI loans should include only those OFI loans which are funded through a FCB (as distinguished from loans funded through other sources, including OFIs' "own funds").

The question regarding the premium base for direct lending association arises primarily because of language added to section 5.55(d)(1) in 1989 by Public Law 101–220 that made the language in this section identical to language of section 5.55(d)(2) of the Act relating to OFIs.

One group of commenters asserted that since Congress consciously amended section 5.55 (d)(1) in 1989, loans of OFIs and direct lending associations included in the premium base should be computed in the same manner. These commenters believe that some part of loans by associations should be excluded from the premium base. Four (4) FCBs assert that this position is consistent with the "primary (though not the exclusive) purpose of the Insurance Fund, which is to protect investors in Systemwide obligations by insuring the timely payment of principal and interest on such obligations." Five (5) FCBs stated that it was virtually impossible to trace an association's source of funds and suggested an allocation formula based on the association's total loan portfolio and its direct line from the FCB.

The second group of commenters asserted that the premium base should include all loans of direct lending associations, regardless of the source of funding, primarily because: (1) The direct line to the direct lender is the "vehicle" which enables the direct lending association to make all its loans; and (2) including total loan volume in the premium base is consistent with use of the Insurance Fund to ensure, under certain circumstances, retirement of "eligible borrower stock."

The Corporation agrees that all loans of direct lending associations must be included in the premium base because: (1) Were it not for the borrowing relationship with the FCB, direct lending associations would be unable to make any loans; and (2) there is a risk to the Insurance Fund posed by all loans made by direct lending associations regardless of the funding source. The Corporation does not believe that amendment of section 5.55(d)(2) requires identical treatment of loans of direct lending associations and OFIs for premium purposes. The Corporation believes that this section of the Act must be read and interpreted in the context of the entire Act and purposes for which the Insurance Fund was established and is to be used. Further, the Corporation believes that the differences between the relationship of a FCB to its direct lending associations and its relationship to its OFIs, and the different risks posed to the Insurance Fund, must be considered in determining how to calculate the insured bank's premium base. In the case of a direct lending association, the exposure of the bank and the Insurance Fund extends to the association's entire portfolio, regardless of the funding source. Losses in an association's portfolio could result not only in exposure on underlying insured obligations, but could also result in the need for financial assistance from either the bank or the Insurance Fund. In the case of an OFI, the exposure of the bank and of the Insurance Fund would be limited to the OFI's ability to repay the amount of funds borrowed from the bank and consequently the bank's ability to repay the related insured obligations.

The different situations of these two types of lenders is recognized, in part, in a comment by one FCB, "In the case of OFIs, measuring the premium by the discounted loan balance may be justified because the OFI will not receive any benefit from the Insurance Fund beyond the repayment of the insured obligation, whereas the direct lending association would. If the direct lending association would benefit from all purposes of the fund, then measuring the loans of direct lending associations by the amount of their direct loans with the bank would unfairly reduce the premium relative to their benefit from the fund." While the payment of insured obligations is a primary use of the Insurance Fund, it is not the only one. Direct lending associations would be eligible to benefit from the other uses of the fund, including retirement of certain eligible borrower stock and financial assistance. On the other hand, since OFIs would not be eligible for any benefit from the Insurance Fund exclusive of repayment of the insured obligations used to fund the OFI, it is reasonable that only those loans funding through insured obligations would be included in the premium base. In light of the different situations of direct lending associations and OFIs, the Corporation has modified § 1410.3(a) to include in a bank's premium base only those loans of OFI's which resulted from funding provided through the bank and which are pledged to or discounted by, the bank.

G. Section 1410.2(f)—Loans Sold to the Farm Credit Finance Corporation of Puerto Rico (FCFCPR)

The Baltimore FCB makes long-term loans in Puerto Rico which are immediately sold to the FCFCPR with full recourse. The FCB states that the San Juan Federal Land Bank Association (SJFLBA) has agreed to bear all the loan loss risk on long-term loans held by the FCFCPR (except to the extent a loan exceeds the SJFLBA's lending authority), therefore, according to the FCB, it has no loan loss risk and such loans should not be included in its

computation of premiums. The FCB argues that none of the loans held or expected to be held by the FCFCPR were or will be financed with Systemwide debt, but rather were financed with obligations of the FCFCPR.

The FCB further argues that since the FCFCPR's notes are not Systemwide debt protected by the Corporation, the investor will require a premium to be paid for the degree of risk that the FCFCPR's notes have over Systemwide debt and to the extent the FCFCPR pays such risk premium to investors and the FCB also pays a premium to the Corporation, there will be a double premium.

The FCB suggests excluding from the definition of "loans" any loan financed with other than Systemwide debt obligations.

The FCFCPR is a wholly-owned subsidiary of the Baltimore FCB formed solely to take advantage of a tax-exempt funding method. Obligations of the FCFCPR are fully guaranteed, as to principal and interest, by the Baltimore FCB. The FCFCPR's financial statements are consolidated with those of the Baltimore FCB. The Baltimore FCB clearly bears the risk associated with the operations of the FCFCPR, both in full recourse and in fully guaranteeing the FCFCPR's debt.

The FCB's suggestion for excluding loans financed with other than Systemwide debt obligations has much broader ramifications than just excluding the FCFCPR's purchased loans. This would raise issues (including a tracing problem) similar to those already discussed in section F of this preamble (above). Additionally, the language of section 5.55 requires that all loans made by a FCB other than loans to direct lenders and OFIs are to be included in premium calculations. There is no exception for any loans of a bank funded by means other than insured obligations. There is no persuasive argument for excluding loans held by FCFCPR from premium calculations, and no change is made in the final regulations.

H. Section 1410.5—Delinquent Premium Payments and Premium Overpayments

Section 1410.5 of the proposed regulations would impose an interest charge on delinquent premium payments owed to the Corporation. Any overpayments would be credited to subsequent premium payments or refunded to the bank that overpaid upon its written request.

The FCC commented that the Corporation should pay interest on any overpayment by a bank and suggested that the regulation provide that refunds of overpayments, if requested, be made within 30 days of the request. In support of their position they noted that the Federal Deposit Insurance Corporation's (FDIC) premium regulations provide for interest payments on overpayments.

In drafting the proposed regulations, the Corporation considered the FDIC's practice of providing for interest payments on overpayments but instead provided that any overpayments would be refunded upon written request. The Corporation has, in § 1410.5(c) of the final regulations, provided for interest payments on overpayments if a refund is not made within 30 days of the Corporation's receipt of the request and the Corporation determines that a refund is in order. This will provide the Corporation with an adequate period in which to review the request and determine whether an overpayment has in fact been made. Interest would be calculated from the expiration of the 30 days until such time as the Corporation issues the refund.

FCC also notes that FDIC regulations exclude interest on delinquent payments where "the delay has been caused by a depository institution's good faith reliance on a specific rule, regulation or approval issued by the [FDIC]." FCC urges that a similar exception be included in the Corporation's regulation.

Since currently the Corporation's only rules and regulations are organizational regulations and the permium regulations now being adopted, the Corporation does not believe that such an exception is needed at the present time. The commenter's suggestion was intended to preclude the assessment of interest in the situation where a bank has paid in compliance with a rule or regulation of the Corporation, and such rule or regulation is subsequently invalidated by reason of litigation. The Corporation believes that, if a specific provision of these premium regulations were invalidated by a court, there would be no obligation to pay premiums in accordance with a new corresponding provision until new regulations were promulgated, and therefore, no interest could apply. In any event, the Corporation believes that the decision of any court which invalidated a provision of these regulations would be likely to address the issue of whether interest were due on underpayments or overpayments. Accordingly, § 1410.5 of the final regulations has not been revised to include this exception.

I. Section 1410.7—Documentation of Premiums

Section 1410.7, as proposed, prescribes requirements for the maintenance of documentation to substantiate the premiums which each insured bank computes and pays. The FCC suggested that the Corporation make several clarifying changes that were also endorsed by three Farm Credit Banks. The FCC suggested that, provided that certain conditions were met, insured banks should be "entitled to rely" on the accuracy of loan balance and classification information provided to them by an association or other financing institution, rather than being required to give an "unqualified certification."

In response to this recommendation, the Corporation notes that section 5.56(a) of the Act provides that "each insured System bank * * * shall file with the Corporation a certified statement * * *." Section 5.56(b) provides that the president of the bank or any other officer designated by its board of directors shall certify that "to the best of the person's knowledge and belief the statement is true, correct, complete and has been prepared in accordance with [part E of title V of the Act] and all regulations issued thereunder." The certification prescribed by statute is not "unqualified", and is similar to the certification required for FCA financial reporting. The obligation to calculate and pay premiums rests upon the bank, which must take steps to ensure the accuracy of the data on which it computes its premiums. Although the contractual relationship between the bank and associations or OFIs may provide recourse against associations or OFIs for interest and other delinquency charges caused by inaccurate information provided by the association or other financing institution, the bank has an independent obligation to accurately compute and pay its premiums to the Corporation.

Second, the FCC suggests that § 1410.7 be "clarified" to provide that records may be maintained at an association or other financing institution so long as the bank has full access to such records. The bank should determine the disposition of all relevant documentation, including any documentation in the hands of associations or OFIs, and ensure that all documentation necessary for review of its premiums is available to the Corporation. It is not necessary, nor does the regulation require, that the bank maintain on its premises all records of loans made by associations and OFIs. It is however, essential that the bank maintain records on its premises sufficient to permit reconciliation of the certified statement.

These records would include worksheets and any schedules or reports received from associations and OFIs which were used in preparation of the certified statement. The Corporation has revised § 1410.7(b) to make this requirement clear.

Finally, the Farm Credit Council suggests that § 1410.7(c) be revised to require that documentation of the computation of premiums be retained for 5 years or until the certified statement is audited by or on behalf of the Corporation, whichever is earlier. The Corporation believes that, as a general rule, 5 years is an appropriate period to hold the records supporting computation of the premiums. However, after considering the comment, § 1410.7(c) has been amended to permit such records to be disposed of earlier if a bank makes a written request and the Corporation approves such request in writing.

J. Use of Generally Accepted Accounting Principles

The FCC comments that it believes that determinations made by a System institution for purposes of calculating premiums should be consistent with determinations made by that institution for financial reporting purposes. The FCC points out the comments in the preamble regarding consistency with the FCA's financial reporting regulations, but notes that the FCA, in its regulations, also provides that System institutions prepare their financial statements on the basis of GAAP, except as otherwise directed by statutory or regulatory requirements. See 12 CFR 621.2(a)(9).

The FCC suggests that the final premium regulations include a provision whereby all "relevant factors" in the calculation of premiums be determined in accordance with GAAP and that a definition of GAAP which parallels FCA's definition also be included. They indicate that this will ease the recordkeeping burden and provide an objective standard by which accounting-related determinations can be made and thus promote consistent application of the regulations.

The FCC states that it believes GAAP should be the basis for making all accounting-related determinations in the calculation of premiums. It points out that reliance upon GAAP would resolve potential ambiguity in the calculation of "principal outstanding" on nonaccrual loans. Specifically, the principal outstanding under GAAP would be equal to the book value for GAAP purposes (i.e., value at which the loan is carried in GAAP financial statements before any reduction for a related specific allowance for loan loss).

The Corporation is not prescribing financial reporting or accounting guidelines in the premium regulations. Definitions within the regulations are limited to those necessary to calculate the banks' premiums. The Corporation believes that relevant terms are adequately defined within the regulations and therefore has not made the suggested change. Further, the Corporation does not believe that the term "principal" needs any clarification. "Principal" is commonly understood to be the current value at which a loan is carried on financial statements before any reductions.

K. Determination of the Secure Base Amount

Under section 5.55(c) of the Act, the Corporation has discretionary authority to increase or decrease the secure base amount. Section 1410.3(d) provides for adjustments to premiums after the secure base amount is reached, but does not address the method of increasing or decreasing the secure base amount. The FCC commented that, in light of the importance of the matter to the Farm Credit System and investors in Farm Credit obligations,. proposed regulations should be issued for comment by interested parties in which objective criteria are set forth for determining "whether and by what amount the secure base amount should be increased or decreased." The comment goes beyond the scope of the present premium regulations. If the Corporation later decides to issue regulations concerning the method it will use to adjust the secure base amount, interested persons will have an opportunity to comment at that time.

L. Bank Authority To Assess Associations

One (1) FCB requested that a reference to section 1.12(b) of the Act be added to the regulation "for purposes of clarification of the bank's responsibility for payment of premiums." Section 1410.4(c), provides that premiums are the obligations of the insured banks, "regardless of whether the insured bank has assessed and collected any assessment under section 1.12 of the Act." The regulation makes it clear that the responsibility for payment rests upon the banks, regardless of authority to impose assessments under section 1.12. Therefore the Corporation has made no change in the final regulation.

M. "Risk" Stock and Calculation of Premiums

A Federal land credit association and a production credit association jointly commented that the premium calculation prescribed by § 1410.3 should "take into account" the amount of member invested "risk" stock as well as retained earnings. Arguing that "risk" stock and retained earnings reduce the risk to investors in insured obligations, the commenter suggested eliminating the premium or portions of loans which finance such stock. Although it is unclear from the commenter's letter how it would suggest treating retained earnings, the Corporation believes that the discussion concerning associations' loans in section F of this preamble responds to that part of the comment. The remainder of the commenter's suggestion is not consistent with the requirements of section 5.55 of the Act, which provides that premiums are assessed on "loans," without regard to the purpose of the loan or the level of risk stock of the institution which made the loan.

N. Section 1410.4(a)—Date for Payment of Initial Premiums

Section 1410.4(a), as proposed, provided that the initial premium payment for 1989 and 1990 be paid "on or before 60 days after the effective date of this regulation or January 31, 1991, whichever is later." The final regulation provides that the initial premium payment shall be paid by a date certain. The Corporation notes that the final regulations are not significantly different from the proposed regulations and notes that banks have been accruing for their initial premium payment. Section 1410.4(a) now provides that the initial premium payment shall be paid on or before March 29, 1991.

List of Subjects in 12 CFR Part 1410

Certified statements, Premiums.

For the reasons set out in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is added to read as follows:

PART 1410—PREMIUMS

Sec.

Authority: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

§ 1410.1 Purpose and scope.

This part sets forth the rules for:

(a) The calculation of premiums;

(b) The time for payment of the premium required by sections 5.55 and

5.56 of the Farm Credit Act of 1971, as amended;

(c) Interest charges on delinquent payments;

(d) The form and content of certified statements; and,

(e) Documentation supporting certified statements.

§ 1410.2 Definitions.

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Average principal outstanding* means:

(1) For calendar year 1989, the average annual principal outstanding using balances as of monthend for each of the 13 months beginning with December 1988 and ending with December 1989;

(2) For calendar year 1990 and thereafter, the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

(c) *Direct lending association* means any production credit association or any other association making direct loans under authority provided under section 7.6 of the Act, including, without limitation, agricultural credit associations and Federal land credit associations.

(d) *Government-guaranteed loans* means loans or credits, or portions of loans or credits, that are guaranteed:

(1) By the full faith and credit of the United States Government or any State government; or,

(2) By an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or,

(3) By an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(e) *Insured bank* means any Farm Credit bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act is insured under part E of title V of the Act, including, without limitation, the Federal Intermediate Credit Bank of Jackson and banks that are in or are placed in receivership or conservatorship to the extent that those banks' participation in such obligations is insured.

(f) *Loan* means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of an insured bank, a direct lending association, or an other financing institution. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the insured bank, direct lending association, or other financing institution and a borrowing entity and loans or interests in loans purchased from another lender. Loans purchased subject to recourse shall be considered loans of the seller to the extent of the recourse.

(g)(1) *Nonaccrual loan* means any loan where——

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or,

(ii) It has been classified "loss" as a result of a periodic credit evaluation and has not been charged off; or,

(ii) The loan is severely past due and is not adequately secured, in process of collection, and fully collectible with respect to all principal and interest.

(2) For the purposes of determining whether a loan is considered as accrual or nonaccrual under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(h) *Other financing institution* means any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act.

§ 1410.3 Calculation and reporting of premiums due.

(a) *Premium base.* For purposes of computing the annual premium, each insured bank shall:

(1) Report its premium base for each category of loan described in paragraph (a)(2) of this section based on the total of the average annual principal balances of:

(i)(A) Loans of each direct lending association that were able to be made because the direct lending association is receiving, or has received, funds provided through the insured bank;

(B) Loans of each other financing institution that were able to be made because the other financing institution is receiving, or has received, funds provided through the insured bank; and,

(C) The bank's loans, other than loans made to direct lending associations and other financing institutions.

(ii) For purposes of this section, loans of an other financing institution were able to be made because of funds provided through the insured bank only if they are loans which resulted from funding provided through the insured bank and which are pledged to or discounted by the insured bank.

(2) Segregate the loans of each entity described in paragraph (a) of this section into:

(i) Loans in accrual status, excluding the guaranteed portions of State and Federal government-guaranteed loans;

(ii) The guaranteed portions of State government-guaranteed loans that are in accrual status;

(iii) The guaranteed portions of Federal government-guaranteed loans that are in accrual status; and,

(iv) Nonaccrual loans.

(b) *Calculating the 1989 premium payment.* The 1989 premium payment shall be equal to the sum of:

(1) The total annual average principal outstanding for calendar year 1989 on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003; and,

(3) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.00015.

(c) *Calculating the premium payment for 1990 and subsequent years.* Except as provided in paragraph (d) of this section, the annual premium payment for 1990 and for each subsequent year shall be equal to the sum of:

(1) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(1)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003;

(3) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity as described in paragraph (a)(1) of this section multiplied by 0.00015; and,

(4) The total annual average principal outstanding for each calendar year on the nonaccrual loans as described in paragraph (a)(2)(iv) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0025.

(d) *Secure base amount.* Upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraph (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

§ 1410.4 Payment of premiums.

(a) *Calendar years 1989 and 1990.* Each insured bank shall pay to the Corporation the amount of the premiums due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time its certified statement is filed. The certified statement for calendar years 1989 and 1990 must be filed with the Corporation and the premium must be received by the Corporation on or before March 29, 1991.

(b) *Calendar year 1991 and subsequent years.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time the statement is filed. Certified statements shall be considered to have been filed and payments made in a timely manner if they are received on or before January 31 following the end of the calendar year on which the certified statement is based.

(c) *Premiums as obligations of insured banks.* Premiums required to be paid by § 1410.3 are obligations of the insured banks, and are to be paid at the times required by this section, regardless of whether the insured bank has assessed and collected any assessments under section 1.12 of the Act.

§ 1410.5 Delinquent premium payments and premium overpayments.

(a) *Delinquent payments.* Each insured bank shall pay to the Corporation interest on delinquent premium payments. All premiums will be considered delinquent if they are received after the time for payment specified in § 1410.4 of this part, including late payments caused by bank errors in the certified statement. The interest rate will be the United States Treasury Department's current value of funds rate, which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published quarterly in the **Federal Register**. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occurring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published in March for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published in June for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published in September for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has been reduced by any premium credit under paragraph (c) of this section.

(b) *Other rights and remedies.* Payment of the interest specified in paragraph (a) of this section does not affect any other rights and remedies available to the Corporation.

(c) *Overpayments.* To the extent that any payment by a bank exceeds the required amount:

(1) The excess shall be credited against future premium payments by the bank which overpaid; or,

(2)(i) Upon written request to the Corporation by the bank which overpaid, the excess shall be refunded to the bank within 30 days of receipt of the written request; and

(ii) If the Corporation fails to make a refund within such 30-day period, and the Corporation determines that a refund is in order, the Corporation shall pay to the bank interest on the amount of the overpayment, from the end of such 30-day period through the date the refund is issued.

§ 1410.6 Certified statements.

(a) *Forms.* The certified statements required to be filed by insured banks under the provisions of section 5.56 of the Act shall be filed with the Corporation. The certified statement forms will be furnished to all insured banks by, or may be obtained from, the Corporation. The following forms are available from the Corporation:

(1) *Form FCSIC 90–001: First Certified Statement.* The form shows the premium base for calendar years 1989 and 1990. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the premium due the Corporation.

(2) *Form FCSIC 90–002: Certified Statement.* The form shows the total of the premium base reported in the 4 quarterly periods in the annual premium payment period. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the amount of the premium due the Corporation.

(b) *Amendments to certified statements.* In the event of an amendment or correction of a previously submitted certified statement, the amending insured bank shall resubmit to the Corporation the appropriate certified statement along with a letter of explanation regarding the amendment or correction.

§ 1410.7 Documentation.

Each insured bank shall:

(a) Prepare and maintain accurate and complete records as necessary to prepare certified statements, including, but not limited to, records relating to the loans of each direct lending association and other financing institution that are able to make such loans because they are receiving, or have received, funding from the insured bank.

(b) Prepare and maintain on its premises books and records in such a manner as to facilitate reconciliation with certified statements prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement, unless the bank shall have requested in writing, and the Corporation shall have granted to the bank, written permission to dispose of such documentation prior to the expiration of 5 years.

(d) Make all records and any supporting documentation available, without limitation, to Corporation officials upon request.

Dated: January 24, 1991.

Curtis M. Anderson,

Secretary, Board of Directors, Farm Credit System Insurance Corporation.

[FR Doc. 91-2091 Filed 1-28-91; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-41; Amendment 39-6863]

Airworthiness Directives; Schweizer Aircraft (Hughes Helicopter) Model 269 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269 series helicopters, which: (1) Amends an existing AD that requires an inspection and modification of the abrasion strip of tail rotor blades with certain serial numbers; and (2) supersedes an AD for the same model helicopter that currently requires an inspection of Hughes-manufactured tail rotor blades with certain serial numbers. This AD is prompted by reports of separation of the abrasion strips from tail rotor blade skins, which if not corrected, could result in the loss of abrasion strips, loss of tail rotor blades, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: March 1, 1991.

ADDRESSES: The applicable service information may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas, or the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, Airframe Branch, New York Aircraft Certification Office, ANE-172, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791-6680.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising Amendment 39-6540 (55 FR 10228, March 20, 1990), AD 89-20-03, and by superseding Amendment 39-5730 (52 FR 41555, October 29, 1987), AD 87-22-07, (applicable to Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269 series helicopters, equipped with 269A6035 series tail rotor blades) to require daily checks and rework of certain tail rotor blades to prevent loss of abrasion strips from the tail rotor blades was published in the **Federal Register** on March 20, 1990 (55 FR 10228).

The proposal was prompted by reports that Model 269 series helicopters manufactured before September 15, 1989, whether manufactured by Hughes Helicopter, Inc., or Schweizer Aircraft Corporation, are subject to separation of the abrasion strip from the tail rotor blade skin.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received from the manufacturer, which states that the AD should be modified by changing the applicability from "Model 269 Series Helicopters certified in any category, equipped with tail rotor blades manufactured before September 15, 1989" to "Model 269 series helicopters, certificated in any category, equipped with 269A6035 series tail rotor blades manufactured before September 15, 1989."

The manufacturer states that only 269A6035 series tail rotor blades are affected by the abrasion strip separation problem and that helicopters installed with 269A6124 tail rotor blades are not subject to the abrasion strip debonding. The FAA concurs inasmuch as there are not adverse service data for any other series tail rotor blades. The applicability statement is limited, in the final rule, to the 269A6035 series tail rotor blades. The amendment is otherwise adopted as proposed.

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

The FAA has determined that this regulation involves approximately 1,550 U.S. registered helicopters. It is estimated that it will take approximately 5.5 manhours at $40 per manhour for the rivet installation on each helicopter. The modification kit will cost another $33 per helicopter. In addition, it is estimated that it will cost $1,200 per helicopter per year to accomplish the required daily checks. Based on this, it is estimated that the total cost impact on the U.S. fleet will be $2,252,150. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6540 (55 FR 10228, March 20, 1990), AD 89-20-03, by revising the applicability statement, compliance paragraph, introductory text, and paragraphs (a) and (b), and by adding a new paragraph (h) and appendix I to read as follows:

Schweizer Aircraft Corporation (Hughes Helicopters, Inc.): Amendment 39-6863. Docket No. 89-ASW-41

Applicability: All Model 269 series helicopters, certified in any category, equipped with 269A6035 series tail rotor blades manufactured before September 15, 1989.

Compliance: Required as indicated, unless already accomplished.

To prevent the loss of the abrasion strips on the tail rotor blades with subsequent loss of tail rotor control, accomplish the following:

(a) Install rivets in the tail rotor blades as follows:

(1) Prior to further flight after the effective date of this AD, modify the

affected tail rotor blades with the following serial numbers (S/N) in accordance with the procedures detailed in Appendix I of this AD:

BLADE S/N's AFFECTED

R0056	S524	S584	S640-S644
R0086	S534	S586	S646
R1059	S538	S588	S648-S650
R1066	S539	S589-S594	S653
R1560	S544	S596	S654
R1922	S546	S598-S603	S657
R3296	S547	S605	S660-S662
R3314	S549	S607	S664-S666
R3330	S550	S608	S668
R3349	S553	S611-S620	S670-S672
S21	S556-S563	S623-S626	S675-S677
S431	S565	S631-S633	S679-S682
S513	S566	S637	S684-S688
S515	S568-S571	S638	S691-S694
S518	S573		
S521	S576-S582		

(2) Within the next 100 hours' time in service after the effective date of this AD, modify all tail rotor blades, whether manufactured by Schweizer or Hughes, except those listed in paragraph (a)(1) in accordance with procedures described in Appendix I of this AD.

(b) Before the first flight of each day, visually check the abrasion strip of these blades for any evidence of cracking or chipping along the entire abrasion strip/airfoil bond line and the blade tip.

* * * * *

(h) Tail rotor blades manufactured by Schweizer with a bond date on or after September 15, 1989, shown on the identification plate located on the inboard end of the blade, are exempt from the requirements of this AD.

Note: Appendix I includes materials from Schweizer Aircraft Corporation Service Information Notice (S/N) N-183.3, dated September 15, 1989. A copy of the service information may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902.

Appendix I

Tap Test and Dye Penetrant Inspection

Procedure

Perform tail rotor blade abrasion strip 100 hour inspection in accordance with HMI, Appendix C, part VII, Table 3-2; as amended by Temporary Revision R-27.

Installation of Rivets in Abrasion Strip

MATERIALS

Nomenclature	Source
Adhesive, epoxy (EA9314/EA9309-preferred).	Commercial/Hysol Division.
or	
Adhesive, epoxy (Room temperature cure).	Commercial.
Rivets (CR2545-4-2) (4 req. per blade-no alternatives)*.	Commercial/SAC.

*Included in SA-269K-056 KIT.

TOOLS AND EQUIPMENT

Nomenclature	Source
Drill bit, No. 27 Cobalt*	Commercial.
Drill bits (number set)	Commercial.
Drill, portable hand	Commercial.
Countersink (100°)	Commercial.
Drill stop (Kwik-Lok)	Commercial/Advanced Air Tool Co.
Riveter (bulbed Cherrylock type)**.	Commercial/Cherry.
Unisink pulling head (preferred)**.	Commercial/Cherry.
or	
Flat pulling head**	Commercial/Cherry.

*Included in SA-269K-056 Kit.
**Refer to current Cherrylock bulbed rivet catalog.

Caution

Do not attempt to perform this procedure with the tail rotor blades on the helicopter. Failure to comply with this caution may result in defective rivets and possible blade damage.

Procedure

Remove tail rotor blades in accordance with Basic HMI, section 9, if not already accomplished.

Warning

It is important to locate rivet holes exactly as specified in the following. Failure to do so may affect structural integrity.

Caution

In step * below, observe the following:

- It is important to maintain adequate edge distance when drilling the two outboard rivet holes. Lack of edge distance will weaken the material and may cause cracking when the rivets are installed.
- Use a drill stop to prevent drilling into opposite side.
- To maintain proper hole size and satisfactory rivet installation, it is important to have blade resting flat on work surface during drilling and riveting operations.
- Using a No. 27 Cobalt drill, locate and drill four rivet holes as shown on Figure 1.

☐ Hand deburr rivet holes using 100° countersink.

Using epoxy adhesive, wet install four CR2545-4-2 rivets. (Allow adequate drying time prior to performing step o below.)

Caution

Installed rivet stems may be deburred using a file, but do not remove material from locking collar.

Inspect the installed rivets in accordance with current Cherrylock bulbed rivet catalog. (If rivet installation is satisfactory, proceed to step O below.)

Caution

During rivet removal observe the following:

- Do not damage or enlarge rivet hole.
- Do not drive, or force rivet stem from hole.
- Do not remove rivets common to tip cap. If defective, consult SAC for tip rib replacement.

Remove defective rivet(s) as follows:

(1) Carefully grind off locking collar and upper portion of rivet stem.

(2) Using a drill stop, drill through rivet stem using care to prevent hole enlargement.

(3) Push remaining rivet stem (with sheer ring) from hole, and remove from spar.

(4) Inspect hole in spar. If defective, consult SAC.

(5) Return to step ☐ above and install new rivets(s).

O Coat the exposed rivet heads with epoxy adhesive. Ensure that stems and rivet head edges are sealed, but do NOT apply excessive adhesive. (See Detail A, Figure 1.) Also ensure that adhesive is smooth without voids.

Determine new blade static balance moment by performing step (1) or (2) below, as applicable.

(1) Use special balancing fixture P/N 369A1710-80901 as specified in HMI Appendix C, Part VII, Section 6, Paragraph 6-6.

(2) If special balancing fixture is not available; add 70 gram-inches to the gram-inch moment number on the blade serial number data plate.

Carefully burnish the old gram-inch moment number on blade serial number data plate; only as necessary to make it unreadable. Coat burnished area with epoxy adhesive or paint.

Install modified tail rotor blades in accordance with Basic HMI, Section 9, in sets of two.

Balance tail rotor assembly in accordance with Basic HMI, Section 9.

Weight and Balance Data

Helicopter Weight and Balance not affected.

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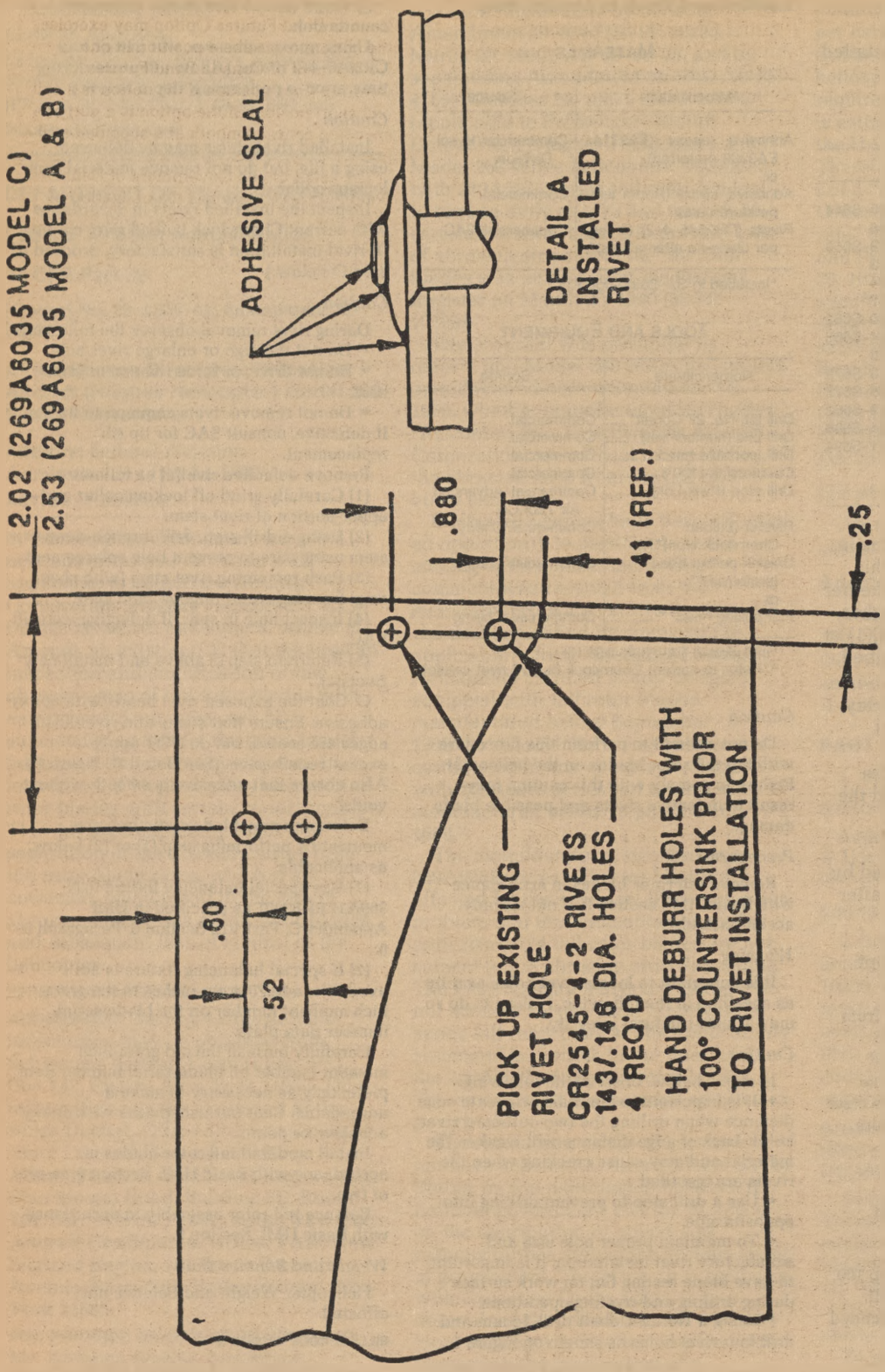

FIGURE 1. ABRASION STRIP RIVET HOLE LOCATION

BILLING CODE 4910-13-C

This amendment amends Amendment 39–6540, AD 89–20–03 (55 FR 10228, March 20, 1990), and supersedes Amendment 39–5730, AD 87–22–07 (52 FR 4155, October 29, 1987).

Amendment 39–6863 becomes effective on March 1, 1991.

Issued in Forth Worth, Texas, on January 8, 1991.

Anthony J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–2034 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Government of Canada Bond Futures Contract traded on the Montreal Exchange ("Montreal") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on July 20, 1988, 53 FR 28840 (July 29, 1988), authorizing certain option products traded on Montreal to be offered or sold in the United States.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. *Telephone*: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the Government of Canada Bond Futures Contract Traded on the Montreal Exchange to be Offered or Sold in the United States Thirty Days after Publication of this Notice in the **Federal Register**.

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the Montreal Exchange ("Montreal") to be offered or sold in the United States. 53 FR 28840 (July 29, 1988). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any Montreal option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated December 21, 1990, Montreal represented that it would be introducing an option contract based on the Government of Canada Bond Futures Contract. Montreal has requested that the Commission supplement its Initial Order authorizing IOCC Foreign Currency Options on British Pounds, Deutsche Marks, Japanese Yen and Swiss Francs, IOCC Options on Canadian Dollars, IOCC Options on Gold and IOCC Options on Platinum by also authorizing Montreal's Option Contract on the Government of Canada Bond Futures Contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988, and subject to the terms and conditions specified therein, the Commission hereby authorizes Montreal's Option Contract on the Government of Canada Bond Futures Contract [2] to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

Contract Specifications

Options on the Government of Canada Bond Futures Contract

Underlying Interest: One (1) Government of Canada Bond Futures Contract, representing C$100,000 face value of Government of Canada bonds.

Description: A buyer of one Government of Canada Bond Futures Option may exercise the option to assume a position in one Government of Canada Bond Futures Contract (long position if the option is a call and short position if the option is a put) of a specified contract month at a specified strike price.

The seller of one Government of Canada Bond Futures Option has the obligation of assuming, if the option is exercised by the buyer, an opposite position in one Government of Canada Bond Futures Contract (short position if the option is a call and long position if the option is a put) of a specified contract month at a specified strike price.

Price Quotations: In points and 1/100 of a point (*e.g.* 3.17).

Minimum Tick: 0.01 = CDN C$10.00 per contract.

Strike Prices: Set in maximum 2-point intervals per Government of Canada Bond Futures price (*e.g.*, Futures at 90, strike prices at 88, 90, 92).

Contract Months: March, June, September and December (same as Government of Canada Bond Futures). Options are referred to by the underlying futures contract month. Contract months covering up to one year will be listed for trading.

Trading Hours: Montreal 8:20 a.m. to 3 p.m. (EST/EDT).

Last Trading Day: Options cease trading on the third Friday of the month preceding the delivery month of the underlying bond futures, provided however, that such Friday precedes by at least two business days the First Notice Day of the underlying futures contract. Otherwise, the Last Trading Day shall be such business day preceding by at least two business days the first Notice Day of the underlying futures contract.

Exercise: Buyers of futures options may exercise their options on any business day prior to cut-off time. The exercise cut-off time is 5:30 p.m. on the Last Trading Day. The Clearing house shall assign exercise notices to sellers of options according to a random selection process.

Expiration: At 11:59 p.m. on the first Calendar day following the last day of trading.

Position Limit: Four-Thousand contracts, on the same side of the market.*

Reporting Limit: Two-Hundred and Fifty contracts.*

Ticker Symbol: OGB.

Clearing House: Trans Canada Options Inc.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

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[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1990), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] *See* section 2a(1) of the Commodity Exchange Act, section 3(a)(12) of the Securities Exchange Act of 1934 and rule 3a12–8 promulgated thereunder. The Securities and Exchange Commission has designated the government debt securities of the Government of Canada as exempted securities for purposes of the Exchange Act's application to the marketing in the United States of futures contracts on those securities.

* The Financial Derivatives Committee has made no recommendations on Position Limit and Reporting Limit, as recommendation on these items falls under the jurisdiction of the Inspection Committee.

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by revising the appendix heading and by adding the following entry alphabetically after the existing entry for "Montreal Exchange" to read as follows:

Appendix B—Option Contracts Permitted To Be Offered Or Sold In The U.S. Pursuant To § 30.3(a)

Exchange	Type of Contract	FR date and citation
* * * * *		
Montreal Exchange.	Option Contract on Government of Canada Bond Futures Contract.	January 29, 1991; 56 FR——.
* * * * *		

Issued in Washington, DC on January 23, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-1982 Filed 1-28-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of correction of tables.

SUMMARY: This notice corrects errors in Tables I and II of 18 CFR 271.101(a) which contain the maximum lawful prices for natural gas prescribed under title I of the Natural Gas Policy Act for the months of November, December, 1990 and January, 1991. The tables were amended on October 31, 1990 as published in the **Federal Register** on November 6, 1990 (55 FR 46660). The Commission issued a correction notice on November 2, 1990, which through administrative error, was not published.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Gary L. Penix, (202) 208-0622.

SUPPLEMENTARY INFORMATION: Section 271.101(a) on pages 46660 and 46661 is correctly amended by adding the maximum lawful prices for November, December, 1990 and January, 1991, to read as follows:

2. Section 271.101(a) is amended by adding the maximum lawful prices for November, December, 1990 and January, 1991, in Tables I and II.

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

Subpart NGPA 271	Category of gas section	Maximum lawful price per MMBtu for deliveries in—of Part		
		Nov. 1990	Dec. 1990	Jan. 1991
B	102 New natural gas, certain OCS gas [1]	$5.949	$5.985	$6.022
C	103(b)(1) New onshore production wells [2]	3.651	3.662	3.673
E	105(b)(3) Intrastate, existing contracts	5.635	5.665	5.695
F	106(b)1(B) Alternative maximum lawful price for certain intrastate rollover gas [3]	2.089	2.095	2.101
G	107(c)(5) Gas produced from tight formations [4]	7.302	7.324	7.346
H	108 Stripper gas	6.371	6.410	6.449
I	109 Not otherwise covered	3.020	3.029	3.038

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519-A. (See § 271.703 of the Commission's regulations.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Nov. 1990	Dec. 1990	Jan. 1991
Post-1974 gas: [2] All producers	$3.020	$3.029	$3.038
1973-1974 biennium gas:			
Small producer	2.547	2.555	2.563
Large producer	1.954	1.960	1.966
Interstate rollover gas: All producers	1.120	1.123	1.126
Replacement contract gas or recompletion gas:			
Small producer	1.435	1.439	1.443
Large producer	1.096	1.099	1.102
Flowing gas:			
Small producer	0.724	0.726	0.728
Large producer	0.609	0.611	0.613
Certain Permian Basin gas:			
Small producer	0.854	0.857	0.860
Large producer	0.756	0.758	0.760

TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)—Continued

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Nov. 1990	Dec. 1990	Jan. 1991
Certain Rocky Mountain gas:			
Small producer	0.854	0.857	0.860
Large producer	0.724	0.726	0.728
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	0.690	0.692	0.694
Other contracts	0.638	0.640	0.642
Minimum rate gas: [1] All producers	0.374	0.375	0.376

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.
[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

Dated: January 23, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2004 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AB29

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; How We Count Earned and Unearned Income; Funds Used to Pay Indebtedness

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules clarify the regulations to reflect a longstanding Social Security Administration (SSA) policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for the purpose of determining eligibility and payment amount under the Supplemental Security Income (SSI) program. This action is expected to eliminate the confusion with respect to the treatment of income withheld for payments of debts or other legal obligations under the SSI program. To the extent that Medicaid eligibility is based on title XVI eligibility, these regulations also affect the Medicaid program.

DATES: These rules are effective January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3-B-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1755.

SUPPLEMENTARY INFORMATION:

Introduction

These rules were published as Notice of Proposed Rulemaking in the **Federal Register** on September 15, 1987 (52 FR 34813). A 60-day comment period was provided. Comments received in response to the Notice of Proposed Rulemaking are discussed under the heading "*Discussion of Comments*".

To be eligible for SSI an individual's income must not exceed certain limits set by law. In addition, the amount of an eligible individual's SSI benefit is determined by the amount of his or her income.

Section 1612(a)(1) of the Social Security Act (the Act) provides that earned income, for SSI purposes, includes wages as determined under section 203(f)(5)(C) of the Act. Since section 203(f)(5)(C) does not specifically exclude wages which are withheld to satisfy an indebtedness, such amounts are charged as wages for title II purposes. Thus, such amounts also are considered as wages, and therefore as earned income, for title XVI purposes.

Section 1612(a)(2) of the Act states that unearned income includes "all other income" which does not meet the statutory definition of earned income.

Section 1612(b) of the Act lists items which are specifically excluded from income. Since amounts which are withheld from income, either earned or unearned, to pay an indebtedness or other legal obligation are not specifically excluded, it is the policy of SSA to treat such amounts as income. Examples of such includable amounts are monies withheld from an individual's income by garnishment, child support payments (both court ordered and voluntary), and payment of other debts. Although our longstanding policy has been to include such amounts as income, our regulations have explicitly provided only for including garnished income and payments such as Medicare premiums. The amendment to the regulations makes explicit that any income withheld to pay a debt would be considered income.

The effect of not considering such funds as income is to have the SSI program subsidize child support obligations or other debts, which is not its purpose as a program designed to meet the subsistence needs of its claimants only. While we do have authority under the deeming provisions in section 1614(f) of the Act to disregard portions of a deemor's income to satisfy the needs of the deemor's ineligible dependent children, we do not have authority under the Act to allocate a portion of an SSI claimant's income for use of the claimant's dependents. When court-ordered obligations reduce income to the extent that there are insufficient funds to meet food, clothing, and shelter needs, an individual may petition the court to have the payments reduced. In addition, when an individual voluntarily incurs a debt that is to be repaid from future income, the terms and amount of the payment installment are, at least initially, within the individual's control.

To lend further support to our policy of counting amounts which are withheld from income to pay a debt or other legal obligation, we are revising 20 CFR 416.1102 to state that sometimes income also includes more or less than actually received. We may include more or less unearned income than actually received, but we do not include less earned income than actually received since gross wages are considered earned income. We have also included cross-references to the specific regulations on earned income (20 CFR 416.1110) and unearned income (20 CFR 416.1123(b)(2)) which explain this concept in more detail.

We are expanding 20 CFR 416.1110 and 416.1123(b)(2) to state specifically our policy with respect to funds which are pledged or which are withheld from earned and unearned income, voluntarily or by court order, for

payment of a debt or other legal obligation, or to make any other payments such as Medicare premiums. That is, funds which are withheld to pay an indebtedness or other legal obligation or to make any other payment will be listed as situations where we include in earned and unearned income more than actually received.

However, a fundamental tenet of SSI policy is that we do not count the same income twice. One illustration of that rule is highlighted in 20 CFR 416.1123(b)(1), *Exception.* It is not our intent that 20 CFR 416.1123(b)(2) change that tenet. Thus, if we considered an overpayment to be unearned income for SSI purposes at the time the payment was received, we do not consider as income any amounts later deducted to repay the debt.

Since the publication of the Notice of Proposed Rulemaking, the United States District Court for the Eastern District of California has rendered an opinion in *Cervantez* v. *Sullivan*, 719 F. Supp. 899 (E.D. Cal. 1989), pertinent to this regulation. In its decision, the district court held that 20 CFR 416.1123(b)(2) contravened Ninth Circuit precedent that has defined unearned income as including only items of value that are actually available to an SSI recipient. The district court also ruled that the regulation contravened the plain meaning of section 1612(a)(2)(B) of the Act.

An appeal of this decision has been filed based on other court decisions favorable to the Government on this issue. A number of recent Federal appeals court decisions have ruled, contrary to the holding of the district court in *Cervantez*, that Congress did not intend to require that the payments set forth in section 1612(a)(2)(B) be actually received in order to be counted as unearned income. See *Lyon* v. *Bowen*, 802 F.2d 794 (5th Cir. 1986); *Szlosek* v. *Secretary of Health and Human Services*, 851 F.2d 13 (1st Cir. 1988); *Robinson* v. *Bowen*, 828 F.2d 71 (2d Cir. 1987); and *Healea* v. *Bowen*, 871 F.2d 48 (7th Cir. 1986).

Discussions of Comments

Comments were received from three organizations in response to the Notice of Proposed Rulemaking published in the **Federal Register** on September 15, 1987 (52 FR 34813). A summary of the comments submitted and our responses follow.

Comment

One commenter requested that the proposed rules not be adopted and the regulations be left as they are. Only income which is available should be included when determining what the SSI monthly benefits will be. In cases where a person's legal obligations, such as child support, are being paid directly out of his or her income, the person never has the income available. To allow the proposed changes in the regulations would undercut the purpose of the Act, which assures recipients basic income with which to meet their subsistence needs for food, clothing and shelter.

Response

The proposed regulations did not reflect a change in policy. It has been longstanding SSI policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for purposes of determining eligibility and payment amount under the SSI program. However, up to now, our regulations have explicitly provided only for considering garnished income and payments such as Medicare premiums to be included in unearned income for SSI purposes; and gross wages (before any deductions) to be included in earned income. The proposed rules would make it explicit that any income withheld to pay a debt or other legal obligation would be considered income. Since such income is used to pay off an obligation, it is considered available income.

Concerning the child support comment, if the SSI program were not to consider monies withheld for child support as income, the SSI program, in effect, would be subsidizing individuals' child support obligations.

In addition, considering as income only the amount of money received after payment of a debt or legal obligation could lead to manipulation of obligations to offset income and, thus, could increase Federal/State assistance. That is, an individual could choose to pay his indebtedness by having it deducted from income received rather than paying the debt after receiving the income. In effect, the debt would be paid off at the expense of the program. This is not the intent of a means-tested program.

Comment

One commenting organization believes the proposed rules will affect those who have incurred an overpayment on a Social Security claim. It takes exception as to how we treat people who have been overpaid Social Security benefits. It suggests, in effect, that SSI is being reduced to collect Social Security overpayments.

Response

The proposed regulations do not affect how SSA treats people who have been overpaid Social Security benefits. SSA already has specific regulatory authority at 20 CFR 416.1123(b)(1) to count as unearned income the gross amount of the title II benefit (including the debt reduction amount), unless the individual also was receiving SSI at the time the overpayment occurred and the overpaid amount was used then to figure the SSI benefit. (Not to count the overpayment would, in effect, result in the SSI program subsidizing the collection of the Social Security overpayment). These proposed rules would clarify the current regulations on counting title II benefit overpayments; they would not change them.

Comment

One commenter suggests that the effect of the proposed rules is to punish people who are working, because their earnings can be reached by a court judgment. As a result, many of these people choose not to work and keep SSI benefits as their sole income, as the SSI benefits cannot be reached by court order.

Response

We have had no indication that recipients choose not to work because they fear court judgments. Moreover, there are numerous incentives available for recipients who want to try to work, and our experience has been that the work incentives have encouraged work activity. While it is true that gross earnings are considered income for SSI purposes, much of that income (whether garnished or not) is excluded by law in determining SSI eligibility and payment amount. SSI recipients who work are in a better financial position than those who do not.

Comment

One commenter indicated that the regulations, as proposed, will impose a severe hardship on elderly couples where one of the individuals (for example, the husband) is in a nursing home. In States where Medicaid eligibility is determined on the basis of SSI financial eligibility, counting the husband's support obligations as income to him could preclude his Medicaid eligibility and result in his eviction from the nursing home. The applicant for Medicaid is faced with a choice of either not paying the court-ordered payment and risking being held in contempt of court, or making the payment and still not being eligible for Medicaid.

Response

As previously stated, it has been longstanding SSI policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for purposes of determining eligibility and payment amount under the SSI program. The proposed regulations do not reflect any change in that policy.

In addition, when one member of a couple (e.g., the husband) is in a nursing home, not counting the husband's support obligations as income to him could result in manipulation of those obligations to offset income and, thus, increase Federal/State assistance. In effect, the husband's support obligations would be paid off at the expense of the program. This is not the intent of a means-tested program.

Under the provisions of the Medicare Catastrophic Coverage Act of 1988, States could elect in determining Medicaid eligibility to disregard garnished income or income which has been designated by court order for specific use. This income disregard is available to the extent that it will not result in the State exceeding the income limitations specified in section 1903(f) of the Act. Section 1902(r)(2)(A) of the Act (subject to specific Federal Financial Participation (FFP) limits) affords States the option to use more liberal income and resource eligibility methodologies for determining Medicaid eligibility for individuals who are not receiving cash assistance than those which are employed by the cash assistance programs.

In addition, the regulations will have no Medicaid consequences for States within the Ninth Circuit because of a Ninth Circuit decision which precludes Medicaid from using the SSI rules which count court-ordered support payments.

This Ninth Circuit decision, *Department of Health Services* v. *Secretary of Health and Human Services*, which was cited by the commenter, was issued less than 2 months prior to the publication of the Notice of Proposed Rulemaking. The Court of Appeals, therefore, was addressing the SSI policy on the treatment of court-ordered support payments without the benefit of seeing the Secretary's proposed statement and clarification of the longstanding policy that income obligated for support payments is considered as income. The court apparently assumed that there was no SSI policy on this issue and reasoned that since no explicit exclusion was necessary to exclude this income and since support payments are considered as income to the recipient, it would not consider such payments as income to the payer. Under the existing section 20 CFR 416.1123(b), however, it has always been SSI policy to count income which has been withheld to meet other obligations. These new regulations merely set forth this policy more clearly and explain its underlying rationale. Since the Ninth Circuit discussed the SSI policy only in the context of a Medicaid case and without knowledge of the actual policy or the clarification later set forth in the Notice of Proposed Rulemaking, we do not believe that SSA is bound by this interpretation. Since we do not believe that the Ninth Circuit's construction of the SSI statute is compelled by either the statute or the United States Constitution, we are proceeding with this final rule as it applies in the SSI program.

Comment

If an SSI recipient were orderd by a court to pay alimony to a spouse who lives apart from him, and that spouse also receives SSI, SSA would count the contributed amount as income to each person and reduce each person's SSI benefit. The commenter states that in such cases, the alimony is counted twice—to the payer and to the payee. Alimony should only be counted as income once. Since Congress has mandated that alimony be considered income to the payee, it should not be income to the payer.

Response

We do not count alimony twice—as income to each person. Money paid as alimony is only income to the payee of the alimony. The monies from which the alimony payments are derived (e.g., wages, pension, etc.) are considered income to the payer in the month received.

When money changes hands, it takes on a different character each time it passes from one person (or entity) to another. In the situation described by the commenter, the money is not counted twice to the same household. The individuals are living in separate households for SSI purposes. When the legal obligation of an individual is met by a reduction of either earned or unearned income for the payment of alimony, that individual has in effect realized the benefit of that earned or unearned income. When the individual's spouse receives the alimony payments, such money is income to the spouse for SSI purposes since it can be used to meet food, clothing, or shelter needs.

Comment

One commenter drew a distinction between court-ordered support obligations and other legal debts, stating that legal debts to creditors are clearly distinguishable from support obligations. The underlying debt to creditors represents an expenditure which benefited the recipient. The obligation to pay alimony is a duty, not a debt. A dependent is not in the same category as a creditor. In the typical debtor/creditor relationship both the debtor and the creditor have voluntarily entered into the transaction to the benefit of each. A spouse's claim to support is based on public policy grounds, not the debtor/creditor relationship.

Response

While we do not disagree that there are distinctions between a debtor/creditor relationship and the obligation to pay alimony, the overall result, we believe, is basically the same; i.e., the payer benefits financially from the satisfaction of the debt/obligation. It is not the purpose of the SSI program to subsidize any types of indebtedness whether that indebtedness results from a debtor/creditor relationship or from an obligation imposed by public policy.

Accordingly, the proposed regulations are adopted without significant change as set forth below.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in costs or savings, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act of 1980

These regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Programs No. 13.807, SSI Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, SSI.

Dated: June 13, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 29, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631, of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 90–363, 98 Stat. 1144.

2. Section 416.1102 is revised to read as follows:

§ 416.1102 What is income.

Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Sometimes income also includes more or less than you actually recieve (see § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.

3. In § 416.1110, the introductory text preceding paragraph (a) is revised to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind. We may include more of your earned income than you actually receive. We include more than you actually receive if amounts are withheld from earned income because of a garnishment or to pay a debt or other legal obligation, or to make any other payments. Earned income consists of the following types of payments:

* * * * *

4. In § 416.1123, paragraph (b)(2) is revised to read as follows:

§ 416.1123 How we count unearned income.

* * * * *

(b) *Amount considered as income.*

* * *

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligaton, or to make any other payment such as payment of your Medicare premiums.

* * * * *

[FR Doc. 91–2057 Filed 1–28–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–90–1475; FR–2487–P–01]

RIN 2502–AE51

Single Family Insurance Claim Settlements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: At present, there are no regulatory provisions specifying the time period within which mortgagees may submit applications for supplementary FHA insurance benefits. The Department has, however, instructed lenders to file these supplementary claims within one year from the date of the original insurance settlement. The instructions for such claims are contained in the Instructions for Single Family Application for Insurance Benefits, Form-HUD 27011. This rule changes the one-year time frame to six months and sets forth in the Code of Federal Regulations the requirement that lenders conform to a six-month filing period for supplementary claims.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Jr., Acting Director, Single Family Servicing Division, Department of Housing and Urban Development, room 9180, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Currently, HUD pays approximately 90,000 single family mortgage insurance claims annually, and it is estimated that for Fiscal Year 1990 claim payments will exceed $5 billion. In addition, about 9,000 supplemental claims are processed each year. Many of these supplemental claims filed by lenders are for relatively small amounts.

The Department has determined that a significant number of the approximately 9,000 supplemental claims filed by mortgagees each year are attributable to careless or inadequate preparation when submitting the original claim. Each supplemental claim requires manual review, and the processing costs to HUD are high. In addition, HUD has had to retain the original claim file on site indefinitely to provide information for the processing of later supplementary claims. This also increases processing costs. For these reasons, HUD is limiting payment of supplemental claims to those submitted within six months of the date of Form HUD–27011, Part B, settlement. This will allow HUD to reduce some of these costs and will encourage mortgagees to reconcile their claims promptly. Exceptions will be allowed where a deficiency judgment is requested or required or where the Commissioner otherwise expressly permits an extension of this time period.

The Department now provides administrative instructions to lenders requiring supplementary claims to be filed within one year of the date of the original insurance settlement. This information is contained in the Instructions for Single Family Application for Insurance Benefits, Form HUD–27011. This rule formalizes, in the Code of Federal Regulations, the requirement that there be a deadline on the filing of supplemental claims. It also changes the one-year period to six months.

The reduction in time to file supplementary claims is supported by the results of several studies conducted or authorized by the Department, including those prepared by Irving Burton Associates. These studies indicated a need to reduce the length of time during which supplemental claims would be permitted. The Department believes that six months is an adequate time for completion of this follow-up claim process.

Public Comments

On May 25, 1990 the Department published at 55 FR 21620 a proposed rule, the text of which is identical to that in this final rule. Six public comments were received with respect to the proposed rule—two from national trade organizations and four from private mortgage companies. What follows is a description of the substantive issues raised by the commenters.

1. *Many claim filing delays are beyond the lender's control.* Four commenters raised this issue. Typical was the comment of the Mortgage Bankers Association of America. While agreeing that "under normal circumstances, six months is an adequate amount of time to file a

supplemental claim," they expressed concern that:

Lenders depend on outside third parties such as investors, contractors and insurance companies for information, refunds and/or billings to file supplemental claims. There are situations when a lender will not be able to file a supplemental claim within the six month time period. When an investor such as Fannie Mae or Freddie Mac is the owner of a mortgage, the claim payment and the claim payment analysis is forwarded directly to the investor. In these situations, the lender is not afforded the opportunity to immediately verify any discrepancies in the amount of the claim payment sought and what is actually received by the investor. Nor can the lender immediately verify that all reimbursable expenses were claimed on the original claim.

HUD's regulation 24 CFR 203.382, cancellation of hazard insurance, requires the lender to estimate the hazard insurance refund due and almost always the lender will have to submit a supplemental claim. Insurance companies may or may not refund the unearned premium on a timely basis. It is inequitable to penalize lenders because of the inaction of third parties when refunds and/or billings are received beyond the six month period.

HUD response: The Department provides both the servicer and holder identified on the claim with identical claim payment information. The fact that investors such as Fannie Mae or Freddie Mac may hold the servicer responsible if the claim payment is less than anticipated does not affect the servicer's responsibility to prepare and file claims accurately and in a timely manner. It is the lender's responsibility to follow up with all outside third parties to ensure complete and timely claim submissions.

If a hazard insurance premium (HIP) refund is estimated under 24 CFR 203.382, HUD will permit a correction. A supplemental claim is the vehicle for correction since the lender is required by regulation to estimate the HIP refund. If the "correction" is received by HUD within two weeks of the issuance of the insurer's notice of adjustment, the claim will be honored and will meet the criteria "expressly authorized" as provided in § 203.401(c)(2) of this rule.

2. *HUD processing performance for paying supplemental claims.* Two commenters raised this issue. As one commenter stated:

HUD should also establish a standard for paying supplemental claims. It is estimated that supplemental claim payments are received by lenders up to eight months after claim filing. This period should be drastically reduced to mirror claim payment on original filings and in any event should not exceed thirty days.

HUD response: HUD's automated systems for processing and paying claims is being enhanced to enable the Department to pay most supplemental claims via the automated system. This initiative will allow the Department to process properly prepared supplemental claims more efficiently. However, the large volume of incorrect and incomplete claim submissions submitted will continue to delay the processing and payment of all supplemental claims. Excluding submissions to correct hazard insurance refund estimates, some lenders continue to submit 3, 4 or more supplemental claims for the same case, each claim resulting from the lenders separate reconciliations for different line items. This practice is a waste of time for both the lender and for HUD.

3. *There is an inequity in allowing mortgagee only six months to file a supplemental claim while HUD has three years to collect claim overpayment.* Four commenters raised this issue. Typical was the comment of the LOGS Group.

Our initial comment is that there seems to be a basic unfairness promulgated in the proposal given HUD's policy of relying on a three year period to collect claim overpayments while restricting lenders to a six month period to collect underpayments. Since billing errors and disputes typically are not discovered or resolved until some internal or external audit or reconciliation is concluded, the proposed rule places a lender under an unreasonable timeframe in which to complete any review of accounts. It should be recognized that servicers perform a function for investors that have their unique schedule for audits and reconciliations. National servicers deal with a multitude of vendors and on occasions, their accounts are in need of correction and reconciliation. The Department cannot expect that all servicers, investors and vendors are capable of completing any necessary reviews within a six month period. HUD should not attempt to enforce more restrictive standards on the industry than it is prepared to impose upon itself.

HUD response: There is no basic unfairness in this situation. In the interest of ensuring that lender's receive their claim payment promptly, HUD for the most part pays the claim without reviewing any supporting information. Thus, the claim process is a matter largely under the control of the lender with HUD's post claim review being conducted later. HUD insistance that lenders complete and file their claims in a reasonable time is a matter completely separable from HUD's post claim review process and the time frame HUD allows itself for conducting its reviews.

4. *Standards should be established for exercise of Commissioner's discretion in allowing extensions.* Two commenters raised this issue. One commenter stated:

Exceptions to the six-month supplemental claim filing time limit should also be allowed for:

—Cases wherein HUD requests a mortgagee to pay an item (i.e. electric bills, gas bills, etc.) *after* the property was conveyed to HUD and to submit a supplemental claim for reimbursement.

—Cases wherein a HUD audit disclosed an underpayment by HUD to the mortgagee.

The second commenter stated:

As proposed, the rule permits extensions when a deficiency judgment is required or requested and on other occasions as "expressly" authorized. We believe that it is appropriate to establish some semblance of a standard for the exercise of the commissioner's discretion. For example, are extensions to be routinely granted if a servicer is unable to clear a discrepancy in a bill with a vendor within a six month period? Further, it is suggested that the rule be clarified to indicate that the exercise of discretion does not constitute a "waiver" of the regulations as that term is used in the HUD Reform Act of 1989.

HUD response: HUD recognizes the need for simplification and clarification in the process of requesting and reviewing extensions. A new extension form will be introduced in the near future which will be used as a turn-around document for both the mortgagee's request and HUD's response. This form will simplify and standardize all requests for extensions of time. Accompanying the introduction of this form, HUD will offer clarification on many of the more common problems associated with extensions such as those cited in the first comment above.

However, except for costs associated with deficiency judgments, which are specifically excluded from the six month timeframe, the servicer should, in almost every instance, be able to determine the final costs associated with the conveyance on or before the date the fiscal data is submitted.

Extensions granted by HUD under the rule's proposed § 203.401(c)(2) would not constitute a "waiver" of the regulations as that term is used in the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235).

5. *Mortgagees should not be penalized because HUD can only handle supplemental claims on a manual basis.* Two commenters raised this issue. As one commenter stated:

Mortgagees should not be asked to bear the costs associated with an inability to correct a bill to the government (submission of claim) because HUD's system is designed only to handle supplemental claims on a manual basis. The technology exists today that would enable lenders to both file and correct claims on an "on line" basis. If HUD were to adopt such a system, the elimination of data entry costs achievable by a direct lender-HUD

interface would more than offset any special expenses in processing supplemental claims for a more extended period than that proposed.

HUD response: We appreciate the commenter's suggestion for improving our claim payment system. Our claims system is presently being improved to allow the Department to process and pay supplemental claims by means of an automated system. However, the "manual" aspect of our claims processing is not the issue. Rather, HUD wants to establish a better discipline in the claims process and be able to close out claims sooner. Again, many supplementals are submitted because of errors made on the initial claim submission. If lenders submitted only complete and accurate claims (including all required documentation), HUD could process and pay supplemental claims in the same time frame as it currently processes and pays Part A claims.

6. *HUD should define "supplemental claim."*

This question was raised by one commenter who stated:

HUD should define "Supplementary Claims". Quite often, HUD unjustifiably curtails a conveyance and/or claim settlement usually for alleged late mailings of the 27011 Part A–C when, in fact, the mortgagee has receipts/driver manifests supporting overnight delivery. This, then, requires the lender to prepare, support and submit a claim for reimbursement of the curtailed conveyance and/or claim settlement, which should not have been curtailed from the outset. The word "supplementary" as defined by Webster's Dictionary means "additional—added as a supplement".

In the case of an unjustified curtailment by HUD, the submission of a "supplemental claim", which is currently the only method provided by HUD to obtain reimbursement after conveyance and claim settlements have been issued, does not constitute an "additional" submission of an item(s) which was not previously included in the initial conveyance/claim, rather a submission for reimbursement of an unjustified curtailment, which should not have been curtailed to begin with.

HUD response: A supplemental claim will remain the mechanism by which mortgagees shall submit any adjustment or correction necessary after the mortgagee files Form HUD–27011, Parts A and B.

As a matter of policy, HUD will honor supplemental claims representing corrections for Hazard Insurance Premium (HIP) adjustments if the "correction" is received by HUD within two weeks of the issuance of the insurer's notice of adjustment. Under these circumstances, the claim will be honored and will meet the criteria "expressly authorized" as provided in § 203.401(c)(2) of this rule.

An "unjustified curtailment" correction is also a separate issue. A supplemental claim will remain the mechanism by which the mortgagee may seek to recover any underpayment.

Often in reviewing courier receipts, we have found errors in the addressing which delayed proper receipt. We have also noted that the claim was not mailed on the date on which it was prepared. As with any other supplemental claim, lenders may request an extension of time from the local HUD office if the claim cannot be submitted before the expiration of the six-month period.

7. *There should be a "phased in" implementation of this rule.* One commenter stated:

If HUD does reduce the supplemental claim filing time limit to six months, they should provide a specific implementation date with claims filed from a certain date forward so as not to affect pending supplemental claims to be filed, which may already be beyond the six months.

HUD response: This rule will take effect 30 days after its date of publication. The six-month requirement established in the rule will apply to claims filed (initial submission of HUD form 27011, Part A) after the rule's effective date.

8. *HUD actions in interpreting regulations can cause delay in filing supplemental claims.* One commenter notes:

In addition to the above problem, ANMC notes that HUD regulations regarding the submission of claims are not always clear in their interpretation. The various HUD field offices issue notices to mortgagees concerning their interpretation of the regulations setting forth whether certain expense items are payable. The effect of these notices requires ANMC to audit its claims previously submitted and file supplemental claims which result in additional funds due and owing to ANMC, or funds reimbursable to HUD for expenses previously charged based on these "revised" interpretations.

HUD response: The Department does not believe this issue will be a problem in the future. The responsibility for the interpretation and enforcement of HUD's claim regulations and instructions will rest with HUD Headquarters.

In certain circumstances, HUD Headquarters will direct Field Offices to issue additional instruction to mortgagees which will be specific to the jurisdiction of the Field Office (such as with preservation and protection costs limits). In the case of conflicting guidance, the instructions issued by Headquarters will prevail.

Procedural Requirements

Major Rule

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Semiannual Agenda

This rule is listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44552) under Executive Order 12291 and the Regulatory Flexibility Act at Sequence Number 1211.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.165 and 14.166.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would have only a minor impact on existing HUD procedures associated with mortgage insurance claims.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to revising, and formalizing in the Code of Federal

Regulations, HUD's supplemental claim procedures. No significant programmatic or policy changes would result from its promulgation.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

List of Subjects in 24 CFR part 203

Mortgage insurance.

Accordingly, 24 CFR part 203 is amended as follows:

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.401 is amended by adding a new paragraph (c) to read as follows:

§ 203.401 Amount of payment—conveyed properties and non-conveyed properties.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(1) Cases where the Commissioner requests or requires a deficiency judgment.

(2) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

For the purpose of this section, the term "final payment" shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365 of this part. In the case of claims filed under claims without conveyance of title, "final payment" shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b) of this part.

3. Section 203.404 is amended by adding a new paragraph (c) to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from final payment by the Commissioner. For the purpose of this section, the term "final payment" shall mean the payment which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information pursuant to § 203.351 of this part.

Dated: January 23, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–2087 Filed 1–28–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to title 40, chapter 10, of the Utah Code Annotated (U.C.A. 1953), otherwise known as the Utah Coal Mining and Reclamation Act (the Utah Act). The amendment pertains to rulemaking authority and procedures, the deadline for review and proposal of revision of rules, and the deadline for revision of rules. The amendment is intended to improve the operational efficiency of Utah's program.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Progam

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated October 10, 1990 (administative record No. UT–589), Utah submitted a proposed amendment to its program pursuant to SMCRA. In the amendment, Utah reproposed State-initiated provisions that it previously withdrew (administrative record No. UT–568) from another amendment (administrative record No. UT–540). Specifically, Utah proposed to add provisions to the Utah Act at U.C.A. 40–10–6.5 (1), (2), and (3) (rulemaking authority and procedures) and U.C.A. 40–10–6.6 (1) and (2) (deadline for review and proposal of revision of rules, and deadline for revision of rules).

OSM announced receipt of the proposed amendment in the October 30, 1990, **Federal Register** (55 FR 45618) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on November 29, 1990. The public hearing, scheduled for November 26, 1990, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the proposed amendment submitted by Utah on October 10, 1990, is no less stringent than SMCRA and no less effective than 30 CFR chapter VII, as discussed below. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's ongoing oversight of the Utah program.

1. U.C.A. 40–10–6.5 (1), (2), and (3), Rulemaking Authority and Procedures

Utah proposed to amend the Utah Act by adding a new section at U.C.A. 40–10–6.5, which establishes rulemaking

authority and procedures. U.C.A. 40–10–6.5 (1) and (2) direct the Board of Oil, Gas, and Mining (the Board) not to adopt rules to the Utah program that are more stringent than the Federal regulations unless the Board makes a written finding, after public comment and hearing and based upon evidence in the record, that the corresponding Federal regulations are not adequate to protect public safety and the environment of the State.

Section 503(a) of SMCRA requires that a State must demonstrate for its proposed program that it can carry out the provisions of SMCRA and meet its purposes through, among other things, a State law which provides for the regulation of surface coal mining and reclamation operations "in accordance with" the requirements of SMCRA and through State regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA. The terms "in accordance with" and "consistent with" are defined in the Federal regulations at 30 CFR 730.5 as meaning that (1) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of SMCRA, and (2) with regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of SMCRA.

Proposed U.C.A. 40–10–6.5 (1) and (2) would not allow Utah to reduce the effectiveness of its rules below the requirements of the Federal regulations, but would allow Utah to exceed the requirements of the Federal regulations if the appropriate conditions are met. The Director finds that rules adopted by Utah under these proposed provisions could be *no less effective than* the Federal regulations, as required by 30 CFR 730.5. Therefore, the Director finds that proposed U.C.A. 40–10–6.5 (1) and (2) are no less stringent that section 503(a) of SMCRA.

In addition to the aforementioned provisions, U.C.A. 40–10–6.5(3) provides that public hearings shall, as required at U.C.A. 40–10–6.5(2), be conducted in a manner that guarantees the parties' due process rights. It also provides examples of such due process rights, including the right to cross-examine any witness, and prohibits *ex parte* communication between any party and the Board.

Whereas SMCRA does not contain a direct counterpart provision to the State's proposed amendment, the Director finds that proposed U.C.A. 40–10–6.5(3) is consistent with the due process concerns of SMCRA (which are reflected throughout various provisions of SMCRA and the Federal regulations), including section 102(i) of SMCRA, which requires that appropriate procedures be in place for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by any State. The Director also finds that U.C.A. 40–10–6.5(3) does not adversely affect any other aspect of the Utah program.

For reasons discussed above, the Director approves U.C.A. 40–10–6.5 (1), (2), and (3).

2. U.C.A. 40–10–6.6 (1) and (2), Deadline for Review and Proposal of Revision of Rules, and Deadline for Revision of Rules

Utah proposed to amend the Utah Act by adding new sections at U.C.A. 40–10–6.6(1), deadline for review and proposal of revision of rules, and U.C.A. 40–10–6.6(2), deadline for revision of rules.

U.C.A. 40–10–6.6(1) requires that (1), within 6 months of Utah's effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, the Board review and propose revisions to its rules in compliance with the rule stringency standard at U.C.A. 40–10–6.5 and (2), within 12 months of Utah's effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, the Utah Division of Oil, Gas and Mining (Division) revise its rules in compliance with the rule stringency standard at U.C.A. 40–10–6.5.

U.C.A. 40–10–6.6(2) states that all existing rules of the Division shall remain in full force and effect after the effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, pending the Board's review and the Division's revision of the Utah program rules in compliance with U.C.A. 40–10–6.6(1).

The Director finds that proposed U.C.A. 40–10–6.6 (1) and (2) contain administrative procedures for implementing U.C.A. 40–10–6.5 (discussed in finding No. 1). They do not have counterpart provisions in section 503(a) of SMCRA, which set forth the requirements for amending State programs. However, they are not inconsistent with any of the requirements of section 503(a) of SMCRA. Also, they do not adversely affect any other aspects of the Utah program. For these reasons, the Director approves U.C.A. 40–10–6.6 (1) and (2).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

EPA did not comment on the proposed amendment.

By letter dated October 30, 1990, the U.S. Soil Conservation Service acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record No. UT–598).

By letter dated November 7, 1990, the Mine Safety and Health Administration (MSHA) acknowledged receipt of the proposed amendment and stated that Utah's proposed statutes did not conflict with MSHA's regulations (administrative record No. UT–596).

By letter dated November 13, 1990, the Bureau of Mines acknowledged receipt of the proposed amendment and stated that the proposed amendment would have no significant adverse impacts to mineral resource production (administrative record No. UT–597).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). or the Clean Air Act (42 U.S.C. 7401 *et seq.*). EPA gave its written concurrence on the proposed amendment by letter dated December 3, 1990 (administrative record Number UT–603).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. The SHPO acknowledged receipt of the proposed amendment and stated that he had no comments (administrative record No. UT–593). The ACHP did not provide any comments to OSM.

V. Director's Decision

Based on the above finding, the Director approves Utah's proposed amendment as submitted on October 10, 1990.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (p) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(p) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on October 10, 1990, are approved effective January 29, 1991: U.C.A. 40–10–6.5 (1), (2), and (3), rulemaking authority and procedures, and U.C.A. 40–10–6.6 (1) and (2), deadline for review and proposal of revision of rules, and deadline for revision of rules.

[FR Doc. 91–2040 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is announcing the previously deferred approval of rules resulting from past rule making action by the Wyoming regulatory authority regarding the Wyoming permanent regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to Wyoming's coal waste disposal and to the retention of highwalls in permanent impoundments. The amendment is intended to revise the State program to be consistent with the counterpart Federal standards.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Guy Padgett Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found in 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Amendment

On May 1, 1986 the State of Wyoming submitted proposed amendments revising nine chapters of its approved permanent program regulations, known as the Rules and Regulations of the Wyoming Department of Environmental Quality, Land Quality Division (DEQ/LQD) (Administrative Record No. WY–A9–(1). The amendment was in response to a December 23, 1985 letter that OSM sent in accordance with Federal regulations at 30 CFR 732.17(d). Included in the submittal were proposed regulation changes to: (1) Wyoming's coal mine waste disposal regulations at chapter IV, section 3(c)(ii)(C)(I), (2) Wyoming's highwall elimination requirement at chapter IV, section 3(h)(iii)(A), and (3) Wyoming's highwall retention provisions at chapter IV, section 3(h)(iii)(B). At the time of Wyoming's submission, the remand of various counterpart Federal regulations was under appeal by the Secretary as a result of a U.S. District Court for the District of Columbia decision in *In Re: Permanent Surface Mining Litigation*, 620 F. Supp. 1519 (D.D.C. 1985). The Director elected to defer a decision on the above Wyoming proposed revisions, as announced in the November 24, 1986 **Federal Register** (51 FR 42209), pending the outcome of the Secretarial appeal. On January 29, 1988, the U.S. District Court of Appeals for the District of Columbia reversed the district court and reinstated a number of remanded rules including counterpart Federal regulations to the proposed Wyoming rules addressed herein (*National Wildlife Fed'n* v. *Hodel*, 839 F.2d 694 (DC Cir. 1988). The Director is therefore revisiting his previous decision to defer action.

Since public comment on these proposed Wyoming rules was previously sought in the May 21, 1986 **Federal Register** (51 FR 18621) and no comments were received on the rules, the Director is not reopening the comment period for this rulemaking action.

III. Director's Findings

On May 1, 1986, changes to the Wyoming program were proposed by deleting, at chapter IV, section 3(c)(ii)(C)(I), a standard that required coal mine waste piles to be constructed

in layers no more than 24 inches thick and compacted to be no less than 90 percent of the maximum dry density. In lieu of the deleted standard, Wyoming proposed at chapter IV, section 3(c)(ii)(C)(I), a requirement that coal mine waste disposal facilities be designed to attain a minimum static safety factor of 1.5. The amended regulation further provides that the foundation and abutments must be stable under all conditions of construction.

The State also proposed changes to the Wymoing Program at chapter IV, section 3(h)(iii)(A), by deleting a requirement for complete highwall elimination in all impoundments and adding, at chapter IV, section 3(h)(iii)(B), a standard that would allow the retention of highwalls in permanent impoundments provided the vertical portion of any remaining highwall is located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

Due to a ruling by the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Litigation,* 620 F. Supp. 1519 (D.D.C. 1985), several Federal regulations were remanded that coincided with Wyoming's proposed submittal. As a result of that court action, OSM then, among other things, suspended the following rules: (1) 30 CFR 816.49(a)(9)/817.49(a)(9), insofar as they permitted the retenetion of highwalls in permanent impoundments; (2) 30 CFR 816.81(c)(2)/817.81(c)(2), to the extent that they allowed construction or modification of coal waste refuse piles with less compaction than necessary to attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method; and (3) 30 CFR 816.83/817.83, to the extent that they allowed coal waste refuse piles to be constructed in lifts greater than 2 feet in thickness. OSM's notice of suspension appeared in the November 20, 1986 **Federal Register** (51 FR 41952).

The U.S. District Court's ruling was appealed by the Secretary. On January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit rendered a decision which reinstated a number of the suspended rules in *National Wildlife Fed'n* v. *Hodel,* 839 F.2d 694 (DC Cir. 1988). OSM's notice of reinstatement was announced in the June 9, 1988 **Federal Register** (53 FR 21764). Among the Federal regulations that OSM reinstated are: (1) 30 CFR 816.49(a)(9)/817.49(a)(9), as promulgated on September 26, 1983 (48 FR 43994), to allow the retention of underwater highwalls in permanent impoundments; (2) 30 CFR 816.81(c)(2)/817.81(c)(2), as promulgated on September 26, 1983 (48 FR 44006), to allow the construction or modification of coal waste refuse piles with compaction that does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method, provided they achieve a long-term static safety factor of 1.5; and (3) 30 CFR 816.83/817.83, as promulgated on September 26, 1983 (48 FR 44006), to allow the construction of coal refuse piles using lifts of greater than 2 feet thickness, provided they achieve a long-term static safety factor of 1.5.

The Director now finds, that the proposed Wyoming rule at chapter IV, section 3(c)(ii)(C)(I) to be the same or similar as the Federal regulations at 30 CFR 816.81(c)(2)/817.81(c)(2) which require disposal facilities be designed to attain a minimum long-term static safety factor of 1.5. Additionally, the Wyoming program has established coal waste lift thickness requirements that mirror the Federal regulations at 30 CFR 816.83/817.83. The Director finds the Wyoming progam proposed mine waste disposal rules at chapter IV, section 3(c)(ii)(C)(I), to be no less effective than the Federal regulations.

The Director also finds that Wyoming's proposed deletion of a requirement for complete highwall elimination at chapter IV, section 3(h)(ii)(A), and replacement thereof with a provision at chapter IV, section 3(h)(iii)(B), that allows highwalls in permanent impoundments under certain circumstances, is acceptable based on the following rationale. In *National Wildlife Fed'n* v. *Hodel,* 839 F.2d 694 (DC Cir. 1988), the Court concluded that it was never the intent of Congress to have submerged highwalls in authorized impoundments removed in all cases. The Court reinstated the Federal regulations at 30 CFR 16.49(a)(9)/817.49(a)(9) and asserted that this was the type of judgement the Court would expect Congress to leave to the agency in charge, in this case, OSM. The Director's finding is further reinforced by the Court's affirmation of the Secretary of Interior's argument that SMCRA explicitly makes impoundments subject to the requirements of section 515(b)(8) and not to the general grading requirements of section 515(b)(3). The Director finds the proposed deletion of language at 3(h)(ii)(A) and the addition of language at chapter IV, 3 (h)(iii)(B), to be no less effective than the counterpart Federal regulations.

IV. Summary and Disposition of Comments

The Director solicited public comment on the proposed amendments and provided opportunity for a public hearing in the May 21, 1986 **Federal Register** (51 FR 18621). No comments were received, and a public hearing was not held because no one requested an opportunity to provide testimony.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment. This approval is contingent upon the State's promulgation of the proposed revisions in the identical form as submitted for OSM's review. The final rule is effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program be submitted to the Director as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to an approved program are not enforceable by the State until approved by the Director. In oversight of the Wyoming Program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

VII. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With the Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or

conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rule will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.10 is amended by revising section 950.10 to read as follows:

950.10 State regulatory program approval.

The Wyoming permanent program as submitted on August 15, 1979 and as revised on October 23, 1979 and May 30, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776,

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.

3. Section 950.15 is amended by removing paragraphs (i)(1)(ii) and (i)(1)(iii) and by adding paragraph (l) to read:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(l) The following amendments to the Wyoming permanent regulatory program, as submitted to OSM on May 1, 1986, are approved effective January 29, 1991: Chapter VI, section 3(c)(ii)(C)(I), concerning coal mine waste pile lift thickness and dry density requirements; chapter IV, section 3(h)(iii)(A), concerning the deletion of the highwall elimination requirement; and chapter IV, section 3(h)(iii)(B), concerning the addition of highwall retention provisions.

[FR Doc. 91–2039 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3836–2]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa and Pima Counties; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces final EPA actions under the Clean Air Act (the Act) (42 U.S.C. 7401 et seq.) regarding the carbon monoxide (CO) State Implementation Plans (SIPs) for the Maricopa County, Arizona Urban Planning Area (Phoenix) and the Tucson, Arizona CO Air Planning Area (Pima County).

EPA is approving control measures previously proposed for approval for Pima County on August 10, 1988 (53 FR 30239) because they strengthen the existing SIP, specifically the demonstration of maintenance of the CO standard. EPA is also taking action to restore its approval of the control measures for the Maricopa and Pima CO nonattainment areas, originally approved by EPA on August 10, 1988 (53 FR 30220 and 53 FR 30224) and vacated by the U.S. Court of Appeal for the Ninth Circuit in *Delaney* v. *EPA*. These control measures, therefore, remain in effect as originally approved and are federally enforceable portions of the applicable implementation plans for Maricopa and Pima Counties.

EFFECTIVE DATE: These actions are effective on February 28, 1991.

ADDRESSES: Copies of the CO plans for Maricopa and Pima Counties and EPA's technical support document for the additional Pima County measures are available for public inspection during normal business hours at the following location. A reasonable fee may be charged for copy.

Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103 (415) 556–5152.

FOR FURTHER INFORMATION CONTACT:

Wallace D. Woo, Chief, State Liaison Section, A–2–2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103 (415) 556–5152.

SUPPLEMENTARY INFORMATION:

A. Background

For a comprehensive description of the relevant requirements of the Act and EPA's past regulatory actions on the Maricopa and Pima CO SIPs, see the final rulemakings of August 10, 1988 (53 FR 30220 and 53 FR 30224).

EPA previously disapproved the CO attainment plans for Maricopa and Pima Counties on September 26, 1986 finding that the plans were inadequate to achieve the National Ambient Air Quality Standards (NAAQS) for CO and imposing a construction moratorium on major sources and major modifications to sources of CO in the two areas pursuant to section 110(a)(2)(I) of the Act (51 FR 33746).

On August 10, 1987 the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for CO in the Maricopa and Pima County nonattainment areas. *McCarthy* v. *Thomas*, No. Civ 85–344 (D. Ariz. Aug. 10, 1984). The court order was the result of a citizen suit brought against EPA by the Arizona Center for Law in the Public Interest (ACLPI). In subsequent proceedings the court ordered EPA to promulgate a FIP by August 10, 1988 unless before that date Arizona submitted and EPA approved adequate state plans. The State submitted a number of revisions to the CO SIP for Arizona, and on August 10, 1988 EPA approved CO attainment plans for Maricopa (53 FR 30224) and Pima (53 FR 30220) Counties.

In the August 10, 1988 notices (53 FR 30220 and 30224), EPA gave final approval to the CO SIPs for the Maricopa and Pima Counties nonattainment areas, finding that the control measures and attainment demonstrations submitted by the State fully met the requirements of section 110 and part D of the Act. EPA also withdrew proposed sanctions and lifted the construction moratorium which had been imposed on September 23, 1986 (51 FR 33746).

Accompanying EPA's August 10, 1988 final approval was another notice (53 FR 30239) proposing approval of two measures which the state had submitted for the Pima County CO nonattainment area. These two measures were the state's oxygenated fuels program and the travel reduction ordinances adopted by Pima County jurisdictions. In its proposal EPA noted that the measures would strengthen the maintenance demonstration of the CO standard. Accordingly, after consideration of the public comments submitted, EPA is today taking final action to approve these two measures as proposed on August 10, 1988.

B. Ninth Circuit Opinion and Order

The Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's August 10, 1988 final actions. On April 11, 1990 the Ninth Circuit issued its amended opinion in *Delaney* v. *EPA*, 898 F. 2d 687 (9th Cir. 1990), finding that where the statutory attainment deadline has passed, the national ambient air quality standards must be attained, "as soon as possible," using "every available control measure." The court concluded that EPA arbitrarily and capriciously found that the Maricopa and Pima plans provided for sufficient control measures and demonstrated timely attainment. The court further concluded that EPA arbitrarily and capriciously approved the Maricopa plan because the plan failed to provide for adequate contingency and conformity provisions as required by EPA guidelines, 46 FR 7188 (January 22, 1981).

The court vacated EPA's approval of the Arizona plans because they do not contain sufficient control measures to attain the CO ambient air quality standard "as soon as possible." The court ordered EPA to promulgate federal implementation plans consistent with the court's opinion within six months. The plans must include contingency and conformity provisions in accordance with EPA guidelines. 898 F. 2d at 695.

C. Discussion

Pursuant to the Ninth Circuit's instructions in *Delaney* v. *EPA*, EPA is proposing, in a separate notice to promulgate a FIP for the Maricopa and Pima County CO nonattainment areas.

While the *Delaney* court vacated EPA's approval of the Arizona plans, EPA does not intend, nor does it consider that the court intended it, to vacate the control measures in the Maricopa and Pima plans which were previously approved by EPA (53 FR 30224, 30220). The court set aside EPA's approval of the plans for failure to include additional measures, beyond those included as part of the control strategy, rather than because the measures submitted by the State were unworthy of approval for their effect in strengthening the SIP. However, because the court's action had the effect of vacating EPA's approval of the individual control measures, EPA is restoring in this rulemaking its approval of all of the control measures which were in effect prior to the *Delaney* court's action. EPA does not believe it is necessary to publish a notice of proposed rulemaking on this action because it is merely restoring the measures previously approved after full notice and comment rulemaking.

D. Public Comment

EPA received three comments on its proposal to approve two additional control measures into the Pima County CO SIP. Comments were received on whether the travel reduction ordinances and oxygenated fuels programs were intended to apply to Pima County and whether the measures should be made federally enforceable SIP commitments.

In letters dated July 18 and 22, 1988, the Arizona Department of Environmental Quality (ADEQ) submitted the travel reduction ordinances and oxygenated fuels program as revisions to the Pima County CO SIP. Both the July 22, 1988 letter and an additional ADEQ letter of May 26, 1988 characterized the measures as commitments towards maintenance of attainment of the CO standard. In a May 2, 1988 letter, the Pima Association of Governments submitted the travel reduction ordinances to ADEQ and stated that the documents should be made part of the Pima County CO SIP. EPA interprets the representations of these agencies as indicating the State's intent to apply these measures to Pima County.

In addition, the agencies' letters evidence the State's intent to make the measures federally enforceable. With regard to the expressed concern of one commentor that Pima County may be bound by enforceable SIP commitments even if state or local law is changed, the State may submit, pursuant to section 110 of the Act, proposed SIP revisions to EPA in the event of such changes. Finally, it is noteworthy that the State did not comment adversely on EPA's proposal to include the measures as enforceable Pima County SIP commitments.

Chevron U.S.A., Inc., in addition to questioning the applicability of oxygenated fuels to Pima County, raised a number of additional issues relating to this measure. EPA addresses the major comments below.

First, Chevron claims that EPA lacks the legal authority under section 110(a)(2)(A) of the Act to approve the measure as providing for attainment of the CO standard since air quality monitoring demonstrates that Pima County is in attainment of the CO standard. Chevron further claims that EPA cannot make the finding relating to EPA's approval of fuels or fuel additive measures required pursuant to section 211(c)(4)(C) of the Act for approval of the measure for the same reason. Section 211(c)(4)(C) states that EPA may approve such measures only if a finding is made that the control is necessary to achieve the standard.

Pima County is currently designated as a nonattainment area for CO under section 107 of the Act. (See 40 CFR 81.303.) Under section 107, an area can be redesignated upon request of the State and EPA approval. To date, no action has been requested or taken with regard to Pima County's designation status. Therefore, regardless of any air quality monitoring results, Pima County remains a nonattainment area for CO until formally redesignated under section 107. As a result, Chevron's analysis of EPA's authority under both sections 110 and 211 of the Act are without merit. Furthermore, with regard to section 211(c)(4)(C), EPA has concluded that the finding is required only when federal pre-emption has occurred. Under section 211(c)(4)(A), State regulation of motor vehicle fuels or fuel additives is allowed unless (1) EPA has made a finding published in the **Federal Register**, that no fuel related control or prohibition is necessary for that fuel or additive, or (2) EPA has prescribed by regulation under 211(c)(1) a control or prohibition applicable to a fuel or fuel additive regulated by the State that is different from the State control or prohibition. Neither form of pre-emption has occurred in this case. For an extended discussion of EPA's authority to prescribe and enforce an oxygenated fuels program under section 211(c)(4), see 53 FR 30240–30241.

Chevron also challenges EPA's approval of the oxygenated fuels measure on the ground that it is not necessary for maintenance of the CO standard under section 110 because EPA has already approved a maintenance program for Pima County at 53 FR 30220. In *Union Electric Co.* v. *EPA*, 427 US 246 (1976), the U.S. Supreme Court held that the criterion of section 110(a)(2)(B) that a SIP contain control measures "as may be necessary" to attain the NAAQS

does not preclude a State from submitting a plan more stringent than federal law requires. In so holding, the Court found additional support in section 116 of the Act which provides that States may adopt emission standards stricter than national standards. 427 US 246, at 263–264. EPA believes the Court's reasoning applies equally to maintenance measures and therefore rejects Chevron's argument.

Finally, Chevron challenges EPA's approval of the oxygenated fuels measure as not complying with the Prevention of Significant Deterioration (PSD) requirements of the Act. Chevron argues that EPA cannot approve any measure that arguably increases NO_x emissions until Arizona submits and EPA approves a NO_x PSD plan for Pima County. However, the majority of the Act's PSD requirements apply only to major stationary sources, not to mobile source emission controls such as an oxygenated fuels program. The only PSD requirement that would apply to this SIP revision is the requirement that after any baseline concentration has been established, all SIP revisions must include a demonstration that the revision will not cause or contribute to a violation of the applicable PSD increment. 40 CFR 51.166(a)(2). EPA did promulgate NO_x increments on October 17, 1988. However, EPA specifically provided in that promulgation that the increments were not self executing, and that no area would have an applicable increment until the state adopted and EPA approved a NO_x PSD plan for the area. See 53 FR 40656, 40658. EPA has not yet approved a NO_x PSD plan for Arizona. Thus, until EPA does approve such a plan, there is no applicable NO_x increment in Pima County. EPA is therefore free to approve SIP revisions in Pima County without requiring a demonstration respecting impacts on such increment.

E. Final Action

EPA is today taking final action to restore its original approval of all of the control measures in the CO SIPs for the Maricopa and Pima County nonattainment areas previously approved by EPA and vacated by the Ninth Circuit in *Delaney*.

EPA is also taking final action today to approve the oxygenated fuels program and the travel reduction ordinances for Pima County jurisdictions, as proposed on August 10, 1988 because they strengthen the SIP by providing extra assurance that the plan will attain and maintain the CO standard.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this approval is effective 30 days from publication of today's notice.

F. Regulatory Process

Under Executive Order 12291, this action is not "major." It has not been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. Regarding the measures EPA is restoring into the SIP, these measures will have no impact on any entities beyond the impact of the previously approved SIPs. Regarding the two new measures which are being approved for the Pima nonattainment area, EPA does not anticipate that either measure will have a significant effect on the small entities referenced in 5 U.S.C. 605(b).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: September 20, 1990.

William K. Reilly,

Administrator.

Subpart D of part 52 of chapter I, title 40 of the Code of Federal Regulations is being amended to read as follows:

Subpart D—Arizona

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.120 paragraphs (c)(63), (65)(i)(A)(*2*) and (66)(i)(D) are being amended to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(63) The following amendments to the plan were submitted by the governor's designee on May 26, 1988:

(i) Incorporation by reference.

(A) Travel reduction ordinances for Pima County: Inter governmental Agreement (IGA) between Pima County, City of Tucson, City of South Tucson, Town of Oro Valley and Town of Marana, April 18, 1988; Pima County Ordinance No. 1988–72, City of Tucson ordinance No. 6914, City of South Tucson Resolutions No. 88–01, 88–05, Town of Oro Valley Resolutions No. 162, 326 and 327, Town of Marana Resolutions No. 88–06, 88–07 and Ordinance No. 88.06.

(65) * * *

(i) * * *

(A) * * *

(*2*) House Bill 2206 section 6 which added, under Arizona Revised Statutes, title 28, chapter 22, new sections 28–2701 through 28–2708, and section 13 which added, under Arizona Revised Statutes, title 41, chapter 15, Article 6 new sections 41–2125A and 41–2125B. (Oxygenated fuels program for Pima County.)

(66) * * *

(i) * * *

(D) Commitment in the July 22, 1988 submittal letter to apply the oxygenated fuels program of the July 18, 1988 submittal to Pima County.

[FR Doc. 91–805 Filed 1–28–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–486; RM–7379]

Radio Broadcasting Services; Asbury, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Asbury, Missouri, in response to a petition filed by William Bruce Wachter. See 55 FR 46837, November 7, 1990. The coordinates for Channel 278A are 37–16–24 and 94–36–24.

DATES: Effective March 11, 1991; the window period for filing applications will open on March 12, 1991, and close on April 11, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 90–486, adopted January 4, 1991, and released January 24, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 278A, Asbury.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–2031 Filed 1–28–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 67]

RIN 2127–AD–38

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: Standard No. 208, *Occupant Crash Protection*, requires vehicles to be equipped with warning light systems designed to remind vehicle occupants to use safety belts. Standard No. 208 has required different warning systems for vehicles equipped with manual belts and vehicles equipped with automatic belts. For vehicles equipped with manual safety belts, the Standard has required that a warning light come on for four to eight seconds when the vehicle's ignition is turned on, regardless of belt use. For vehicles equipped with automatic safety belts, the Standard has required illumination of a warning light for at least 60 seconds when the ignition is turned on, if there are indications that the driver's safety belt is not in use, and allows the light to remain illuminated longer than that. On June 28, 1990 (55 FR 26471), NHTSA proposed an amendment to give manufacturers the option of using in passenger cars equipped with manual belts the same type of warning system currently required in cars equipped with automatic safety belts. The proposed amendment was requested by General Motors Corporation in a December 11, 1989 petition for rulemaking. After considering comments on the proposal, NHTSA is adopting the amendment without substantive change in this final rule. Since the warning system for automatic safety belts is more stringent than the warning system for manual belts, NHTSA believes that the amendment could result in greater safety protection.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective January 29, 1991. Petitions for reconsideration of this final rule must be filed by February 28, 1991.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, Office of Vehicle Safety Standards, NRM–12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. The Standard requires vehicles to be equipped with occupant restraints (e.g., safety belts) and with warning systems designed to remind vehicle occupants to use safety belts. Standard No. 208 has required different warning systems for vehicles equipped with manual belts and vehicles equipped with automatic belts.

For vehicles equipped with manual safety belts, section S7.3 has required that a warning light come on for four to eight seconds when the vehicle's ignition is turned on, regardless of whether the driver is using his belt. However, there is no requirement that a warning light remain activated after that time, even if the driver's belt is not in use.

For vehicles equipped with automatic safety belts, section S4.5.3.3(b) has required illumination of a warning light for at least 60 seconds when the ignition is turned on, if there are indications that the driver's safety belt is not in use. The warning light is permitted to stay on for longer than 60 seconds. The light must also be activated if the belt is nondetachable and the emergency release mechanism is in the released position.

On December 11, 1989, General Motors Corporation (GM) petitioned NHTSA to amend section S7.3 of Standard No. 208 to allow manufacturers to use a safety belt warning system that meets the requirements for automatic safety belt warning systems as an alternative to the warning system that was specified for manual belt systems. GM stated that increasing the duration of the manual belt warning light beyond the eight second limitation could increase the effectiveness of the reminder.

NHTSA granted the GM petition on January 5, 1990. On June 28, 1990, NHTSA proposed an amendment to give manufacturers the option of using in passenger cars equipped with manual belts the same type of warning system currently required in cars equipped with automatic safety belts. Since the automatic safety belt warning system is more stringent than the warning system for manual belts, NHTSA tentatively concluded that the amendment could result in greater safety protection.

NHTSA received five comments on the proposal, four from motor vehicle manufacturers and one from an automobile dealers association. All commenters supported the proposal without reservation. One commenter suggested revised regulatory language to provide greater clarity and avoid potential problems of interpretation.

Final Rule

After reviewing the comments, NHTSA has decided to adopt the amendment in this final rule without substantive change. NHTSA has revised the regulatory text of the amendment to provide greater clarity.

The primary purpose of the safety belt warning light requirements in Standard No. 208 is to encourage the use of safety belts. If a manufacturer chooses the newly permitted option, there would be two differences from the warning system requirements previously applicable.

First, the warning light would remain on for at least 60 seconds if the driver did not buckle his or her safety belt. NHTSA stated in the proposal that increasing the duration of the manual belt warning light beyond the eight second limitation could increase the effectiveness of the reminder and thus increase use of safety belts. No commenters disagreed with this point.

Second, the safety belt warning light would not come on if the driver buckled the safety belt before inserting the ignition key. NHTSA stated in the proposal that this would not have a major impact on safety belt use at other seating positions. In such a case, the driver would already have buckled his or her safety belt and thus set an example for any passengers in the vehicle. No commenter disagreed with this point.

The requirements in Standard No. 208 for a four to eight second audible signal when the ignition switch is turned on and the safety belt is not in use are not changed by this amendment. Since both vehicles equipped with automatic safety belts and vehicles equipped with manual safety belts are required to have the four to eight second audible signal, the amendment does not change those requirements.

NHTSA stated in the proposal that the agency does not believe that the amendment raises any issues under section 125 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1410b). No commenter disagreed with NHTSA's position. Section 125 provides that no Federal motor vehicle safety standard may have the effect of requiring, or provide that a manufacturer is permitted to comply with such standard by means of, a buzzer which operates longer than eight seconds after the ignition is turned to the "start" or "on" position and is designed to indicate that safety belts are not in use. However, section 125 does not prohibit a Standard permitting a safety belt warning light to remain illuminated for more than eight seconds. Further, the legislative history of section 125 of the Safety Act does not suggest Congressional disfavor of such an approach.

NHTSA stated in the proposal that the agency intended to make the amendment effective immediately upon its publication in the **Federal Register** as a final rule. No commenter objected to NHTSA's stated intention. NHTSA finds that good cause exists to make the amendment effective immediately upon its publication. The amendment will not result in any additional burden to manufacturers since it simply provides manufacturers an option for the manual safety belt warning system. In addition, the amendment could result in greater safety protection since the automatic belt warning system requirements are more stringent than the manual belt requirements.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this final rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. NHTSA believes that the impacts of this rule amending Standard No. 208 will be minimal. The amendment simply provides manufacturers an option for the manual belt warning system. It does not require a new warning system. Therefore, NHTSA did not prepare a full regulatory evaluation for this rulemaking.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

First, few motor vehicle manufacturers affected by this rule qualify as small entities. For those that would so qualify, the impacts will not be significant, since the amendment simply provides manufacturers an option for the manual safety belt warning system. Second, small organizations or governmental units will not be signficantly affected. Any price increases associated with this final rule will be minimal and will not affect the purchasing of new motor vehicles by these entities. Accordingly, no regulatory flexibility analysis has been prepared.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that this final rule will not have a significant impact on the quality of the human environment.

4. Federalism

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

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

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

§ 571.208 [Amended]

2. Section 571.208 is amended by revising S7.3 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S7.3(a) A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that, at the option of the manufacturer, either—

(1) Activates a continous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continous or flashing warning light visible to the driver displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts", for not less than 60 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position) when condition (b) exists simultaneously with condition (c), or that

(2) Activates, for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position), a continous or flashing warning light visible to the driver, displaying the identifying symbol of the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts", when condition (b) exists, and a continuous or intermittent audible signal when condition (b) exists simultaneously with condition (c).

(b) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(c) The driver's lap belt is not in use, as determined, at the option of the manufacturer, either by the belt latch mechanism not being fastened, or by the

belt not being extended at least 4 inches from its stowed position.

* * * * *

Issued on January 23, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-2020 Filed 1-28-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 19
Tuesday, January 29, 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 AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations on Community Facility Loans. This action is necessary to correct a problem relating to the scheduling of loan payments, to make another revision for consistency purposes and to make minor corrections. The revisions will rectify the problem, allow loan processing to proceed more smoothly and clarify a related paragraph.

DATES: Comments must be received on or before February 28, 1991.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, South Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donna H. Roderick, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under numbers 10.423, Community Facilities Loans, and 10.418, Water and Waste Disposal Systems for Rural Communities, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect a small number of entities for which the changes will make debt instruments less complex to prepare.

Background

This action proposes to amend FmHA's regulations to require semiannual or annual payment bonds in cases where State law requires principal plus interest type bonds and to clarify the maximum loan repayment period. This action is necessary because loan payments may currently be scheduled more frequently than annually or semiannually and if principal plus interest bonds are required under State law, this causes debt instruments to be unreasonably complex, causes accounting of payments to be burdensome and is otherwise impractical. This action is also necessary to revise the maximum loan repayment period language for consistency with other parts of the regulation and to make minor corrections.

Lists of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and community development, Rural areas, Waste treatment and disposal—domestic, water supply—domestic, Loan security.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraphs (f)(7) introductory test and (f)(7)(ii) to read as follows:

§ 1942.17 Rates and terms.

* * * * *

(f) * * *

(7) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA grant funds are used in connection with an FmHA loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA is jointly financing with another lender, the FmHA payments of principal and interest should approximate amortized installments.

* * * * *

(ii) *Payment date.* Loan payments will

be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

* * * * *

3. Section 1942.19 is amended by revising paragraph (h)(5) to read as follows:

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

* * * * *

(h) * * *

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual P&I bonds will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

* * * * *

§ 1942.19 [Amended]

4. In § 1942.19(h)(10)(iv), the name of Form FmHA 1942–9 is changed from "Loan Resolution (Security Agreement)" to "Loan Resolution Security Agreement."

Dated: November 29, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–2017 Filed 1–28–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Special Services and Benefits; User Fees

[Ins No. 1308–90 Atty. Gen. Order No. 1469–91 INS/EOIR Fee Review]

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the existing fee schedule of the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR). These changes are necessary to place the financial burden of providing special services and benefits which do not accrue to the public at large on the recipients of these special services and benefits. Charges have been adjusted to more nearly reflect the current recovery cost of providing these special services and benefits taking into account public policy and other pertinent facts.

DATES: Comments must be received on or before February 28, 1991.

ADDRESSES: Please submit written comments in triplicate to Charles S. Thomason, Revenue Officer, Resource Management Branch, Immigration and Naturalization Service, 425 I Street NW., Room 6309, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Revenue Officer, Resource Management Branch, Immigration and Naturalization Service, 425 I Street NW., Room 6309, Washington, DC 20536, Telephone number (202) 514–4705.

SUPPLEMENTARY INFORMATION: The INS has undertaken a study of the INS/EOIR fee schedule as required under 31 U.S.C. 9701 and OMB Circular A–25. Under that law and the OMB Circular, it is required that a special service or benefit provided to or for any person by a Federal Agency be self-sustaining to the fullest extent possible. Charges are to be fair and equitable, taking into consideration direct and indirect costs to the Government, public policy or interest served, and other pertinent facts. All services and benefits provided to the public by the INS were reviewed by INS for applicability of user charges. Costs which should be recovered from recipients of special services and benefits provided were identified in order to be fair and equitable to the taxpayers and the recipients of these special services and benefits. Identified costs include, but are not limited to, inflationary costs, the costs associated with asylum and refugee adjudication, for which a fee is not charged as provided by section 286 of the Immigration and Nationality Act (the Act), as amended by the appropriations for the Departments of Commerce, Justice and State, the Judiciary and Related Agencies for the fiscal year ending September 30, 1991, and the Federal Bureau of Investigation name and fingerprint check costs.

The following proposed fee changes to the existing INS/EOIR fee schedule are based upon a study by the INS of its policies and practices for user charges, a review of costs and fees, the principles of user charges prescribed by the Congress in 31 U.S.C. 9701, and the guidelines of the Office of Management and Budget in OMB Circular A–25. In addition Form I–129H replaces Form I–129B, and Form N–643 and a Request for Parole are added to the fee schedule.

The INS proposes to:

1. Increase the fee from $75 to $130 for filing Form I–17, application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof.

2. Increase the fee from $35 to $70 for filing Form I–90, application for Alien Registration Receipt Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a change name.

3. Increase the fee from $35 to $70 for filing Form I–102, application for Arrival-Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed.

4. Increase the fee from $40 to $90 for filing Form I–129F, petition to classify nonimmigrant as a fiancee or fiance under section 214(d) of the Act.

5. Establish a fee of $80 for filing Form I–129H, petition for temporary worker or trainee. This form replaces Form I–129B, petition to classify nonimmigrant as temporary worker or trainee.

6. Increase the fee from $50 to $80 for filing Form I–129L, petition to employ intracompany transferee.

7. Increase the fee from $40 to $75 for filing Form I–130, petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act.

8. Increase the fee from $45 to $65 for filing Form I–131, application for issuance of reentry permit.

9. Increase the fee from $50 to $70 for filing Form I–140, petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act.

10. Increase the fee from $50 to $90 for filing Form I–191, application for advance permission to return to unrelinquished domicile.

11. Increase the fee from $35 to $85 for filing Form I–192, application for advance permission to enter as nonimmigrant.

12. Increase the fee from $50 to $90 for filing Form I–193, application for waiver of passport and/or visa.

13. Increase the fee from $45 to $90 for filing Form I–212, application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation.

14. Increase the fee from $60 to $120 for filing Form I–485, application for permanent residence status or for creation of lawful permanent residence.

15. Increase the fee from $60 to $120 for filing Form I–485A, application by Cuban refugee for permanent residence.

16. Increase the fee from $35 to $70 for filing Form I–506, application for change of nonimmigrant classification under section 24B of the Act.

17. Increase the fee from $35 to $70 for filing Form I–538, application by a nonimmigrant student (F–1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training.

18. Increase the fee from $35 to $70 for filing Form I–539, application for extension of stay of a nonimmigrant, other than one described in section 101(a)(15)(F) or 101(a)(15)(J) of the Act, and, upon a basis of reciprocity, a nonimmigrant described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v) of the Act.

19. Increase the fee from $75 to $140 for filing Form I–600, petition to classfiy orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $140 will be required.)

20. Increase the fee from $100 to $140 for filing Form I–600A, application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee of $140 will be required.)

21. Increase the fee from $45 to $90 for filing Form I–601, application for waiver of grounds of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee of $90 shall be required when the alien is applying simultaneously for a waiver under both sub-sections.)

22. Increase the fee from $50 to $90 for filing Form I–612, application for waiver of the foreign residence requirement under section 212(e) of the Act.

23. Increase the fee from $35 to $65 for filing Form I–751, joint petition for removal of conditional basis of alien's permanent residence status.

24. Increase the fee from $65 to $85 for filing Form I–752, application for waiver of requirement to file joint petition for removal of conditions.

25. Increase the fee from $35 to $60 for filing Form I–765, application for employment authorization.

26. Increase the fee from $50 to $70 for filing Form N–300/315, for receiving and filing declaration of intention.

27. Increase the fee from $60 to $90 for filing Form N–400, application to file petition for naturalization.

28. Increase the fee from $50 to $80 for filing Form N–402, application to file naturalization petition on behalf of child.

29. Increase the fee from $50 to $70 for filing Form N–405/407, for making, filing, and docketing a petition for naturalization.

30. Increase the fee from $40 to $90 for filing Form N–455, application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, Public Law 90–633.

31. Increase the fee from $55 to $90 for filing Form N–470, application for section 316(b) or 317 of the Act benefits.

32. Increase the fee from $50 to $85 for filing Form N–565, application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; or for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act.

33. Increase the fee from $60 to $90 for filing Form N–600, application for certificate of citizenship under section 309(c) or section 341 of the Act.

34. Establish a fee of $85 for filing Form N–643, application for a certificate of citizenship in behalf of an adopted child.

35. Establish a fee in the amount of $65 for adjudicating requests for parole into the United States. If granted, Form I–512, authorization for parole of an alien into the United States, will be completed by the INS.

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

This rule would not be 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 103

Administrative practice and procedures, Archives and records, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds, Fees, Forms.

For the reasons set forth in the preamble, title 8, chapter I, Part 103 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 5 U.S.C. 552(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1983 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by revising certain fees in paragraphs (b)(1) and (b)(3) and Form I–765 in paragraph (b)(1); removing Form I–129B from paragraph (b)(1); adding Form I–129H and Form N–643 to paragraph (b)(1); and adding an entry for "Request for Parole" to the end of paragraph (b)(1) to read as follows:

103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–17. * * *—$130.00.

Form I–90. * * *—$70.00.

Form I–102. * * *—$70.00.

Form I–129F. * * *—$90.00.

Form I–129H. For filing petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act—$60.00.

Form I–129L. * * *—$80.00.

Form I–130. * * *—$75.00.

Form I–131. * * *—$65.00.

Form I–140. * * *—$70.00.

Form I–191. * * *—$90.00.

Form I–192. * * *—$85.00.

Form I–193. * * *—$90.00.

Form I–212. * * *—$90.00.

* * * * *

Form I–485. * * *—$120.00.

Form I–485A. * * *—$120.00.

Form I–506. * * *—$70.00.

Form I–538. * * *—$70.00.

Form I–539. * * *—$70.00.

* * * * *

Form I–600. * * *—$140.00.

Form I–600A. * * *—$140.00.
Form I–601. * * *—$90.00.
Form I–612. * * *—$90.00
* * * * *
Form I–751. * * *—$65.00.
Form I–752. * * *—$85.00.
Form I–765. For filing application for employment authorization pursuant to 8 CFR 274a.13. Applicants must pay a fee of sixty ($60.00) dollars to be remitted in the form of cash, check, or money order.
* * * * *
Form N–400. * * *—$90.00.
Form N–402. * * *—$80.00.
* * * * *
Form N–455. * * *—$90.00.
Form N–470. * * *—$90.00.
Form N–565. * * *—$85.00.
* * * * *
Form N–600. * * *—$90.00.
Form N–643. For filing application in behalf of an adopted child of United States citizen parents—$65.00.
* * * * *
Request. For requesting authorization for parole of an alien into the United States—$65.00.
* * * * *
(3) * * *
Form N–300/315. * * *—$70.00.
Form N–405/407. * * *—$70.00.
* * * * *

Dated: January 22, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–1931 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–9]

Nuclear Control Institute and the Committee to Bridge the Gap; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Nuclear Control Institute and the Committee to Bridge the Gap request that the Commission revise its regulations to upgrade the design basis threat for radiological sabotage of nuclear reactors. The petitioners believe that the design basis threat for radiological sabotage must be revised to include explosives-laden surface vehicles such as truck and boat bombs and to reflect the possibility of an attack by a larger number of attackers using more sophisticated weapons.

DATES: Submit comments by February 28, 1991. Comments received after this date will be considered if it is practical to due so, but consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Petitioners' Request

On January 11, 1991, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by the Nuclear Control Institute and the Committee to Bridge the Gap. The petition was docketed as PRM–73–9. The petitioners request that the NRC revise its regulations in 10 CFR 73.1 to upgrade the design basis threat for radiological sabotage of nuclear reactors. The petitioners believe that the regulations must be revised to include explosives-laden surface vehicles, such as trucks and boats, and to reflect the possibility of an attack by a larger number of attackers using more sophisticated weapons.

The petitioners contend that the present design basis threat is not realistic in view of the current trends in terrorism. The petitioners state that a successful terrorist attack could cause the release of radioactivity comparable to a severe nuclear accident and result in significant health and safety consequences and property damage. The petitioners believe that the increased threats may be countered by measures which can be implemented for a modest cost but would protect against events with potential catastrophic consequences.

Petitioners' Interest

The Nuclear Control Institute (NCI) is a non-profit corporation established to monitor nuclear programs in the United States and other countries. NCI develops strategies to prevent and reverse the growth of nuclear armaments and to explore strategies for the reduction of existing nuclear arsenals thereby helping to prevent nuclear proliferation and terrorism. The Committee to Bridge the Gap (CBG) is a non-profit corporation engaged in policy advocacy and research. CBG is concerned with nuclear safety and the threat of nuclear terrorism.

Basis for the Requested Amendments

The NRC has established regulations concerning the physical protection of plants and materials in 10 CFR part 73. These regulations include protective measures related to the radiological sabotage of nuclear facilities. Section 73.1 establishes the design basis threats to be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of formula quantities of special nuclear material.

The petitioners believe that § 73.1 has interpreted by the Commission so as not to require nuclear reactor licensees to protect against radiological sabotage attempts by a larger number of attackers capable of using weapons of greater sophistication than hand-held automatic weapons and explosives, thereby excluding an attack by explosives-laden vehicles.

The petitioners believe that terrorist incidents which have occurred since the design basis threat was adopted demonstrate the ability and willingness of terrorists to mount sophisticated attacks capable of causing substantial physical destruction, particularly through the use of vehicle bombs. Because of the ongoing Persian Gulf crisis, the growth of State-sponsored terrorism, and changes in terrorist tactics, the petitioners believe that current regulatory standards, which exclude the vehicle bomb threat and sophisticated large group attacks supported by substantial firepower, do not provide a realistic or sufficient guarantee of public health and safety or common defense and security.

The petitioners state that the terrorist threat has become bloodier, more sophisticated and better armed, and frequently State-supported. As a result, the petitioners believe that the possibility of nuclear terrorism, resulting in a substantial number of casualties, is far more likely today than it was ten years ago.

The petitioners believe that it is essential to upgrade the design basis threat for radiological sabotage to protect against vehicle bomb attacks which pose a grave threat to civilian power plants. The petitioners cite the

effects of the vehicle bomb attacks in Beriut in 1983. The petitioners state that studies have indicated the vulnerability of licensed reactors to attack by explosives-laden vehicles and the potentially unacceptable damage from such an attack.

The petitioners believe that it is essential to upgrade the design basis threat to anticipate attacks by more sophisticated, larger, and better-armed groups. The petitioners state that there are two components to this threat: (1) A larger number of attackers with the capability to act in several coordinated teams; and (2) heavier firepower. The petitioners cite documented large group attacks on nuclear facilities in Latin America and Europe and the widespread availability of advanced weaponry as indications that the current design basis threat is no longer realistic.

Requested Regulatory Action

The petitioners request that the design basis threat for radiological sabotage contained in 10 CFR 73.1(a)(1)(i) be amended to read as set forth below. Note that text to be added is set off by arrows and text to be removed is set off in brackets.

§ 73.1 Purpose and scope.

(a) * * *

"(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions of several ►up to twenty◄ persons ►operating as two or more teams◄ with the following attributes, assistance, and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g. provide information), an active role (e.g. facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons [, up to and including hand-held automatic weapons, equipped with silencers and] having effective long range accuracy, (D) [hand-carried] equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, ►in quantities transportable by vehicle◄, and"

* * * * *

The petitioners request that the NRC take other actions necessary to ensure that the specific protective measures contained in 10 CFR part 73 are sufficient to respond to the increased design basis threat and provide the high assurance required under § 73.55(a) that the threat of radiological sabotage will be effectively countered.

Because the petitioners believe that the suggested amendments are vitally important to reduce grave risks to public health and safety and the common defense and security, the petitioners request that the Commission make a determination on the petition within 30 days from the date of receipt and that it proceed immediately to promulgate a final rule, without issuing a proposed rule, that would adopt the requested amendments.

The Commission has evaluated the petitioner's request for expedited action. The Commission has determined that the petition should be processed as quickly as possible but in compliance with the procedures for processing a petition for rulemaking in § 2.802(e). In the event the Commission determines to initiate rulemaking to modify the design basis threat for radiological sabotage, the Commission would also consider the petitioners' suggestion that the amendments be made effective immediately without further opportunity for public comment.

The petitioners also requested that the NRC, on an emergency basis, "require that existing licensee contingency plans against truck bombs, as developed under Generic Letter No. 89–07, be put into effect at once" and immediately thereafter, the NRC "should undertake an evaluation of the adequacy of the plans and require such improvements therein, on a plant-by-plant basis, as it deems necessary to ensure their adequacy." That request was denied on January 15, 1991, by Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards. The NRC denial noted that the NRC is continually reviewing the threat environment associated with commercial nuclear facilities, and that, based on evaluation of intelligence community and other relevant data, the NRC staff determined that there continues to be no credible threat and terrorist actions against any NRC-licensed facility that warrants implementation of contingency plans against truck bombs at this time. The denial also noted that the situation resulting from activities in the Middle East continues to be closely monitored so that, if warranted, individual facility, regional, or national contingency plans can be implemented.

Dated at Rockville, Maryland, this 23rd day of January, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–2068 Filed 1–28–91; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Motor Vehicle Parts and Accessories Industry

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its size standard regulation for the industry of Motor Vehicle Parts and Accessories (SIC code 3714) from the present 500 employees to 750 employees. This action reflects findings of a study by the SBA which indicates that firms in the industry generally need to be larger than 500 employees to achieve competitive economies of scale. Thus a size standard of 750 employees is being proposed which would better reflect small business within this industry's structure than the present size standard of 500 employees.

DATES: Comments must be submitted on or before February 28, 1991.

ADDRESSES: Send comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street NW., room 932, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, Tel: (202) 653–6373.

SUPPLEMENTARY INFORMATION: Comments received by the Small Business Administration in recent months have claimed that the size standard of 500 employees in the Motor Vehicle Parts and Accessories Industry (Standard Industrial Classification (SIC) code 3714) is too small to permit firms to reach acceptable efficiencies in size. Under this view, many firms within the size standard of 500 employees would be unable to compete with larger firms in the industry due primarily to their relatively modest size of operations. To appraise this view SBA has prepared a study which analyzes the structure of this industry and compares it with other industries in Major Group 37—the manufacturing of transportation equipment.

In evaluating the appropriateness of a size standard, SBA compares industries to each other using various factors. The primary factors include: industry competition, average firm size, start-up costs, distribution of firms by size and the small business market share of Federal procurement (a factor not analyzed for this industry). Federal procurement was not a factor reviewed becaused the firm requesting a change

focused entirely on the observation that the size standard was too small for firms to achieve optimal efficiencies of size rather than citing problems with Federal procurement caused by the size standard.

For this industry, as well as other manufacturing industries, the four-firm concentration ratio (defined as the percent of sales generated by the four largest producers in the industry) measures the extent of industry competition. The average number of employees per firm in the industry is an indicator of average firm size. The coverage ratio (defined for manufacturers as the percent of sales by firms of 500 employees or less) is used as an indicator of both the relative difficulty of starting a firm and the distribution of firms by size.

For manufacturing industries, SBA has adopted a 500 employee size standard as the starting point for analyzing the size standard appropriate for an industry given its industry structure. Five hundred employees is considered an "anchor standard" for manufacturing industries. About 75 percent of industries in the manufacturing industry division have a size standard of 500 employees. SBA adjust the size standard applied to an industry based on an analysis of the primary factors discussed above. In general, for example, if the four-firm concentration ratio is high relative to other manufacturing industries, SBA would be inclined to set a higher size standard than the anchor standard, thus encouraging firms in a broad range of sizes to compete with the much larger and dominant firms in the industry. Similarly, if the industry's average firm size is high relative to other industries, SBA will view this as a factor suggesting a higher size standard than 500 employees. A low coverage ratio, however, suggests that the size standard is set too low relative to other industries and that a higher size standard than 500 employees might be warranted.

The following table compares the motor vehicle parts and accessory industry with other industries with a 500-employee size standard in Major Group 37 (manufacturing of transportation equipment) for three important parameters relating to industry structure.

SELECTED INDUSTRY CHARACTERISTICS—INDUSTRIES IN MAJOR GROUP 37 WITH A 500 EMPLOYEE SIZE STANDARD

SIC	Industry	4-firm concentration ratio	Coverage ratio (percent)	Average firm size (employee)
3713	Truck and bus bodies	27	52.9	45
3714	Motor vehicle parts and accessories	61	9.3	161
3715	Truck trailers	36	36.8	66
3732	Boat building and repairing	14	70.8	21
3751	Motorcycles, bicycles, and parts	59	27.7	49
3792	Travel trailers and campers	36	44.7	32
3799	Transportation equipment, N.E.C.	24	46.8	27
	Average (excluding SIC code 3714)	33	46.6	40

Source: 1982 census.

1. A high four-firm concentration ratio suggests the need for a relatively high size standard and vice versa.
2. A low coverage ratio suggests the need for a relatively high size standard and vice versa.
3. A high average firm size suggests the need for a relatively high size standard and vice versa.

This table indicates that the industry structure for SIC code 3714 is significantly different from the structure of other industries in its major group which have a 500-employee size standard. Its concentration ratio of 61 is almost double that of the average for other industries with a 500-employee standard in Major Group 37. Similarly, its average firm size is between three to eight times the average of other industries in its major group which have a 500-employee size standard. Finally, its coverage ratio, at only 9 percent, is only about one-fourth the coverage ratio of other industries with a 500-employee size standard in Major Group 37, a factor suggesting a higher size standard. Thus all three factors point to a higher size standard than 500 employees for this industry.

Given that three important parameters of industry structure point to a size standard higher than 500 employees, the key question is how high a size standard would be most appropriate for the motor vehicle parts and accessories industry. In general when compared to industries with a 1,000-employee size standard, these indicators of industry structure for SIC code 3714 point to a lower size standard than 1,000 employees, as illustrated in the table below. This table indicates that SIC code 3714's four-firm concentration ratio and average firm size is generally less than industries in its major group with a 1,000-employee size standard, while its coverage ratio tends to be higher (five of nine industries have higher four-firm concentration ratios than SIC code 3714; eight of 10 have higher average firm size; while only three of 10 have higher coverage ratios).

SELECTED INDUSTRY CHARACTERISTICS—INDUSTRIES IN MAJOR GROUP 37 WITH A 1,000 EMPLOYEE-SIZE STANDARD

SIC	Industry	4-firm concentration ratio [1]	Coverage ratio [2] (percent)	Average firm size (employees) [3]
3714	Motor Vehicle Parts & Accessories	61	9.3	161
3711	Motor vehicles and passenger car bodies	92	0.8	852
3716	Motor homes	54	34.5	95
3724	Aircraft engines and engine parts	72	6.4	465
3728	Aircraft parts and auxiliary equipment, N.E.C.	38	13.2	146
3731	Shipbuilding and ship repair	35	15.2	271
3743	Railroad equipment	58	6.2	221
3761	Guided missiles and space vehicles	71	0.0	6,825
3764	Guided missiles and space vehicles propulsion units and propulsion unit parts	68	0.5	1,266

SELECTED INDUSTRY CHARACTERISTICS—INDUSTRIES IN MAJOR GROUP 37 WITH A 1,000 EMPLOYEE-SIZE STANDARD—Continued

SIC	Industry	4-firm concentration ratio [1]	Coverage ratio [2] (percent)	Average firm size (employees) [3]
3769	Guided missiles and space vehicle part, N.E.C.	—	2.9	475
3795	Tanks and tank components	85	3.3	489
	Average	64	8.3	1,111

Source: 1982 Census.
[1] A high four-firm concentration ratio suggests the need for a relatively high size standard and vice versa.
[2] A low coverage ratio suggests the need for a relatively high size standard and vice versa.
[3] A high average firm size size suggests the need for a relatively high size standard and vice versa.

Analysis of the primary factors points to a size standard for the motor vehicle parts and accessories industry of between 500 and 1,000 employees. Therefore, SBA has made a preliminary determination that an increase in the size standard to 750 employees would be appropriate. A 750-employee size standard would be less than the size standard of a majority of industries in Major Group 37, but would reflect findings that an increase in the size standard from 500 employees appears merited based on industry structure.

While this proposed rule has focused on factors suggesting a higher size standard for this industry, the SBA has not made a final decision on this issue and welcomes all comments from the public relating to the appropriateness of the present size standard of 500 employees as well as the proposed revision to 750 employees on any other size standard.

Compliance With Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

SBA certifies that this proposed rule would not, if promulgated in final form, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.* Over the 1988–89 period, firms in this industry utilized SBA's guaranteed loan program for only $6.0 million in loans per year. Over the 1986–88 period, small firms were awarded an annual average of $55 million in total Federal contracts in this industry which equates to about 25% of total Federal contracts in this industry. These dollar and percentage figures are not likely to increase signficiantly as a result of this revision. Only 28 firms out of a total of 2,000 firms constituting about 2 percent of sales in this industry are projected to gain eligibility as a result of this revision.

SBA certifies that this proposed rule would not, if promulgated in final form, be a major rule within the meaning of Executive Order 12291 because it is not expected to have an annual economic impact of $100 million or more, as previously discussed. This size standard is proposed to better match the motor vehicle parts and accessories industry's size standard with the structure of the industry. This regulation would not likely result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

SBA certifies that this proposal, if promulgated in final form, would not impose any requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

SBA certifies that this proposed rule, if promulgated in final form, would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6) and Pub. Law 100–656, (102 Stat. 3853 (1988)).

§ 121.601 [Amended]

2. In § 121.601, Major Group 37, is amended by revising SIC code 3714 to read as follows:

* * * * *

SIC	Description	Size standard
3714	Motor Vehicle Parts and Accessories	750

* * * * *

Dated: December 19, 1990.

Susan S. Engeleiter,

Administrator, U.S. Small Business Administration.

[FR Doc. 91–2061 Filed 1–28–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–ANM–15]

Proposed Amendment, Transition Area, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Aspen, Colorado, 1,200-foot transition area. The increase in aeronautical operations at Colorado "Ski Country" airports, and the attendant development of Instrument Flight Rules procedures, necessitates establishment of additional controlled airspace. The intended effect would facilitate further procedure development and provide point-to-point air navigation routings within controlled airspace where none presently exist.

DATES: Comments must be received on or before March 1, 1991.

ADDRESSES: Send comments on the proposal to: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 90–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

The official docket may be examined at the same address. An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 90–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ANM–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration.

Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056, ANM–530.

Communications must identify the notice number of this NRPM. Persons interested in being placed on mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A which best describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Aspen, Colorado 1200-foot transition area. The development of new instrument flight rule procedures necessitates additional controlled airspace to accommodate aeronautical growth at Colorado "Ski Country" airports. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Aspen, Colorado [Revised]

* * * point of beginning and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 40°50'00" N., long. 108°00'00" W.; to lat. 40°50'00" N., long. 107°30'00" W.; to lat. 40°30'00" N., long. 105°52'00" W.; to lat. 39°19'00" N., long. 105°52'00" W.; to lat. 39°19'00" N., long. 106°30'00" W.; to lat. 39°00'00" N., long. 106°30'00" W.; to lat. 39°00'00" N., long. 108°30'00" W.; to lat. 40°00'00" N., long. 108°30'00" W., to point of beginning.

Issued in Seattle, Washington, on December 31, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–2035 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ANM–13]

Proposed Amendment, Spokane Fairchild AFB Control Zone, Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Spokane Fairchild AFB Cotrol Zone to provide additional controlled airspace for departing and arriving heavy military aircraft. The intent of this action is to assure that heavy aircraft operations will be contained within controlled airspace during critical departure and arrival phases of flight. The control zone would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 1, 1991.

ADDRESSES: Send comments on the proposal to: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 90–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056, telephone: (206) 227–2536.

The official docket may be examined at the same address. An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 90–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056, telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, areonautical, economic, environmetnal, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments

on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ANM–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing data for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing data for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration.

Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, ANM–530.

Communications must identify the notice number of this NRPM. Persons interested in being placed on mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A which best describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Spokane Fairchild AFB, Washington, Control Zone. The amendment would alter the part of the Control Zone that lies along the Runway 23 extended centerline, by extending that airspace to 3 miles northwest and 2.5 miles southeast of the centerline, and 8 miles southwest of the liftoff end of the runway. The amendment would also clarify the description of the part of the Control Zone that lies along the Spokane VORTAC 228° radial, by deleting redundant references.

This amendment would provide additional controlled airspace for heavy military aircraft departing from and arriving at Fairchild AFB. This action would assure that heavy aircraft operations are contained within controlled airspace during critical phases of flight. The control zone would be depicted on aeronautical charts for pilot reference.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

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

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

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

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

2. Section 71.171 is amended as follows:

Spokane Fairchild AFB, Washington [Revised]

Within a 5-mile radius of Fairchild AFB (lat. 47 36'55" N., long. 117 39'20" W.); within 3 miles northwest and 2.5 miles southeast of Runway 23 extended centerline, extending from the 5-mile radius zone to 8 miles southwest of the liftoff end of Runway 23; and within 4 miles northwest and 4.5 miles southeast of the Spokane VORTAC 228 radial extending 8 miles southwest of the VORTAC; to lat 47 30'19" N., long, 117 34'45" W., to lat. 47 40'57" N., long 117 36'00" W.

Issued in Seattle, Washington, on December 31, 1990.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–2036 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATIOI AGENCY

22 CFR Part 514

[Rulemaking No. 8]

Designation of Consortium, Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Filing date for comments extended.

SUMMARY: By notice published at 55 FR 46073 the United States Information Agency invited comments on whether college or university consortia should be designated as Exchange Visitor Program sponsors, and if so, what form the implementing regulations governing such program should take. On December 4, 1990, the United States Information Agency extended the time for response to January 10, 1991. Comments were to be received by the Agency no later than that date. Nine parties responded prior to the due date. Four parties responded after January 10, 1991, some as late as January 14, four days after the due date. None of the parties asked for leave to late file, nor did they offer a reason for the late filing. By this notice the Agency seeks public comment as to whether to admit the additional three comments to the record.

DATES: If no parties object to the admission of the late filed comments by February 28, 1991, the late filed comments will be admitted to the record. If objections are received, the Agency will consider the objections prior to determining whether the comments should be accepted into the record.

ADDRESSES: Interested persons should submit relevant views or arguments to Rulemaking No. 8, Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: The United States Information Agency published an advanced notice of proposed rulemaking on designation of consortia at 55 FR 46073, on November 1, 1990. By that announcement, the Agency invited comments from the public which were to be submitted in writing no later than December 3, 1990.

However, the Agency believed that an additional time period 37 days was warranted. Accordingly, the deadline for submission of comments to the Agency was extended to January 10, 1991, by notice published at 55 FR 50034. In that notice, the Agency stated: "Comments in response to the notice must be submitted in writing no later than January 10, 1991."

Consequently, the Agency cannot consider the late filed comments unless there is no objection from the other parties or the public, or there is a good reason given for the late filing. None of the parties gave a reason for the late filing; none requested permission to file late. Accordingly, the Agency requests that parties or any member of the public who may have an objection to accepting the late comments into the record, make the objeciton known to the Agency.

Dated: January 24, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-2092 Filed 1-28-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to ownership and control, permit information requirements, permit rescission, revegetation, coal processing waste, roads and support facilities, coal exploration, exemption for coal extraction incidental to the extraction of other minerals, and subsidence control. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. February 28, 1991. If requested, a public hearing on the proposed amendment will be held on February 25, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on February 13, 1991.

ADDRESSES: Written comments should be mailed or hand-delivered to Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 2040 South Pacheco, Santa Fe, NM 87505, Telephone: (505) 827-5970

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, telephone number (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 16, 1991 (Administrative Record No. NM-623), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to letters of May 11, and November 1, 1989, and February 7, and June 22, 1990, that OSM sent in accordance with 30 CFR 732.17(c) (Administrative Record Nos. NM-494, NM-550, NM-563, and NM-596). The rules that New Mexico proposes to amend are: Coal Surface Mining Commission (CSMC) Rules 80-1-1-5, 11-17, and 11-19, concerning ownership and control; CSMC Rules 80-1-7-13, 7-14, 11-17, 11-29, and 30-11, concerning permit information requirements; CSMC Rules 80-1-11-20 and 11-24, concerning permit rescission; CSMC Rules 80-1-20-116 and 20-117, concerning revegetation, CSMC Rules 80-1-9-25 and 20-93, concerning coal processing waste; CSMC Rules 80-1-9-37, 9-40, 19-15, 20-150, and 20-151, concerning roads and support facilities; CSMC Rule 80-1-19-17, concerning coal exploration; CSMC Rules 80-1-12-10, 34-1, 34-2, 34-3, 34-4, 34-5, 34-6, 34-7, 34-8, 34-9, and 34-10, concerning exemption for coal extraction incidental to the extraction of other minerals; and CSMC Rules 80-1-9-39, 20-121, and 20-124, concerning subsidence control.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. on February 13, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-2038 Filed 1-28-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-3900-5]

Open Meeting of the Negotiated Rulemaking Advisory Committee—Lead Acid Battery Recycling Rule

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting—negotiated rulemaking committee on the lead acid battery recycling rule.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Advisory Committee to negotiate a rule to recycle lead acid batteries. The meeting is open to the public without advance registration.

The purpose of the meeting is to consider information on the status of lead acid battery recycling, and to generate and discuss issues and options for the committee to discuss.

DATES: The meeting will be held on February 13, 1991 from 10 a.m to 4 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of lead acid battery recycling rule should call Nancy Laurson, Office of Toxic Substances, U.S. EPA, (202) 382-7363. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Regulatory Negotiation Project, (202) 382-5495 or the Committee's facilitator, John McGlennon, (617) 742-8228.

Dated: January 24, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 91-2085 Filed 1-28-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-25; Notice 02]

RIN 2127-AC69

Glazing Materials; Head Up Display Systems

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

ACTION: Termination of rulemaking.

SUMMARY: On December 11, 1989, NHTSA published an advance notice of proposed rulemaking (ANPRM) concerning head up display (HUD) systems. HUD systems are capable of optically projecting instrument panel readings so that they appear on some portion of the windshield in front of the driver. In the NAPRM, NHTSA requested public comment on options for allowing the use of HUD's, while ensuring that HUD's do not interfere with drivers' viewing of the road environment. After considering comments, NHTSA has decided to terminate this rulemaking. MHTSA will obtain research data on the potential safety benefits and/or problems of HUD's and information on actual experience by drivers with HUD's over the next few years. After reviewing and analyzing this information, NHTSA will again assess the need for rulemaking concerning HUD's.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5276.

SUPPLEMENTARY INFORMATION: On December 11, 1989, NHTSA published an advance notice of proposed rulemaking (ANPRM) concerning head up display (HUD) systems (54 FR 50783). HUD systems are capable of optically projecting instrument panel readings so that they appear on some portion of the windshield in front of the driver. In the ANPRM, NHTSA requested public comment on options for allowing the use of HUD's, while ensuring that HUD's do not interfere with drivers' viewing of road conditions.

Specifically, NHTSA requested comment on two options. The first option was for NHTSA to adopt European Economic Community (EEC) Directive 77/649, with modifications. This EEC Directive requires automobile manufacturers in the European market to provide an adequate forward field of vision for drivers. It also limits the type, size, and location of obstructions in the 180-degree forward field of vision of drivers of specific vehicle types. The second option was for NHTSA to formulate new requirements based on the criteria used in the agency's previous letters interpreting the Federal Motor Vehicle Safety Standards as they relate to HUD's appearing on a portion of the windshield. These interpretation letters have addressed whether certain areas of the front windshield may have HUD's. To evaluate these two options, NHTSA also requested answers to nine specific questions concerning HUD's and visibility.

NHTSA received 18 comments on the ANPRM. A number of commenters stated that rulemaking concerns HUD's was unnecessary at this time. Among the commenters taking this position were the Motor Vehicle Manufacturers Association (MVMA), Ford Motor Company (Ford), General Motors Corporation, Nissan Research & Development, Inc., PPG Industries, Inc., and Pilkington. These commenters stated that automotive HUD technology is being developed and refined rapidly and that rulemaking based on current technology may quickly become inappropriate. They further stated that regulating HUD's at this time may

undermine the refinement of the technology since future performance and safety requirements of HUD's could be limited by rulemaking based on current technology. These commenters stated that this could discourage technological innovations that may greatly enhance driver performance. Some commenters also questioned the safety need for the rulemaking since they were not aware of accident data demonstrating that HUD's compromise motor vehicle safety. The Federal Highway Administration (FHWA) stated that standards concerning application of HUD's could unduly encumber research and development on advanced driver information systems. The FHWA stated that this could have negative safety, congestion, and driver convenience effects. FHWA urged that any standards concerning HUD's be established in the future, when they can be based on more research, experiementation, and experience. Some commenters (e.g., Ford and MVMA) stated that HUD designs are now available that allow 70 percent minimum glazing transmittance and otherwise comply with Standard No. 205, *Glazing Materials.*

After considering comments on the ANPRM, NHTSA has decided to terminate this rulemaking. NHTSA finds the above arguments persuasive. Thus, NHTSA agrees with commenters that rulemaking concerning HUD's is premature at this time. NHTSA will obtain research data on the potential safety benefits and/or problems of HUD's and information on actual experience by drivers with HUD's, over the next few years. After reviewing and analyzing the research data and other information, NHTSA will again assess the need for rulemaking concerning HUD's.

In addition, while NHTSA is terminating this rulemaking concerning HUD's, the agency may address issues raised in the December 11, 1989 ANPRM concerning light transmissibility and areas "requisite for driving visibility" in future rulemakings to amend Standard No. 205. Any such amendments would apply to glazing generally and not be restricted to HUD's.

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

Issued: January 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-2021 Filed 1-28-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 591

[Docket No. 89-5; Notice 8]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that persons who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, must submit to the Administrator information in support of a request for admission and obtain in advance of such importation a letter of permission from NHTSA.

The purpose of the proposed requirement is to ensure that the request to import nonconforming vehicles and equipment for these purposes is, in fact, is not a subterfuge. In addition, if the requester intends to use the vehicle on the public roads, (s)he would have to obtain written permission from NHTSA for such use. However, the proposed requirement would not apply to original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards.

DATES: The comment closing date for the proposal is April 1, 1991. The effective date of the amendment would be 30 days after publication of the final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: Until January 31, 1990, the regulation governing the importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards was 19 CFR 12.80, a joint regulation of the Department of Transportation and Treasury, and the U.S. Customs Service. Under § 12.80(b)(1)(vii), a nonconforming vehicle or equipment item was allowed entry into the United States without the necessity for conformance, upon the declaration of its importer that it was "imported solely for the purpose of show, test, experiment, competition * * * repair or alteration". As a condition of entry, §§ 12.80 (c)(2) and (c)(3) required that each declaration be accompanied by an appropriate information statement specifying the use to be made of the vehicle or item, and its intended disposition.

The Imported Vehicle Safety Compliance Act of 1988, Public Law 100-562, amended the National Traffic and Motor Vehicle Safety Act of 1966 to vest primary authority to regulate importation in the Department of Transportation. One of these amendments added section 108(j) (15 U.S.C. 1397(j)) to the Vehicle Safety Act. Under this section, on and after January 31, 1990, NHTSA may allow the importation into the United States of any motor vehicle or item of motor vehicle equipment that does not conform to all applicable Federal motor vehicle safety standards "upon such terms and conditions as (NHTSA) may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events." This provision of the 1988 Act was the closest in words and effect to the § 12.80(b)(1)(vii) of the old joint importation regulation.

On April 25, 1989, in prospective implementation of this and other requirements of the 1988 Act, NHTSA proposed 49 CFR part 591, a regulation governing the importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards (54 FR 17772). Proposed § 591.5(j) and § 591.6(f) were intended to implement section 108(j), and, in essence, proposed the adoption of the existing requirement that an appropriate information statement accompany the entry declaration.

However, in developing the final rule, NHTSA realized that it had no authority of its own to seize motor vehicles entered pursuant to false declarations. It therefore sought a means to ensure the *bona fide* nature of imports under § 591.5(j) before they entered the United States and passed out of the agency's control. This effort was necessary because there is not requirement that these vehicles enter under a conformance bond. NHTSA was particularly concerned because the volume of imports under § 12.80(b)(1)(vii) had become equivalent to the number of nonconforming vehilces for which conformance verification is required. Further, with the restrictions placed upon nonconforming vehicles by the 1988 Act intended to reduce the number of "grey market" cars, the agency envisioned that a greater proportion of people would

attempt to enter vehicles under claims that importation was for the purpose of tests, experiments, demonstrations and the like. NHTSA recalled that some importers seeking vehicle entry under § 12.80(b)(2)(vii) had submitted statements of purpose whose truthfulness the agency had questioned. In those instances, the agency could only object to the entry under § 12.80(b)(2)(vii), and request Customs to require reentry of the nonconforming vehicle under § 12.80(b)(2)(iii), the declaration that the nonconforming vehicle would be brought into conformance.

At the conclusion of this review, the agency determined that NHTSA's authority to exempt a nonconforming vehicle from the importation prohibitions for reasons of testing, experimentation, etc., would be better exercised before vehicle entry rather than after, and that it could adopt a pre-approval requirement as one of the "terms and conditions" authorized by the 1988 Act. Accordingly, when the final rule was published on September 29, 1989 (54 FR 40069), section 591.5(j) required that the importer's declaration at the time of entry include a statement that the importer had previously received written permission from NHTSA. Section 591.6(f) set forth the requirement that the prospective importer submit in advance of such importation a written request containing the information previously required to accompany the declaration.

Petitions for reconsideration of this requirement were received from Volkswagen of America and Mazda Motors Corp. Statements of support were subsequently received from General Motors Corp. and Motor Vehicle Manufacturers Assocation. Commenters claimed that the requirement was unduly burdensome and objected to the fact that the requirement had been adopted without a specific proposal for it. In response to these petitions, the agency rescinded the requirement for prior approval, and adopted its April 1989 proposal which continued the existing practice of simultaneous submission. This action occurred on February 5, 1990 (55 FR 3742).

In developing the proposal contained in this notice, the agency has reviewed the substantive arguments that the petitioners raised, and has tried to accommodate to their concerns. The petitioners and their supporters believe that prior approval is "burdensome to the agency as well as to the manufacturers or other importers involved in such temporary importations." Volkswagen asked that if NHTSA believes it necessary to control these importations by means of letters of authorization, then the agency should publicly designate a specific contact and telephone number for such approvals, in order to expedite the process. It further commented that a delay in the authorization for the importation of a test vehicle for EPA certification testing, for which EPA importation regulations do not require prior authorization, could result in inconvenience to the EPA and the manufacturer.

NHTSA remains concerned with the possibility of abuse of this exception. However, after reviewing the comments, NHTSA realizes that the inclusiveness of the former requirement for prior approval of importation might indeed create an unnecessary burden upon original manufacturers of motor vehicles who sell their products in the United States, and who, in the course of product development and evaluation, are accustomed to importing prototypes, or completed vehicles manufactured by their foreign subsidiaries, joint venturers, or other unrelated vehicle manufacturers. NHTSA has no wish to encumber importers such as Volkswagen, Mazda, GM, and others, who are "original manufacturers" as that term is defined in part 591, and whose purpose in importation is directly related to legitimate business concerns of research, studies, and the other categories listed in section 108(j). NHTSA wishes to proceed on the basis that importations by original manufacturers will be in good faith. Such manufacturers have been meeting NHTSA's requirements over the years, and there is no need to require prior approval for their vehicle importations. However, since the 1988 Act became effective, NHTSA has noted an increasing number of importations, both accomplished and attempted, of personal vehicles by private importers under test declarations; once a vehicle has been admitted by Customs under Box 7, there is no DOT bond or other enforcement mechanism available to the agency (other than a possible civil penalty of up to $1,000) to compel the importer either to conform it or to export it. Accordingly, NHTSA is not proposing that the current requirement be changed for original manufacturers of motor vehicles that are certified as conforming to all applicable Federal motor vehicle safety standards, and who wish to import a motor vehicle of the same type that they manufacture (though such vehicle may be of a type the manufacturer does not sell in the United States). However, it is proposing that any other person wishing to import a vehicle pursuant to § 591.5(j) obtain prior approval.

NHTSA is also proposing reinstatement of the previous restriction upon importation § 591.7(c)) that a vehicle imported pursuant to § 591.5(j) may not be used on the public roads without the written approval of the Administrator, and adding to it the proposed requirement that the importer retain title to the vehicle at all times that it is in the United States, and, further, that it not lease it during that time.

Finally, NHTSA wishes to clarify that the 1988 Act does not change the definition of "motor vehicle" contained in the National Traffic and Motor Vehicle Safety Act: "any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways * * *." This definition has always excluded racing machines designed and manufactured for use on closed courses from the jurisdiction of NHTSA, as contrasted with modified stock cars which are "motor vehicles", and admissible, if noncomplying, for competitive racing events.

Impacts

NHTSA has considered the impacts of this proposed rule, and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". It is not significant under Department of Transportation regulatory policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles are not imported for resale. The impact upon the Federal government is that it would be required, in certain instances, to issue written approvals to original manufacturers who are importers of nonconforming vehicles and wish to use them on the public roads, and to other importers who are not original manufacturers. There should be little impact upon those who will have to seek prior approval. These importers need not wait until their vehicles arrive, but may apply to NHTSA in advance of the shipping date, and NHTSA will respond in two to five working days.

The agency has also considered the effects of this proposed rule in relation to the Regulatory Flexibility Act. Since the impact of this proposal is expected to be minimal (the writing of a letter and the response to it), I certify that it will not have a significant economic impact

upon a substantial number of small entities. Further, small organizations and governmental jurisdiction would not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles.

NHTSA has analyzed this proposed rule for purposes of the National Environmental Policy Act. The rule would not have a significant effect upon the environment.

The declaration requirements and submittal of written statements to NHTSA in this proposed rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion § 591.6(f) in the final rule published on September 29, 1989.

The agency has analyzed the proposed rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism", and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. Please submit 10 copies of written comments. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulations (49 CFR part 512).

All comments received before the close of business on the closing date indicated above will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested prsons continue to examine the docket for new material.

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

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles

In consideration of the foregoing, title 49, Code of Federal Regulations, part 591 would be amended as follows:

1. The authority citation would continue to read:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50.

2. Section 591.5(j) would be revised to read:

§ 591.5 Declarations required for importation.

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported for a temporary period solely for the purpose of:

(i) Research,

(ii) Investigations,

(iii) Studies,

(iv) Demonstrations or training, or

(v) Competitive racing events;

(2)(i) The importer has received written permission from NHTSA, or

(ii) The importer is an original manufacturer of motor vehicles that are certified to comply with all applicable Federal motor vehicle safety standards, and is a manufacturer of the type of motor vehicle as the motor vehicle it seeks to import; and

(3) The importer will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

3. Section 591.6(g) would be revised to read:

§ 591.6 Documents accompanying declarations.

* * * * *

(g) A declaration made pursuant to § 591.5(j) shall be accompanied by the following documentation:

(1) A declaration made pursuant to section 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that section. Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to that section shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment item, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use the vehicle or equipment item on the public roads is necessary. The statement shall also state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.

(2) A declaration made pursuant to § 591.5(j)(2)(ii) shall be accompanied by a written statement containing the information required in paragraph (g)(1) of this section.

(4) Section 591.7 (c), (d), and (e) would be added to read:

§ 591.7 Restrictions on importations.

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j), shall at all times retain title to it, shall not lease it, and may use it on the public roads only if written permission has been granted by the Administrator, pursuant to § 591.6(g).

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j) shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

(e) If the importer of a vehicle under § 591.5(j) does not intend to export, or destroy the vehicle or equipment item not later than 3 years after its entry, the importer shall request permission in writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time, subject to the limitations of § 591.7(b). Such a request must be received not later than 60 days before the date that is 3 years after the date of entry.

Issued on: January 23, 1991.

Michael B. Brownlee,

Acting Associate Administrator for Enforcement.

[FR Doc. 91–2022 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 56, No. 19
Tuesday, January 29, 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

Forest Service

Supplement to the Environmental Assessment for the Interim Standards and Guidelines for the Protection and Management of Red-Cockaded Woodpecker Habitat within three-quarter mile of Colony Sites, May 1990

AGENCY: Forest Service, USDA.

ACTION: Notice; availability of supplement for review and comment.

SUMMARY: The Southern Regional Office of the USDA Forest Service gives notice of the availability of a supplement to the Red-Cockaded Woodpecker interim standards and guidelines Environmental Assessment for review and comment. The scope of analysis in the supplement pertains to the Apalachicola and Wakulla Ranger Districts on the Apalachicola National Forest in Florida and the Vernon, Evangeline and Kisatchie Ranger Districts on the Kisatchie National Forest in Louisiana. The public will have until February 22, 1991, to provide the Regional Forester with written comments on the alternatives being considered in the supplement. The Regional Forester's preference in alternatives at this point is alternative 4; however, after considering the comments received, the Regional Forester will decide which alternative to implement. The affected Forest Plans will be amended accordingly. The interim standards and guidelines will be in effect until a decision is reached on the Supplement to the Final Environmental Impact Statement for the Regional Guide for the South and the Regional Guide is amended accordingly.

DATES: Comments must be received in writing on or before February 22, 1991.

ADDRESSES: Send comments to Joseph M. Dabney, Acting RCW EIS Team Leader, 1720 Peachtree Rd. NW., Atlanta, GA 30367. Contact Mr. Dabney at this address or at (404) 347–5097 for single copies of the supplement.

FOR FURTHER INFORMATION CONTACT: Joseph M. Dabney, Phone No. (404) 347–5097.

Dated: January 17, 1991.

Robert J. Lentz,

Deputy Regional Forester.

[FR Doc. 91–1636 Filed 1–28–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review: Certain Coater Blade Steel

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain coater blade steel.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 280 metric tons of certain coater blade steel for 1991 under the U.S.-EC steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 38.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain coater blade steel used in the printing industry. On January 22, 1991, the Secretary received an adequate petition from J.N. Eberle & Cie ("Eberle") of Augsburg, Federal Republic of Germany, through the Commission of the European Communities, requesting a short-supply allowance for 280 metric tons of this product for 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. Eberle is requesting short supply beause this product is not available in the United States and because it has insufficient quota available.

The requested material meets the following specifications:

Width range: 2.5–4.25 inches;

Thickness range: 0.012–0.050 inch;

Straightness deviation: Maximum of 0.024 inch/10 feet of length;

Flatness: Extra accurate, with maximum deviation of 0.0025 inch/inch of width;

Other: High wear resistance, edge finish without notches, no surface defects, hardened and tempered, narrow tensile strength tolerances with maximum deviation ±7 KSI.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary granted short-supply allowances for this product during each of the two immediately preceding years. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than February 6, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than February 5, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual

information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: January 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–2129 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Review: Certain Large Diameter Steel Line Pipe

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain large diameter steel line pipe.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 15,923 net tons of certain sizes of large diameter double submerged arc welded ("DSAW") line pipe for the first half of 1991 under Article 8 of the U.S.-EC and U.S.-Brazil steel arrangements and paragraph 8 of the U.S.-Japan steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 37.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain large diameter DSAW steel line pipe for the first half of 1991. On January 18, 1991, the Secretary received an adequate petition from Texas Gas Transmission Corporation ("Texas Gas") requesting a short-supply allowance for a total of 15,923.28 net tons of DSAW steel pipe generally meeting American Petroleum Institute grade X–65 specifications, 36 inches in diameter, and with wall thicknesses ranging from 0.331 inch to 0.477 inch. The quantity requested is broken down as follows: 9,597.34 net tons with a wall thickness of 0.331 inch; 2,596.51 net tons with a wall thichness of 0.397 inch; and 3,729.43 net tons with a wall thickness of 0.477 inch. This pipe is for use in the construction of a natural gas pipeline in the United States and must be delivered during the first half of 1991. Texas Gas requested short supply under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, and Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. Texas Gas in requesting short supply because the three U.S. manufacturers of this DSAW pipe cannot meet its needs for this product during the requested time period and because its potential foreign suppliers have insufficient regular export licenses available.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 15, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than February 5, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after February 5, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Graig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0165 or (202) 3277–0159.

Dated: January 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–2128 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Improving Acceptance of U.S. Products in International Markets; Opportunity for Interested Parties to Attend and Observe

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of workshop.

SUMMARY: On December 14, 1990, the National Institute of Standards and Technology announced a Pressure Vessel workshop cosponsored with The American Society of Mechanical Engineers, the first of a series of workshops in various products sectors, to gather information, insights, and comments to determine conformity assessment related activities (testing, certification, accreditation, quality assessment, etc.) in which the U.S. Government can assist U.S. industry in gaining product acceptance within other markets such as the European Community (EC). (See FR, Vol. 55, No. 241, December 14, 1990, page 51460.) Due to the large number of requests to attend, the workshop is relocated from room 4830 to the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

DATES: The Pressure Vessel workshop will be held at 9:30 a.m. on Thursday, January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Bert G. Simson, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A–603, Gaithersburg, MD 20899; (301–975–4006).

Dated: January 22, 1991.

John W. Lyons,

Director.

[FR Doc. 91–1974 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[P322B]

Marine Mammals; Application for Permit: College of the Atlantic

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U S.C. 1531–1544), and the regulations governing endangered fish and wildlife permit (50 CFR parts 217–222)

1. Applicant: Dr. Steven K. Katona, College of the Atlantic, 105 Eden St., Bar Harbor, ME 04609.

2. Type of Permit: Scientific research and scientific purposes.

3. Name and Number of Marine Mammals: Fin whales (*Balaenoptera physalus*) 500.

4. Type of Take: The applicant proposes to take by harassment the above species over a 5-year period for photoidentification and collection of skin biopsies. Of the 500 animals, 20 biopsy samples will be taken from females and their calves (10 each). Annual take will not exceed 100 animals.

The collection of this small number of samples from individuals of known maternal lineages will be used as a control for kinship analysis. Additional samples for comparison will be obtained from other countries include, but not limited to Canada, Greenland, and Italy. Animals from those regions will be biopsied by researchers currently working in each of these countries. Sampling will be conducted under the regulations of each country and samples will be exchanged in accordance with CITES provisions. Samples collected in the U.S. will be exported, if needed, to supplement studies initiated by collaborating scientists.

5. Location and Period of Activity: Sampling will begin in Spring 1991. Samples will be collected in waters between the mid-Atlantic Bight and Maine. Specifically, waters east of Cape Charles, MD, Cape May, NJ, Long Island, NY, Block Island, RI, Great South Channel and Massachusetts Bay, MA, Jeffreys Ledge, NH, and Mt. Desert Rock, ME.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910, (301) 427–2289;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281–9300; and

Director, Northwest Region, National Marine Fisheries Service, 7600 San Point Way, NE., BIN C15700, Seattle, Washington 98115, (206) 526–6150.

Dated: January 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–1983 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 653; P371A]

Marine Mammals; Modification of Permit; Duke University Marine Laboratory

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 653 issued to Duke University Marine Laboratory, Pivers Island, Beaufort, North Carolina 28516–9721, on November 4, 1988 (53 FR 46643) is modified in the following manner:

Section B.8 is deleted and replaced by:

8. This permit is valid with respect to the activities authorized herein until December 31, 1991.

This modification became effective December 31, 1990.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: January 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-1984 Filed 1-28-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service NOAA, Commerce.

ACTION: Modification No. 2 to Permit No. 518 (P273D).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR part 217–222). Scientific Research Permit No. 518 was issued to LGL Limited, Environmental Research Associates, 22 Fisher Street, P.O. Box 280, King City, Ontario, Canada LOG 1KO on August 23, 1985 (50 FR 35286). The Permit was modified on December 23, 1987, and is further modified as follows:

Delete Special Condition B.7. and replace with the following:

7. This Permit is valid with respect to the taking authorized herein until December 31, 1991.

All conditions currently contained in the Permit remain in effect.

This modification is effective on January 1, 1991.

Documents submitted in connection with Permit No. 518 and Modifications are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802.

Dated: January 17, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-1989 Filed 1-28-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Modification No. 1 to Permit No. 719 (P470).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 220.24 of the Regulations Governing Endangered Species (50 CFR parts 217–222), Scientific Research Permit No. 719 was issued to Dr. Walter H. Munk, Scripps Institution of Oceanography (A–025), Institute of Geophysics and Planetary Physics, La Jolla, California 92093, on December 7, 1990 (55 FR 51311), and is modified as follows:

Changes to section A. Number and Kind of Marine Mammals Replace A.1. with the following:

1. No more than 15,000 Antarctic fur seals, 100,000 southern elephant seals, 6900 sei whales, 42,100 fin whales, 103,300 minke whales, 54,700 killer whales, 1500 blue whales, 1000 humpback whales, 1000 southern right whales, 23,700 sperm whales, and an unspecified number of other species, all sizes, sex and age classes, shall be harrassed during the course of the experiment in the vicinity of Heard Island in the Southern Indian Ocean in an area of 40 km radius around a point 53° 14′ South, 74° 31′ East.

Add the following species to A.2:

2. Spectacled porpoise (*Australophocaena dioptrica*), Strap-toothed whale (*Mesoplodon layardi*), Andrew's beaked whale (*Mesoplodon bowdoini*), Arnoux's beaked whale (*Berardius arnuxii*), Hourglass dolphin (*Lagenorhynchus cruciger*).

All conditions currently contained in the Permit remain in effect.

This modification is effective on January 22, 1991.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7320, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Building., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service,

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396.

Dated: January 22, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-1990 Filed 1-28-91; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 634]

Marine Mammals; Modification of Permit; Marine World Foundation (P172C)

Notice is hereby given that pursuant to the provisions of § § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 634 issued to the Marine World Foundation, Marine World Parkway, Vallejo, California 94589, on April 29, 1988 (53 FR 16307), is modified in the following manner:

Section B.4 is deleted and replaced by:

4. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1992. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification became effective on December 31, 1990.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196).

Dated: January 18, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-1987 Filed 1-28-91; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 4 to Permit 573]

Marine Mammals; Modification of Permit; Dr. William Watkins (P70C)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and importing of Marine Mammals (50

CFR part 216), and § 220.24 of the regulations on endangered species (50 CFR parts 217–222), Scientific Research Permit No. 573 issued to Dr. William Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, on November 21, 1986 (51 FR 43422), as modified on December 31, 1987 (53 FR 9348), August 30, 1988 (53 FR 34139), and August 29, 1990 (FR 37343) is further modified as follows:

Section B.5 is replaced by:

5. The authority to take by harassment, tagging or other activities authorized herein, shall extend from the date of issuance through December 31, 1991.

This modification became effective on December 31, 1990.

Documents submitted in connection with the above modifications are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427–2289); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200)

Dated: January 18, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–1988 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Dr. Deane Renouf (P458)

On January 10, 1990, notice was published in the **Federal Register** (55 FR 891) that an application had been filed by Dr. Deane Renouf, Associate Professor, Ocean Sciences Centre, Memorial University of Newfoundland, St. John's, Newfoundland, Canada A1C 5S7, for a permit to obtain a blind harp seal (*Phoca groenlandica*) for use in behavioral research associated with sensory function and orientation as described in the application.

Notice is hereby given that on January 18, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930

Dated: January 18, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–1991 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request to Consult and Cancellation of a Limit on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

January 23, 1991.

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

ACTION: Announcing the rescission of a request to consult and cancelling a limit.

EFFECTIVE DATE: January 30, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

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 United States Government has decided to cancel the request made on February 23, 1990 to consult on imports of cotton and man-made fiber nightwear in Categories 351/651. Should it become necessary to discuss these categories with the Government of the Federative Republic of Brazil at a later date, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 23961, published on June 13, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on January 30, 1991, this directive cancels the limit established in the directive of June 6, 1990 for cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Brazil and exported during the period May 24, 1990 through March 31, 1991.

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. 91–2073 Filed 1–28–91; 8:45 am]

BILLING CODE 3510–DR–M

Announcing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

January 23, 1991.

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

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

EFFECTIVE DATE: January 30, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of 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).

A Memorandum of Understanding dated December 18, 1990 between the Governments of the United States and the United Arab Emirates establishes a limit for Category 352 for the period January 1, 1991 through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register**

notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1991.

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

Dear Commissioner: This directive amends, but does not cancel, the directive of December 21, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1991 through December 31, 1991.

Effective on January 30, 1991, you are directed to amend the December 21, 1990 directive to establish a limit for Category 352 at a level of 224,720 dozen.[1]

Imports charged to the limit for Category 352 for the period beginning January 1, 1990 and extending through December 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Import charges will be provided as data become available.

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. 91-2072 Filed 1-28-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing room at the Commission's Washington, DC headquarters located at room 532, 2033 K Street, NW., Washington, DC 20581, February 21, 1991, beginning at 9 a.m. and lasting until 1 p.m. The agenda will consist of:

Agenda

1. Opening remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;
2. Discussion of the state/federal regulatory issues involving commodity pools, particularly the effects of the Commodity pool guidelines issued by the North American Securities Administrators Association (NASAA);
3. Discussion of the recently passed California Commodity Law of 1990 and status report on the adoption of the NASAA Model State Commodity Code in other states;
4. Report on the continuing efforts to promote a consumer education program in the public schools in the upper midwest region, and discussion of a possible CFTC brochure on customer protection;
5. Report on CFTC reauthorization and other legislative issues; and
6. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 27, 1990 Seventh Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement of the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on January 23, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-1985 Filed 1-28-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force Board of Visitors Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on Tuesday, 30 April 1991, at 8 a.m., room 113, Building 843, Sheppard Air Force Base, Texas.

Purpose of the meeting is to review and discuss academic policies and issues relative to operation of CCAF. Agenda items include: The Air Training Command Program Plan; the impact on training of budget, accessions, and base closure; the Air Force Inspector General's review of CCAF impact; and policies affecting certificate and degree programs.

For further information contact Major Paul R. Brown, (205) 293-7937, Community College of the Air Force, Maxwell Air Force Base, Montgomery, Alabama 36112-6655.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91-2054 Filed 1-28-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF85-253-002, et al.]

North Powder Energy, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate filings

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

1. North Powder Energy, Inc.

[Docket No. QF85-253-000]

January 16, 1991.

On January 9, 1991, North Powder Energy, Inc., of 1580 Valley River Drive, Suite 290, Eugene, Oregon 97401-2148, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.2 MW facility is located on Oregon State Highway 237 in La Grande, Oregon and will consist of a biomass-fueled boiler (BMFB), a condensing steam turbine generator, and wood gasification system. The wood gasification system produces wood gas to be burned by the BMFB. The original certification was issued to Time Energy

[1] The limit has not been adjusted to account for any imports exported after December 31, 1990.

Systems, Inc. on May 6, 1985, 31 FERC ¶ 62,163 (1985). The instant recertification is requested due to transfer of ownership of both wood gasification system and the generating facilities from NCP Acquisition, Inc. and Catalyst Crisstad Corporation to Gary Marcus, which will be renamed to North Powder Woodgas Inc. and North Powder Energy, Inc., respectively.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Co.

[Docket No. ER90-567-001]

January 17, 1991.

Take notice that on January 14, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report modifying the Interconnection Agreement (IA) filed in Docket No. ER90-567-000 for the Sacramento Municipal Utility District (SMUD).

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

PG&E states that this submittal is in compliance with the Commission's order issued October 31, 1990. The significant modifications to the IA ordered by the Commission, in footnote 47 of the order, provide the option of complying by eliminating the market-based, pricing flexibility provisions from the coordination power services section. Under this method of compliance the IA is modified to initially provide for the only cost-based coordination power and transmission services.

Comment date: January 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota) v. Southern Minnesota Municipal Power Agency

[Docket No. EL91-13-000]

January 17, 1991.

Take notice that on January 9, 1991, Northern States Power Company (Minnesota) (hereinafter "NSP") tendered for filing a Complaint and Petition for Declaratory Relief pursuant to Rules 206 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.206; 385.207). NSP states that it complains of the conduct of Southern Minnesota Municipal Power Agency (hereafter "SMMPA") in failing to pay for services rendered in accordance with the terms of a series of contracts filed as rate schedules with this Commission, under which NSP provides transmission service, and NSP seeks a declaration of the rights and responsibilities of the parties under these rate schedules.

Comment date: February 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Baltimore Gas and Electric Co.

[Docket No. ER91-216-000]

January 17, 1991.

Take notice that on January 15, 1991, Baltimore Gas and Electric Company (BG&E) tendered for filing, as an initial rate schedule, a letter agreement between BG&E and Public Service Electric and Gas Company (PS) reflecting BG&E's sale to PS of one hundred percent of BG&E's entitlement for the use of the Pennsylvania-New Jersey-Maryland Interconnection's (PJM) transmission system which is used to import energy from systems to the west of PJM at a rate of three hundred seventy dollars ($370.00) per megawatt week each week for the period December 31, 1990—December 29, 1991. PS has concurred in this rate scheduled by its execution of the Letter Agreement. BG&E requests that the Commission waive its customary notice period and allow the rate schedule to become effective December 31, 1990.

Comment date: January 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Co.

[Docket No. ER89-49-001]

January 17, 1991.

Take notice that on January 14, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report modifying the Transmission Rate Schedule (TRS) filed in Docket No. ER39-49-000 for the Sacramento Municipal Utility District (SMUD) (Rate Schedule FERC No. 123).

PG&E states that this filing is being submitted in compliance with the Commission's order issued on October 31, 1990 in this docket. The significant modifications to the TRS ordered by the Commission concern: (1) The use of 1988 test year cost support; (2) the deletion of the area subfunction charge and related area loss factor; (3) the deletion of Southern California Edison restriction; (4) the modification of the curtailment in Section C.2; (5) the modification of Section B.6 regarding Mitigation Measures; (6) the modification of SMUD's security deposit obligations; (7) the modification of SMUD's obligations under Section G.2 of the TRS; and (8) the reduction of the rate of return on common equity.

Comment date: January 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER91-210-000]

January 17, 1991.

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing on January 10, 1991, an agreement between Niagara Mohawk and Selkirk Cogen Partners II, L.P. (Selkirk) dated December 13, 1990 providing for certain transmission services to Selkirk. This agreement provides for the transmission and delivery by Niagara Mohawk of specified quantities of power produced by Selkirk to be sold by Selkirk to Consolidated Edison Company of New York (Con Ed) under separate agreement. Firm services under this agreement are proposed to commence as of the commercial operation date of Selkirk's Production Facility, as that term is defined in the Selkirk-Con Ed power purchase agreement (The commercial operation date is currently projected by Selkirk to be January 1993).

Niagara Mohawk requests waiver of the Commission's notice requirements. 18 CFR 35.3(b), 35.11. Waiver is warranted because approval of this contract at this time is necessary for the successful obtainment of financing for construction of the Production Facility.

Copies of this filing were served upon Selkirk and the New York State Public Service Commission.

Comment date: January 28, 1991, in accordance with Standard Paragraph E end of this notice.

7. South Carolina Public Service Authority

[Docket No. ES91-13-000]

January 17, 1991

Take notice that on January 14, 1991, South Carolina Public Service Authority ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue not more than $150 million in tax-exempt revenue bonds. The Applicant asks, in the alternative, an order dismissing the application for lack of jurisdiction.

Comment date: February 13, 1991, in accordance with Standard paragraph E at the end of this notice.

8. American Electric Power Service Corp.

[Docket No. ER90–26–005]

January 17, 1991

Take notice that on January 14, 1991, American Electric Power Service Corporation tendered for filing its Compliance Refund Report pursuant to the Commission's Letter Order issued October 2, 1990 in this docket.

Comment date: January 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co.

[Docket No. ER91–209–000]

January 17, 1991

Take notice that the Northeast Utilities Service Company ("NUSCO" on behalf of the Connecticut Light and Power Company ("CL&P"), Western Massachusetts Electric Company, Holyoke Water Power Company and Holyoke Power and Electric Company (each a subsidiary of Northeast Utilities and hereafter collectively called the "NU Companies") tendered for filing a Transmission Service Agreement, dated November 29, 1990 (the "amended and restated TSA") between the NU Companies and the Connecticut Municipal Electric Energy Cooperative ("CMEEC"). The amended and restated TSA when it becomes effective would amend, restate, and supercede the currently-effective Transmission Service Agreement dated September 25, 1980 between the NU Companies and CMEEC. (FERC Rate Schedule Nos. CL&P 217 and Supplements 1–5, WMECO 180, HWP 31, and HP&E 21).

NUSCO states that the amended and restated TSA is part of a settlement arrangement that resolves ambiguities with respect to presently effective arrangements between the parties. In addition, NUSCO points out that CMEEC has advised the Commission that the amended and restated TSA resolves all of its concerns with Northeast Utilities' proposed acquisition of Public Service Company of New Hampshire.

NUSCO has requested waiver of the Commission's customary notice requirements in order that the changed rate schedule be permitted to become effective on January 1, 1991.

NUSCO states that copies of the filing were served upon CMEEC and on the Connecticut Department of Public Utility Control.

Comment date: January 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Canal Electric Co.

[Docket No. ER91–217–000]

January 18, 1991

Take notice that on January 15, 1991, Canal Electric Company (Canal) tendered for filing a Participation Agreement between itself, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company (Commonwealth), which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Capacity Acquisition Commitment for Phase II of the Hydro-Quebec Project (FERC Rate Schedule No. 21, Supplement No. 6). Canal states that the Participation Agreement provides that Canal will pay any savings it realizes as a result of its participation in Phase II of the Hydro-Quebec Project to Cambridge and Commonwealth, and that Cambridge and Commonwealth, in turn, will reimburse Canal for all payments it makes in support thereof. Canal has requested that the Commission waive its notice requirements pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate schedule to become effective as of November 1, 1990, the date on which Phase II of the Hydro-Quebec Project began commercial operation.

Comment date: February 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Public Service Co.

[Docket No. ER91–57–000]

January 18, 1991.

Take notice that on January 15, 1991, Maine Public Service Company (MPS) tendered for filing certain supplemental information requested by the Commission Staff in connection with the subject initial rate scheduling filing pertaining to agreements entered into with Houlton Water Company (Houlton) covering transmission and back-up services for MPS for Houlton's entitlement in the Maine Yankee Atomic Power Plant. More specifically, MPS supplemented its filing on three matters: (1) Houlton's actual billing determinants under Rate 0–1, (2) the reference to the relationship of a November 20, 1985 Power Contract and (3) the recovery of transmission costs via both the transmission charges and back-up charges.

Comment date: January 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power and Light Co.

[Docket No. ER90–218–000]

January 18, 1991.

Take notice that on the Dayton Power and Light Company (DP&L) tendered for filing on January 14, 1991, amendments to the Interconnection Agreements dated as of March 1, 1987, between DP&L and the Ohio Edison Company (Ohio Edison) and May 1, 1967, between DP&L and the Ohio Power Company.

These proposed amendments consist of language changes to ensure consistency with the language contained in previous filings.

A copy of the filing was served upon Ohio Edison, Ohio Power and the Public Utilities Commission of Ohio.

Comment date: February 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2005 Filed 1–28–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–904–000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

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

1. K N Energy, Inc.

[Docket No. CP91–904–000]

January 17, 1991.

Take notice that on January 11, 1991, K N Energy, Inc. (K N), P.O. Box 150265, Lakewood, Colorado 80215, filed in Docket No. CP91–904–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Reglations under the Natural Gas Act for authorization to construct and operate sales taps for the

delivery of gas to end users and under K N's blanket certificate issued in Docket No. CP83–140–000, as amended, pursuant to section 7 of the National Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are no prohibited by any of its existing tariffs, and that the additional taps will have no significant impact on its peak day and annual deliveries.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP91–935–000]

January 17, 1991.

Take notice that on January 14, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91–935–000, a request pursuant to § 157.205 of the Commisson's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in the state of Arkansas, under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER states that it proposes to construct and operate four new sales taps and related facilities, all for the delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic, commercial and industrial consumers. AER further states that the total estimated initial annual and peak day volumes to be delivered to ALG would be 390,275 Mcf and 904 Mcf, respectively. AER indicates that the total cost of the proposed facilities would be approximately $63,733. The natural gas would be delivered from general system supply, which AER states is adequate to provide the service.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Co.

[Docket Nos. CP91–908–000, CP91–909–000, CP91–910–000, CP91–911–000, CP91–912–000]

January 17, 1991.

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

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

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91–909–000 (1–11–91)	Midcon Marketing Corp. (marketer).	721,000 721,000 263,165,000	System	Various	4–30–86, interruptible.	ST91–6206–000 12–13–90.
CP91–909–000 (1–11–91)	Arkla Energy Marketing Company (marketer).	206,000 206,000 75,190,000	System	Various	10–26–88, FTS, firm.	ST91–5798–000 11–12–90.
CP91–910–000 (1–11–91)	Transamerican Gas Transmission (intrastate pipeline).	154,500 154,500 56,392,000	LA, TX	LA, TX, FL, MS	4–23–86, interruptible.	ST91–6009–000, 11–30–90.
CP91–911–000 (1–11–91)	Texican Natural Gas Company (marketer).	1,545 1,545 563,925	LA	MS	12–1–90, FTS, firm	ST91–6061–000, 12–1–90.
CP91–912–000 (1–11–91)	Victoria Gas Corporation (marketer).	29,355 29,355 10,714,575	LA	LA, MS, TX	3–3–86, interruptible.	ST91–6207–000 12–12–90.

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

United Gas Pipe Line Co., Williams Natural Gas Co., Williams Natural Gas Co., Columbia Gulf Transmission Co.

[Docket Nos. CP91–932–000,[2] CP91–933–000, CP91–934–000, and CP91–936–000]

January 17, 1991.

Take notice that on January 14, 1991, Applicants tiled in the above referenced dockets, prior notice requests pursuant to §§ 157;205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

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

[2] These prior notice requests are not consolidated.

provided by the Applicants and is included in the attached appendix.

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

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] / Avg, annual	Points of [2] Receipt	Delivery	Start up date rate schedule	Related [3] dockets
CP91-932-000 (1-14-91)	United Gas Pipe Line Company, P.O. Box 1478 St., Houston, TX, 77251-1478.	Victoria Gas Corporation.	103,000 103,000 37,595,000	AL, LA, MS, TX	AL, DFL, LA, MS, TX.	12-12-90, ITS	CP88-6-000, ST91-6209-000.
CP91-933-000 (1-14-91)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Reliance Gas Marketing Company.	285 Dt 285 DT 104,025 Dt	CO, KS, MO, OK, TX, WY.	KS, MO	12-1-90, FTS	CP86-631-000, ST91-6203-000.
CP91-934-000 (1-14-91)	Williams Natural Gas Company.	Pittsburg Corning Corporation.	1,200 Dt 1,200 DT 438,000 Dt	CO, KS, MO, OK, TX, WY.	MO	12-2-90, FTS	CP86-631-000, ST91-6200-000.
CP91-936-000 (1-14-91)	Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001.	Shell Gas Trading Company.	57,000 30,000 10,950,000	TX		12-2-90, ITS-2	CP86-239-000, ST91-6082-000.

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

5. Natural Gas Pipeline Co. of America, Colorado Interstate Gas Co.

[Docket Nos. CP91-922-000, CP91-923-000, CP91-927-000, and CP91-928-000]

January 17, 1991.

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, and Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, (Applicants) filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket Nos. CP86-582-000 and CP86-589, *et al.*, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[3]

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

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. date filed	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP91-922-000 (1-14-91)	Williams Gas Marketing Company (Marketer).	25,000 10,000 3,650,000	AR, CO, Il, IA, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	CO, IL, IA, LA, OLA, NM, OK, TX, OTX.	11-6-90, ITS, Interruptible.	ST91-5577, 11-8-90.
CP91-923-000 (1-14-91)	MidCon Marketing Corporation (Marketer).	200,000 75,000 27,375,000	AR, CO, IL, IA, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	CO, IL, LA, OLA, MO, NM, OK, TX, OTX.	4-3-90, ITS, Interruptible.	ST91-5578, 11-9-90.
CP91-927-000 (1-14-91)	Enron Gas Marketing, Inc. (Marketer).	90,000 20,000 7,300,000	TX, WY	TX	9-24-90, TI-1, Interruptible.	ST91-668, 9-25-90.
CP91-928-000 (1-14-91)	Chevron U.S.A. Inc. (Producer).	37,000 10,000 2,000,000	WY	WY	8-1-90, T1-1, Interruptible.	ST91-5511 10-27-90.

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

6. Texas Gas Transmission Corp., Northern Natural Gas Co., Division of Enron Corp., Northern Natural Gas Co., Division of Enron Corp., Trunkline Gas Co., Columbia Gulf Transmission Co., Columbia Gulf Transmission Co.

[Docket Nos. CP91-946-000, CP91-947-000, CP91-948-000, CP91-949-000, CP91-950-000 and CP91-951-000]

January 18, 1991.

Take notice that on January 16, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

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

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-946-000 (1-16-91)	TXG Gas Marketing Company.	25,000 25,000 9,125,000	Various	OH	10-23-90, FT, Firm.	ST91-5830-000 12-1-90.
CP91-947-000 (1-16-91)	Mobil Natural Gas Inc. (Marketer).	37,000 27,750 13,505,000	KS	KS	11-30-90, FT-1, Firm.	ST91-5814-000 12-1-90.
CP91-948-000 (1-16-91)	Mobil Natural Gas Inc. (Marketer).	63,000 47,250 22,995,000	KS	KS	11-30-90 (FT-1, Firm.	ST91-5812-000 12-1-90.
CP91-959-000 (1-16-91)	Delhi Gas Pipeline Corporation (Intrastate Pipeline).	100,000 100,000 [2] 36,500,000	OLA, OTX, TX, IL, LA, TN, TX.	LA	11-7-90, PT, Interruptible.	ST91-5587-000 11-8-90.
CP91-950-000 (1-16-91)	American Central Gas Companies, Inc. (Marketer).	20,000 10,000 3,650,000	OLA, LA	LA	11-16-90, ITS-2, Interruptible.	ST91-6251-000 12-15-90.
CP91-951-000 (1-16-91)	Louis Dreyfus Energy Corporation (Marketer).	100,000 40,000 14,600,000	OLA, LA	LA	12-12-89, [3] ITS-1 & 2, Interruptible.	ST91-6260-000 12-14-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Trunkline's quantities are in Mcf.
[3] As amended.

Applicant's address	Blanket docket
Columbia Gulf Transmission Company, 2603 Augusta, P.O. Box 683, Houston, Texas 77001.	CP86-239-000
Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301.	CP88-686-000
Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642.	CP86-586-000

7. Alabama-Tennessee Natural Gas Co. United Gas Pipe Line Co.

[Docket Nos CP91-903-000, CP91-905-000, CP91-906-000 and CP91-907-000]

January 18, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the National Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

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

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

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Alabama-Tennessee Natural Gas Company, Post Office Box 918, Florence, AL 35631.

Blanket Certificate Issued in Docket No. CP89-2201-000.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-903-000 (01-11-91)	Meth Corporation (Marketer).	100,000 100,000 36,000,000	Various	AL, IN	11-30-90 IT	ST91-5941-000.

[1] Quantities are shown in dth unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: United Gas Pipe Line Company, Post Office Box 1478, Houston, TX 77251-1478.

Blanket Certificate Issued in Docket No. CP88-6-000.

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[3] avg, annual	Points of		Start up date, rate schedule	Related [4] dockets
			Receipt	Delivery		
CP91-905-000 (01-11-91)	NGC Transportation, Inc. (Marketer).	154,500 154,500 56, 392, 500	Offshore LA, TX, MS, AL, Offshore TX.	LA, TX, FL MS, Offishore LA, Offshore TX.	11-26-90 ITS	ST91-6208-000.

[3] Quantities are shown in MMBtu unless otherwise indicated.
[4] If an ST docket is shown, 120-day transportation service was reported in it.

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[4] avg, annual	Points of		Start up date, rate schedule	Related [5] dockets
			Receipt	Delivery		
CP91-906-000 (01-11-91)	Rangeline Corporation (Marketer).	30,900 30,900 11,278,500	Offshore LA, TX, MS	LA, TX, MS, AL, FL	12-07-90, ITS	ST91-6014-000.
CP91-907-000 (01-11-91)	MidCon Marketing Corp. (Marketer).	721,000 721,000 263,165,000	TX, LA, MS, Offshore LA, AL, NM, UT, OK.	LA, TX, MS, AL, FL, Offshore LA, Offshore TX.	12-12-90 ITS	ST91-6008-000.

8. Williams Natural Gas Co.

[Docket Nos. CP91-914-000,[6] CP91-915-000 and CP91-916-000]

January 18, 1991.

Take notice that on January 11, 1991, Williams Natural Gas Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

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

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak Day,[1] avg. annual	Points of		Start up rate schedule	Related [2] dockets
				Receipt	Delivery		
CP-91-914-000 (1-11-91)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Phillips 66 Natural Gas Company.	5,000 5,000 1,825,000	CO, KS, MO, OK, TX, WY.	KS, MO, OK	12-1-90, FTS	CP86-631-000, ST91-6198-000.
CP91-915-000 (1-11-91)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Reliance Gas Marketing Co.	3,320 3,320 1,211,800	CO, KS, MO, OK, TX, WY.	KS, MO, OK	12-1-90, FTS	CP86-631-000, ST91-6202-000.
CP91-916-000 (1-11-91)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Vesta Energy Company.	2,842 2,842 1,037,330	CO, KS, MO, OK, TX, WY.	KS, MO, OK	12-1-90, FTS	CP86-631-000, ST91-6199-000.

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

9. Midland Cogeneration Venture Limited Partnership

[Docket No. CI91–34–000]

January 18, 1991.

Take notice that on January 4, 1991, Midland Cogeneration Venture Limited Partnership (MCV) of 100 Progress Place, Midland Michigan 48640, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a limited-term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce of imported natural gas and gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

10. Seminole Gas Marketing

[Docket No. CI91–36–000]

January 18, 1991.

Take notice that on January 10, 1991, Seminole Gas Marketing (Seminole), c/o J.V. Trading Inc., P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of all NGPA categories of NGA gas, imported and/or liquified natural gas, and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: Feburary 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

11. Louisiana State Gas Corporation

[Docket No. CI91–37–000]

January 18, 1991.

Take notice that on January 11, 1991, Louisiana State Gas Corporation (LSGC), an intrastate pipeline company, of 333 North Belt, suite 400, Houston, Texas 77060, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales in interstate commerce for resale of natural gas from source (domestic or foreign) which would be subject to the Commission's NGA jurisdiction including imported gas and gas purchased from "non-first-sellers" such as gas sold to LSGC pursuant to interstate pipeline discount sales authority, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of the notice.

12. ANR Supply Co., Coastal States Gas Transmission Co.

[Docket Nos. CI86–419–005 [1] and Docket No. CI88–274–003]

January 18, 1991.

Take notice that on January 11, 1991, ANR Supply Company and Coastal States Gas Transmission Company (Applicants) of 9 Greenway Plaza, Houston, Texas 77046, each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI88–419–004 and CI88–274–002 for terms expiring March 31, 1991, to extend such authorizations for unlimited terms or such shorter terms as the Commission deems appropriate, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Comment date: February 6, 1990, in accordance with Standard Paragraph J at the end of this notice.

13. Coastal Gas Marketing Co.

[Docket No. CI89–194–003]

January 18, 1991.

Take notice that on January 11, 1991, Coastal Gas Marketing Company (CGM) of 9 Greenway Plaza, Houston, Texas 77046, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket limited-term certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89–194–001, as amended in Docket No. CI89–194–002, for a term expiring March 31, 1991, to extend such authorization for an unlimited term or such shorter term as the Commission deems appropriate and to include sales for resale of imported natural gas and liquified natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

14. Northern Minnesota Utilities

[Docket No. CI91–28–000]

January 18, 1991.

Take notice that on December 20, 1990, Northern Minnesota Utilities (NMU), a local distribution company, of 910 Cloquet Avenue, Cloquet, Minnesota 55720, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize the sale for resale in interstate commerce of imported gas, including liquified natural gas, and all NGPA categories of gas subject to the Commission's NGA jurisdiction. NMU also requests that the Commission state that the validity of NMU's exclusion under section 1(c) of the NGA is not impaired by activity conducted under the authorization requested, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

15. JMC Fuel Services, Inc.

[Docket No. CI91–33–000]

January 18, 1991.

Take notice that on January 4, 1991, JMC Fuel Services, Inc. (JMC), c/o John B. Howe, One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

16. Connecticut Natural Gas Corp.

[Docket No. CI91-35-000]

January 18, 1991.

Take notice that on January 8, 1991, Connecticut Natural Gas Corporation (Connecticut Natural), a local distribution company, of 100 Columbus Boulevard, Hartford, Connecticut 06144, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize the sale for resale in interstate commerce of all NGPA categories of gas subject to the Commission's jurisdiction under the NGA, imported natural gas, and gas purchased pursuant to the authority of an interstate pipeline to make interruptible sales of surplus system gas. Connecticut Natural also requests that the Commission state that the validity of Connecticut Natural's exclusion under section 1(c) of the NGA is not impaired by activity conducted under the authorization requested, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

17. Columbia Gas Transmission Corp., Columbia Gas Transmission Corp. and Columbia Gas Transmission Corp.

[Docket Nos. CP91-937-000, CP91-938-000 and CP91-939-000]

January 18, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under a blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

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

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

Comment date: March 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-937-000 (1-14-91)	Columbia Gas Transmission Corp., 1700 MacCorkle Ave., SE., Charleston, WV 25314.	Columbia Gas Development Corp..	300 240 39,000	WV, PA	PA	11-21-90 FTS	CP86-240-000, ST91-5582-000.
CP91-938-000 (1-14-91)	Columbia Gas Transmission Corp., 1700 MacCorkle Ave., SE., Charleston, WV 25314.	Atlas Gas Marketing, Inc..	130,000 104,000 47,450,000	KY, OH, WV, PA, NY, MD, VA, NJ.	KY, VA, MD, PA	12-5-90 ITS	CP86-240-000, ST91-5847-000.
CP91-939-000 (1-14-91)	Columbia Gas Transmission Corp., 1700 MacCorkle Ave., SE., Charleston, WV 25314.	TXG Gas Marketing Co..	50,000 40,000 18,250,000	KY, OH, WV, PA, MD, VA, NJ.	PA, NY, OH, MD, KY, NJ, WV.	11-1-90 ITS	CP86-240-000, ST91-5875-000.

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

Standard Paragraph

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

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

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

Lois D. Cashell,

Secretary.

[FR Doc. 91-2006 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-39-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 22, 1991.

Take notice that on January 11, 1991 ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Substitute Seventh Revised Sheet No. 570, under Rate Schedule X-64, of Original Volume No. 2 of its F.E.R.C. Gas Tariff to be effective January 1, 1991.

ANR states that this compliance filing is being made to eliminate the 5% inflation adjustment to operation and maintenance expenses in compliance with the Commission's Letter Order dated December 28, 1990 in Docket No. RP91-39-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2007 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-86-003 & RP90-128-001]

Chandeleur Pipe Line Co.; Proposed Changes in the FERC Gas Tariff

January 22, 1991.

Take notice that Chandeleur Pipe Line Company, on January 14, 1991, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The tariff sheet is this:

First Revised Sheet No. 4 Superseding Original Sheet No. 4 entitled "Statement of Rates".

This tariff sheet reduces the rate to 5.05 cents per mcf pursuant to the Commission's Opinion (53 FERC 61,246).

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2008 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-23-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 22, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on January 16, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1991.

ESNG states that such tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. ESNG inadvertently picked up the incorrect LGA-1 Capacity Charge when tracking Transcontinental Gas Pipe Line Corporation's LGA-1 Capacity Charge in its GRI tracking filing to be effective January 1, 1991. The substitute tariff sheets are being filed hereto to correct the oversight. The tariff sheets filed by ESNG on December 21, 1990 showed the LGA-1 Capacity Charge at $.1710 and this filing properly tracks the rate to be billed at $.1700.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 91-2009 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

January 22, 1991.

Take notice that Equitrans, Inc. (Equitrans) on January 15, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective February 1, 1991:

Substitute Twenty-Third Revised Sheet No. 10

Substitute Thirteenth Revised Sheet No. 34

This filing is intended to replace in its entirety the filing made by Equitrans on January 9, 1991 in Docket No. TQ91-4-24-000, which Equitrans has withdrawn.

This filing, unlike the filing that Equitrans withdrew reflects the currently effective charges of Tennessee Gas Pipeline Company which Equitrans is seeking to reflect in its rates.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.0188 per dekatherm (Dth) and an increase in the commodity cost of $0.0694 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase $0.0703 per Dth.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on February 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211

(1990). All such protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are alredy parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2010 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT91-2-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 22, 1991.

Take notice that on January 16, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing First Revised Sheet No. 145, Original Sheets Nos. 146 and 147, First Revised Sheets Nos. 246, 247, 248, 249, 250 and 251, and Original Sheet No. 246-A, to its FERC Gas Tariff, Second Revised Volume No. 1, proposed to become effective on January 16, 1991.

First Revised Sheet No. 145 and Original Sheets 146-147 contain the tariff provisions required by § 250.16(b)(1) of the Commission's Regulations (18 CFR 250.16(b)(1)) to bring National into compliance with the requirements of Order No. 497 applicable to interstate natural gas pipelines which conduct transportation transactions with affiliated natural gas marketing or brokering entities.

First Revised Sheets Nos. 246-251 and Original Sheet 246-A revise the Transportation Service Request and Customer Nomination Forms included in National's original Notice of Acceptance and Compliance Filing dated December 3, 1990 concerning National's open-access transportation Certificate (Docket Nos. RP86-136-000, RP86-136-007, RP89-49-010, RP90-14 and CP89-1582-002). The revisions are said by National to make these forms more understandable, user-friendly and similar to forms used by other open-access interstate pipelines.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211). All such motions to intervene or protests should be filed on or before February 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2011 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-36-001]

Northern Natural Gas Co.; Compliance Filing and Request For Waiver

January 22, 1991.

Take notice that Northern Natural Gas Company (Northern), on January 14, 1991, submitted information in purported compliance with Ordering Paragraph D of the Commisison's December 28, 1990, order in Docket No. RP91-36-000. Northern states such order required it to support the absorption of an amount of take-or-pay costs equal to twenty-five percent, as agreed to pursuant to Section V(c) of the Settlement in Docket No. RP88-259, *et al.*

Northern states Schedule A indicates that when interest is calculated assuming a sixty-month recovery period, Northern would absorb an amount equal to 26.3 percent. Northern states it proposed to recover the principal over a fifty-month recovery period so that, for administrative convenience, the surcharge associated with both litigation exception filings would terminate on February 29, 1995. Northern avers no party opposed or protested the fifty-month recovery period.

Northern states it again requests any waiver necessary to allow the recovery over the fifty-month period as requested. However, Northern states it would not object to a revision to its proposal requiring recovery over a sixty-month period.

Any person desiring to protest said hearing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1990). All such protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2012 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-72-000]

Texas Eastern Transmission Corp.; Proposed Changed in FERC Gas Tariff

January 22, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 15, 1991 tendered tariff sheets for filing as part of its FERC Gas tariff, Fifth Revised Volume No. 1, with a proposed effective date of February 15, 1991.

Texas Eastern states that the purpose of this filing is to reestablish in response to the Commission's Order No. 528 the monthly take-or-pay surcharges billed by Texas Eastern to its customers in order to recover surcharges billed to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas) for its take-or-pay costs paid directly to producers. Texas Eastern states further that this filing is based on Texas Gas' December 26, 1990 filing in Docket No. RP91-61-000, in which it allocated 50 percent of its costs among its customers on the basis of each customer's D1 level, and 50 percent on the basis of each customer's D2 level, both measured as of the dates of each of Texas Gas' original filings to recover take-or-pay costs.

Texas Eastern states that copies of the filing were served on Texas Eastern's affected customers and interested state commissions and all parties to its prior take-or-pay dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2013 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. RP91-73-000]

January 22, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 15, 1991, tendered primary tariff sheets and alternate tariff sheets for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, with a proposed effective date of February 15, 1991.

Texas Eastern states that the purpose of this filing is to reestablish in response to the Commission's Order No. 528 the monthly take-or-pay surcharges billed by Texas Eastern to its customers in order to recover take-or-pay surcharges billed to Texas Eastern by United Gas Pipe Line Company (United). Texas Eastern states further that the present filing is conditioned on the Commission approving United's pending settlement, and that it reserves its right to refile under a different allocation methodology in the event United makes any subsequent filing incorporating a methodology alternative to that reflected in United's pending settlement.

Texas Eastern states that copies of the filing were served on Texas Eastern's affected customers and interested state commissions and all parties to its prior take-or-pay dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2014 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-74-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 22, 1991

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 15, 1991, tendered primary tariff sheets and alternate tariff sheets for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, with a proposed effective date of February 15, 1991.

Texas Eastern states that the purpose of this filing is to reestablish in response to the Commission's Order No. 528 the monthly take-or-pay surcharges billed by Texas Eastern to its customers in order to recover take-or-pay surcharges billed to Texas Eastern by Southern Natural Gas Company (Southern).

Texas Eastern states that copies of the filing were served on Texas Eastern's affected customers and interested state commissions and all parties to its prior take-or-pay dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2015 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-75-000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

January 22, 1991

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 15, 1991, tendered primary tariff sheets and alternate tariff sheets for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, with a proposed effective date of February 15, 1991.

Texas Eastern states that the purpose of this filing is to reestablish in response to the Commission's Order No. 528 the monthly take-or-pay surcharges billed by Texas Eastern to its customers in order to recover take-or-pay surcharges billed to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas) to flow through Texas Gas' upstream supplier charges.

Texas Eastern states that copies of the filing were served on Texas Eastern's affected customers and interested state commissions and all parties to its prior take-or-pay dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2016 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 22, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas

Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB number: 3060–0402.
Title: Application for a New or Modified Microwave Radio Station License Under part 21.
Form number: FCC Form 494.
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of responses: On occasion.
Estimated annual burden: 5,000 responses, 2 hours average burden per response, 78,000 hours total annual burden.
Needs and uses: The FCC 494 is used by telecommunications entitles to apply for facility licenses in the services governed by 47 CFR part 21. The data is used to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91–2032 Filed 1–28–91; 6:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted To the Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785

OMB number: 3060–0020.
Title: Application for Ground Station Authorization in the Aviation Services.
Form number: FCC Form 406.
Action: Revision.
Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.
Frequency of response: On occasion reporting
Estimated annual burden: 3,275 responses; 1.25 hours average burden per response; 4,094 hours total annual burden.
Needs and uses: FCC Rules require that applicants file the FCC Form 406 to apply for new, modification, renewal with modification or for an assignment of a Ground Station authorization. The data collected by the FCC to determined eligibility, issue licenses and update databases. The revision of this information collection is due, in part, to incorporation of fee data into the form.

OMB number: 3060–0157.
Title: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).
Action: Extension.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of response: On occasion reporting.
Estimated annual burden: 300 responses; 15 minutes (.25) average burden per response; 75 hours total annual burden.
Needs and uses: Section 73.99 requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. The letter is used by FCC staff to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

OMB number: None.
Title: Section 73.1620(g), Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (Report and Order, Gen. Doc. 90–264).
Action: New collection.
Respondents: Business or other for-profit (including small businesses).
Frequency of response: Upon completion of the construction of a new broadcast station and one year thereafter.
Estimated annual burden: 10 responses; 5 hours average burden per response; 50 hours total annual burden.
Needs and uses: The Commission recently modified its policies and rules regarding the conduct of comparative hearings involving applicants for new broadcast facilities. The Commission determined that it could monitor applicant adherence to such promises by requiring the successful applicant to report deviations from their promises, if any, in their application for a license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91–2033 Filed 1–28–91; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Ocean Highway and Port Authority of Nassau County Nassau Terminals, Inc.

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.: 224–010918–002.
Title: Ocean Highway and Port Authority of Nassau County/Nassau Terminals, Inc. Terminal Agreement.
Parties: Ocean Highway and Port Authority of Nassau County (Authority), Nassau Terminals, Inc.
Filing Party: Mr. Wayne D. Stubbs, Ocean Highway and Port Authority of Nassau County, 11 North 14th Street, Fernandina Beach, FL 32034.
Synopsis: The Agreement amends and restates the basic agreement to change the name of the Authority's terminal operator at the Port of Fernandina, Florida to Nassau Terminals, Inc. and provides for the disposition of certain rights and duties with respect to the

Authority's revenue bonds. The term of the Agreement is for ten years.

Dated: January 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-1976 Filed 1-28-91; 8:45 am]

BILLING CODE 6730-01-M

Port of Oakland/Sea-Land Service, Inc. et al.; 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.: 224-003914-005.

Title: Port of Oakland/Sea-Land Service, Inc. Terminal Agreement.

Parties:

Port of Oakland

Sea-Land Service, Inc.

Synopsis: The Agreement amends the basic agreement to conform with Agreement No. 224-200469 regarding secondary use and retention of revenues for wharfage in excess of 1,750,000 revenue tons in a contract year.

Agreement No.: 224-004067-008.

Title: Port of Oakland/Stevedoring Services of America Terminal Agreement.

Parties:

Port of Oakland

Stevedoring Services of America

Synopsis: The Agreement deletes the Berth 22 area from the marine terminal facilities covered by the basic agreement.

Agreement No.: 224-200469.

Title: Port of Oakland/Sea-Land Service, Inc. Terminal Agreement.

Parties:

Port of Oakland (Port)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement provides for Sea-Land's 5-year preferential assignment of certain premises at Berth 22 in the Port's Outer Harbor Area on a nonexclusive basis for use as a containership terminal at a minimum monthly rental of $132,066.92. In addition, if the total revenue tonnage of Sea-Land's primary use of the premises and certain adjacent area covered by Agreement No. 224-003914 for any contract year exceeds 1,750,000 tons, Sea-Land shall pay 10% of the Port's tariff wharfage charges for the primary use cargo which exceeds 1,750,000 tons.

By Order of the Federal Maritime Commission.

Dated: January 24, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-2056 Filed 1-28-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Caledonia Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 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 February 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caledonia Financial Corporation*, Caledonia, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Caledonia, Caledonia, Michigan.

2. *Valley Banc Services Corp.*, St. Charles, Illinois; to acquire 100 percent of the voting shares of Anchor Bank, Lake Villa, Illinois, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Barrett Holding Company*, Watonga, Oklahoma; to acquire an additional 1.82 percent of the voting shares of Watonga Bancshares, Inc., Watonga, Oklahoma, and thereby indirectly acquire Watonga State Bank, Watonga, Oklahoma.

2. *Central Grain, Inc.*, Central City, Nebraska, to acquire 13.8 percent; Green Top, Inc., Palmer, Nebraska, to directly acquire 12.5 percent, and indirectly acquire 23.6 percent through its subsidiary, Shelby Insurance, Inc., Shelby, Nebraska; Archer, Inc., Archer, Nebraska, to directly acquire 13.18 percent, and indirectly acquire 27.2 percent through its subsidiary Osceola Insurance, Inc., Osceola, Nebraska; of Heartland Bancorporation, Aurora, Nebraska, which is the proposed parent of The Farmers State Bank & Trust Co., Aurora, Nebraska, and Crete State Corporation, Crete, Nebraska, and thereby indirectly acquire Crete State Bank, Crete, Nebraska.

3. *Central of Kansas, Inc.*, Junction City, Kansas; to acquire 100 percent of the voting shares of Herington Bancshares, Inc., Herington, Kansas, and thereby indirectly acquire The Bank of Herington, Herington, Kansas.

4. *First of Fort Morgan, Inc.*, Fort Morgan, Colorado; to acquire 100 percent of the voting shares of Heartland Community Bankshares, Inc., Fort Morgan, Colorado, and thereby indirectly acquire First National Bank of Sterling, Sterling, Colorado; and also to acquire 100 percent of the voting shares of First Community Bankshares, Inc., Fort Morgan, Colorado, and thereby indirectly acquire First National Bank of Holyoke, Holyoke, Colorado.

5. *Heartland Bancorporation*, Aurora, Nebraska; to acquire 80.03 percent of the voting shares of The Farmers State Bank & Trust Co., Aurora, Nebraska, and 100 percent of the voting shares of Crete State Corporation, Crete, Nebraska, and thereby indirectly acquire Crete State Bank, Crete, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ford Bank Group Holdings, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBank Waco, N.A., Waco, Texas.

Board of Governors of the Federal Reserve System, January 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1712 Filed 1-28-91; 8:45 am]

BILLING CODE 6120-01-F

William G. Dietrich, et al.;

Change in Bank Control Notice;

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 8, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *William G. Dietrich*, Kansas City, Missouri; to acquire an additional 16.55 percent of the voting shares of Blue Ridge Bancshares, Inc., Kansas City, Missouri, for a total of 41.53 percent and thereby indirectly acquire Blue Ridge Bank and Trust Co., Kansas City, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mark Alan Workman*, Lubbock, Texas; to acquire an additional 22.39 percent for a total of 23.53 percent; and David Don Workman, Shallowater, Texas; to acquire an additional 22.39 percent for a total of 23.53 percent of the voting shares of Caprock Bancshares, Inc., Shallowater, Texas, and thereby indirectly acquire First State Bank, Shallowater, Texas.

Board of Governors of the Federal Reserve System, January 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1711 Filed 1-28-91; 8:45 a.m.]

BILLING CODE 6210-01-F

First Western Bancorp, Inc.;

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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 February 19, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Western Bancorp, Inc., Huron, South Dakota; formerly 401, Inc., to merge with First Bancorp, Inc., Huron, South Dakota.

In connection with this application, Applicant also proposes to acquire First Western Agency, Inc., Huron, South Dakota, and thereby engage in general insurance agency activities pursuant to section 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted in the State of South Dakota.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2047 Filed 1-28-91; 8:45 a.m.]

BILLING CODE 6210-01-F

Fulton Financial Corporation;

Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under section 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 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 February 15, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to acquire Great Valley Savings Association, Reading, Pennsylvania, and thereby engage in the ownership, control and operation of a savings association, and to engage only in deposit taking and lending activities pursuant to section 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Berks County, Pennsylvania.

Board of Governors of the Federal Reserve System, January 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-1713 Filed 1-28-91; 8:45 a.m.]

BILLING CODE 6210-01-F

Martinius Corporation;

Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under section 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 section 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 section 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 February 19, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Martinius Corporation, Rogers, Minnesota; to engage *de novo* in making, acquiring, or servicing loans for its own account pursuant to section 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in a radius of ten miles from Rogers, Minnesota.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2051 Filed 1-28-91; 8:45 a.m.]

BILLING CODE 6210-01-F

Mountain Holding Corporation, et al.;

Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 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 February 19, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Mountain Holding Corporation, Tucker, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Mountain National Bank, Tucker, Georgia.

2. The Prosperity Banking Company, Saint Augustine, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Prosperity Bank of Saint Augustine, Saint Augustine, Florida.

3. Tifton Banks, Inc., Tifton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Tifton Bank & Trust Company, Tifton, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Farmers Savings Bank, Trustee of Farmers Savings Bank Stock Ownership Plan & Trust, West Union, Iowa; to acquire 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.

2. First National Bancorporation of Stoughton, Inc., Stoughton, Wisconsin; to become a bank holding company by acquiring 95 percent of the voting shares of First National Bank of Stoughton, Stoughton, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Overton Financial Corporation, Overton, Texas; to acquire 80 percent of the voting shares of Lindale Bancshares, Inc., Lindale, Texas, and thereby indirectly acquire Lindale State Bank, Lindale, Texas.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2046 Filed 1-28-91; 8:45 a.m.]

BILLING CODE 6210-01-F

Norwest Bank Minnesota N.A.;

Corporation to do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than February 19, 1991.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. Norwest Bank Minnesota N.A., Minneapolis, Minnesota; to establish a corporation to be known as Norwest Bank International, Iowa, Minneapolis, Minnesota. This application may be inspected at the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–2050 Filed 1–28–91; 8:45 am]

BILLING CODE 6210–01–F

Philip J. Rocco;

Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 12, 1991.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Philip J. Rocco, Santa Ana, California; to acquire up to 24.9 percent of the voting shares of Orange Bancorp, Fountain Valley, California, and thereby indirectly acquire The Bank of Orange County, Fountain Valley, California.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–2049 Filed 1–28–91; 8:45 am]

BILLING CODE 6210–01–F

Synovus Financial Corp.;

Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under section 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 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 this application must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 19, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia; and TB&C Bancshares, Inc., Columbus, Georgia; to acquire Citizens Federal Savings and Loan Association of Rome, Rome, Georgia, and thereby engage in operating a savings association pursuant to section 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in Rome, Georgia.

Board of Governors of the Federal Reserve System, January 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–2048 Filed 1–28–91; 8:45 a.m.]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 28–March 1, 1991, at the National Institute of Health, Building 31, C wing, conference room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. to recess on February 28, and from 8:30 a.m. to adjournment on March 1, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal years 1991–1992. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood

Institute, Building 31 Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: January 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2024 Filed 1–28–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 22, 1991. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, C–Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2025 Filed 1–28–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Notice of Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung and Blood Institute, February 21–22, 1991, Building 31, Conference Room 7, C-Wing, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from approximately 8:30 a.m. on February 21, to adjournment on February 22, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4235, will provide a summary of the meeting and a roster of the committee members.

Dr. G. C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NMHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: January 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2026 Filed 1–28–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 20–21, 1991, in Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to recess on February 20 and 8:30 a.m. to adjournment on February 21 to discuss new initiatives, program policies, and issues.

Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: January 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–2027 Filed 1–28–91; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633–7557. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title

XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from September 13, 1990, through September 19, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, writtten information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2214 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, Maryland 20857. The Court's captain *(Petitioner's Name* v. *Secretary of Health and Human Services)* and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Linda Walker on behalf of Grant M. Walker, St. Paul, Minnestoa, Claims Court Number 90–0965 V
2. Samuel and Frances Simpson on behalf of Jennifer Simpson, Geneva, Ohio, Claims Court Number 90–0966 V
3. Betty Stranlund on behalf of William Stranlund, El Toro, California, Claims Court Number 90–0967 V
4. Nell Lewis on behalf of Julie Lewis, Syracuse, Kansas, Claims Court Number 90–0968 V
5. Vicki Dillabough on behalf of Jessica Dillabough, Camp Lejeune, North Carolina, Claims Court Number 90–0969 V
6. Tamette Norton on behalf of Keriann Norton, Salt Lake City, Utah, Claims Court Number 90–0970 V
7. Sharon Hill on behalf of Kayla Hill, Knoxville, Tennessee, Claims Court Number 90–0971 V
8. Samuel Ezell on behalf of Tanika Ezell, Camp Lejeune, North Carolina, Claims Court Number 90–0972 V
9. Harvey and Marianne Creech on behalf of James Creech, Hyden, Kentucky, Claims Court Number 90–0973 V
10. Billy and Carri Benson on behalf of Joshua Benson, Forest Grove, Oregon, Claims Court Number 90–0974 V
11. Ronald and Alisa Bradley on behalf of Rachael Bradley, Dunedin, Florida, Claims Court Number 90–0975 V
12. Sheila Vickery on behalf of Kelley Vickery, Mobile, Alabama, Claims Court Number 90–0977 V
13. Stanley Mirek on behalf of Christine Mirek, Edison, New Jersey, Claims Court Number 90–0978 V
14. Karla Pride on behalf of Mesia Pride, Henderson, Kentucky, Claims Court Number 90–0979 V
15. Robert and Dorothy Harman on behalf of Christopher Harman, Bristol, Pennsylvania, Claims Court Number 90–0980 V
16. Helene Saeger on behalf of Michael Adams, Deceased, Sheboygan, Wisconsin, Claims Court Number 90–0982 V
17. John and Sherry Sharpnack on behalf of Megan Sharpnack, Lincoln, Nebraska, Claims Court Number 90–0983 V
18. Mildred Downing on behalf of Melissa Downing, Maysville, Kentucky, Claims Court Number 90–0984 V
19. Michael and Ellen Bigelow on behalf of Renee Bigelow, Dubuque, Iowa, Claims Court Number 90–0985 V
20. Denise Gilmore on behalf of Quincy Gilmore, Madisonville, Kentucky, Claims Court Number 90–0986 V
21. Paula Colbert on behalf of Johua Colbert, Ada, Oklahoma, Claims Court Number 90–0987 V
22. Frances Pearson on behalf of Katherine Judge, Atlanta, Georgia, Claims Court Number 90–0988 V
23. Johnny and Debra Clark on behalf of Holly M. Clark, Kingsport, Tennessee, Claims Court Number 90–0989 V
24. Michael and Judith Schoor on behalf of Holly Schoor, Steubenville, Ohio, Claims Court Number 90–0990 V
25. Robert and Debra Wilcox on behalf of Jarred Wilcox, Wuerzburg Army Hospital, Germany, Claims Court Number 90–0991 V
26. Sheryl Mains on behalf of Matthew B. Mains, Mercerville, New Jersey, Claims Court Number 90–0992 V
27. Herbert and Susan Goldman on behalf of Jonathan Goldman, Chicago, Illinois, Claims Court Number 90–0993 V
28. Hurshel and Carol Hall on behalf of Tammy Hall, Manassas, Virginia, Claims Court Number 90–0994 V
29. Donna Deitz on behalf of Tracy Deitz, Homer, Alaska, Claims Court Number 90–0996 V
30. Charles and Rose Donovan on behalf of Tralane Donovan, Bronx, New York, Claims Court Number 90–0997 V
31. Lorilee Immel on behalf of Kristen Immel, Phoenix, Arizona, Claims Court Number 90–0998 V
32. Vonda Underwood on behalf of Dawn Waletzke, Deceased, Quantico, Virginia, Claims Court Number 90–0999 V

33. Rhonda Budden on behalf of McKenna Budden, Phoenix, Arizona, Claims Court Number 90–1000 V
34. Alicia Oliva on behalf of Jaclyn Oliva, Deceased, Mesa, Arizona, Claims Court Number 90–1001 V
35. Suzanne Valenzuela on behalf of Monica Velenzuela, Deceased, Tucson, Arizona, Claims Court Number 90–1002 V
36. Stephen and Stephanie Fernholz on behalf of Jessica Fernholz, Deceased, Blue Earth, Minnesota, Claims Court Number 90–1004 V
37. William and Joanne Anttila on behalf of Bret Anttila, Deceased, Moorpark, California, Claims Court Number 90–1005 V
38. Eva Meisner on behalf of Mitchell Meisner, Las Vegas, Nevada, Claims Court Number 90–1006 V
39. Douglas Hawkins on behalf of Jared Hawkins, Deceased, Aurora, Clorado, Claims Court Number 90–1007 V
40. William and Sue Ann Reitz on behalf of Katlyn Reiz, Clearfield, Pennsylvania, Claims Court Number 90–1008 V
41. Martha Kennedy on behalf of Michael Kennedy, Fort Smith, Arkansas, Claims Court Number 90–1009 V
42. Fred and Josie Moore on behalf of Kristy Moore, Phoenix, Arizona, Claims Court Number 90–1010 V
43. John and Elizabeth Hamilston on behalf of Wesley Hamilton, Durango, Colorado, Claims Court Number 90–1011 V
44. Dennis and Clasina Joling on behalf of Teresa Joling, Chino, Colorado, Claims Court Number 90–1012 V
45. George and Faye Northrup on behalf of Daniel Northrup, New York, New York, Claims Court Number 90–1013 V
46. Mark and Patricia Keller on behalf of Joshua Keller, Macon, Georgia, Claims Court Number 90–1014 V
47. Melissa Serbin on behalf of Shannon Maskal, Butler, Pennsylvania, Claims Court Number 90–1015 V
48. Clara Mitchell on behalf of James Lane, Deceased, Tyler, Texas, Claims Court Number 90–1016 V
49. Sidney and Carol Davis on behalf of Kevin Davis, Tulsa, Oklahoma, Claims Court Number 90–1017 V
50. Larry and Brenda Trumble on behalf of Logan Trumble, Ketchikan, Alaska, Claims Court Number 90–1018 V
51. Dianna Jamieson on behalf of Michael Jamieson, George Air Force Base, California, Claims Court Number 90–1019 V
52. Talmadge and Georgia Atkins on behalf of Talmadge Atkins, Ft. Walton Beach, Florida, Claims Court Number 90–1020 V
53. Matthew and Shelia Jennett on behalf of Damien Jennett, New Haven, Connecticut, Claims Court Number 90–1022 V
54. Craig and Vicki Sterrett on behalf of Ryan Sterrett, Virginia Beach, Virginia, Claims Court Number 90–1023 V
55. Mary Garrett on behalf of Antonio Garrett, Talladega, Alabama, Claims Court Number 90–1024 V
56. Sara Lewis on behalf of Julia Poulson, Shaker Heights, Ohio, Claims Court Number 90–1025 V
57. Linda Wood on behalf of Jessica Wood, Macon, Georgia, Claims Court Number 90–1027 V
58. Roberta Iler on behalf of Michael Iler, Waltham, Massachusetts, Claims Court Number 90–1028 V
59. Donna Budzan, Pomona, California, Claims Court Number 90–1029 V
60. Karen Woodcock on behalf of Daniel Woodcock, Hackettstown, New Jersey, Claims Court Number 90–1030 V
61. Linda Haim on behalf of Nicole Haim, Deceased, Canoga Park, California, Claims Court Number 90–1031 V
62. Fran Whyde on behalf of Michael Farrar, Morgantown, Indiana, Claims Court Number 90–1032 V
63. Jerry and Linda Wooten on behalf of Audrey Wooten, Upland, California, Claims Court Number 90–1033 V
64. Robert Maloney on behalf of Kevin Maloney, Deceased, Orimune, Massachusetts, Claims Court Number 90–1034 V
65. John Tweed on behalf of John Adam Tweed, Elkton, Maryland, Claims Court Number 90–1035 V
66. Sheri Taylor on behalf of Kristen Coffman, Seabrook, Maryland, Claims Court Number 90–1036 V
67. Donna Bomarito on behalf of Sarah Bomarito, Monterey, California, Claims Court Number 90–1037 V
68. Diane Ankenbauer on behalf of Chance Ankenbauer, Great Falls, Montana, Claims Court Number 90–1038 V
69. Bruce and Cosette Smoller on behalf of Jamie Smoller, New York, New York, Claims Court Number 90–1039 V
70. Joseph Manni, Philadelphia, Pennsylvania, Claims Court Number 90–1040 V
71. Debra Hand on behalf of Sheena Hand, Burlington, Massachusetts, Claims Court Number 90–1041 V
72. Barbara Orozco on behalf of Leslie Orozco, Dallas, Texas, Claims Court Number 90–1042 V
73. Doris Shuford on behalf of Judith Shuford, Hickory, North Carolina, Claims Court Number 90–1043 V
74. Theresa Johnson on behalf of Crystal Johnson, Arlington, Texas, Claims Court Number 90–1044 V
75. Kenneth and Elaine McCaul on behalf of Brian McCaul, Miami, Florida, Claims Court Number 90–1045 V
76. Maria Restrepo on behalf of Juan Restrepo, Deerfield, Illinois, Claims Court Number 90–1046 V
77. Lynda Ouellette on behalf of Christin Ouellette, St. Agatha, Maine, Claims Court Number 90–1047 V
78. Joan Rustay on behalf of Linda Rustay, Deceased, Johnson City, New York, Claims Court Number 90–1048 V
79. Hillary Yeoman, Joplin, Missouri, Claims Court Number 90–1049 V
80. Ashley Fournier, Springfield, Missouri, Claims Court Number 90–1050 V
81. Marlene Skinner on behalf of William Skinner, Deceased, Binghamton, New York, Claims Court Number 90–1051 V
82. Ivan and Christine Haines on behalf of Kierstin Haines, Lancaster, Pennsylvania, Claims Court Number 90–1052 V
83. Bruce and Yvonne Schlener on behalf of Keith O'Rourke, Bethlehem, Pennsylvania, Claims Court Number 90–1053 V
84. David and Sharon Steele on behalf of Daniel Steele, Williamsburg, Virginia, Claims Court Number 90–1054 V
85. Randall and Betty Leggett on behalf of Mimi Leggett, Clarksburg, West Virginia, Claims Court Number 90–1055 V
86. Linda Schiavone on behalf of Michael Calabrese, Staten Island, New York, Claims Court Number 90–1056 V
87. James and Ruby Snider on behalf of John Snider, Little Hocking, Ohio, Claims Court Number 90–1057 V
88. James Brammell, Suitland, Maryland, Claims Court Number 90–1058 V
89. Glen and Jill Tomkiewicz on behalf of Stevey Tomkiewicz, Rancho Palos Verdes, California, Claims Court Number 90–1059 V
90. Thomas and Helen Lohfink on behalf of Thomas Lohfink, Metairie, Louisiana, Claims Court Number 90–1060 V
91. Carl Miles, Odessa, Texas, Claims Court Number 90–1061 V
92. Gretchen Estep on behalf of Trisha Estep, Columbus, Ohio, Claims Court Number 90–1062 V
93. Darius Snyder, Tachikawa, Japan, Claims Court Number 90–1064 V
94. Roy and Lynn Borger on behalf of Stacy Borger, Lehighton, Pennsylvania, Claims Court Number 90–1066 V
95. Kathy Reece on behalf of Kathryn Reece, Deceased, Tupelo, Mississippi, Claims Court Number 90–1067 V

96. Brenda Dixon on behalf of Jonathan Dixon, Pascagoula, Mississippi, Claims Court Number 90–1068 V
97. Leon and Linda Weiss on behalf of Rachel Weiss, Cherry Hill, New Jersey, Claims Court Number 90–1069 V
98. Julia Cain on behalf of Jeremy Cain, Kilmarnock, Virginia, Claims Court Number 90–1070 V
99. Judith Wolff, New York, New York, Claims Court Number 90–1071 V
100. Lorenzo and Gwendolyn Davis on behalf of Lorkeshia Davis, Houston, Texas, Claims Court Number 90–1072 V
101. Albert and Jeannette Couture on behalf of Denis Couture, Manchester, New Hampshire, Claims Court Number 90–1073 V
102. Mark and Connie Green on behalf of Laural Green, Cleburne, Texas, Claims Court Number 90–1074 V
103. Joseph and Ann Tipman on behalf of Angela Tipman, Oak Park, Illinois, Claims Court Number 90–1075 V
104. Roberta Taylor on behalf of John Taylor, Bakersfield, California, Claims Court Number 90–1076 V
105. Evert and Magdalena Pearson on behalf of Magdalena Pearson, Chicago, Illinois, Claims Court Number 90–1077 V
106. Frank Baron, IV, Fairfield, Iowa, Claims Court Number 90–1078 V
107. Robin Hackman on behalf of Danielle Landis, Telford, Pennsylvania, Claims Court Number 90–1079 V
108. Carol Huston on behalf of Matthew Huston, Long Beach, California, Claims Court Number 90–1080 V
109. Robert and Mary Acken on behalf of Patricia Acken, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90–1081 V
110. John D. Landwehr on behalf of John G. Landwehr, Cincinnati, Ohio, Claims Court Number 90–1082 V
111. Deborah Murray on behalf of Jeffrey Murray, Paw Paw, Michigan, Claims Court Number 90–1083 V
112. Timothy Engle, Gadsden, Alabama, Claims Court Number 90–1084 V
113. John and Margaret Beard on behalf of Joshua Beard, Sandusky, Ohio, Claims Court Number 90–1085 V
114. Raymond and Marie Ferens on behalf of Adrianna Ferens, Mendham, New Jersey, Claims Court Number 90–1086 V
115. Archie Hayes on behalf of David L. Hayes, Houston, Texas, Claims Court Number 90–1089 V
116. Ray and Martha Holt on behalf of Stephen Holt, Houston, Texas, Claims Court Number 90–1090 V
117. Ronald Price, Mountainview, California, Claims Court Number 90–1091 V

Dated: January 23, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–2053 Filed 1–28–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–754509

Applicant: Jerome R. Bofferding, Maple Grove, MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. F.W.M. Bowker Jr., Grahamstown Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–754593

Applicant: Marion E. Milstead, Shreveport, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–676811

Applicant: U.S. Fish and Wildlife Service, Region 2, Albuquerque, NM.

The applicant requests amendment of their current permit to include take of the eastern prairie fringed orchid (*Platanthera leucophaea*), western prairie fringed orchid (*P. praeclara*), virgin river chub (*Gila robusta semidnuda*) and the neosho madtom (*Noturus placidus*) for scientific purposes and the enhancement of propagation or survival of the species in accordance with Recovery Plans, listing, or other Service work for these species.

PRT–678870

Applicant: Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service, Laurel, MD.

The applicant requests amendment of their current permit to take (capture, obtain biological samples, and attach radio transmitters) gray wolf (*Canis lupus*) in Minnesota, Wisconsin, and Michigan for the purpose of scientific research. In addition, they are requesting amendment to take (collect eggs, hatch, and release, collect up to 10 non-viable eggs for contaminant analyses, monitor 3 to 6 nests by video/audio camera, radio-tag up to 12 hatchings per year with implanted transmitters) Mississippi sandhill crane (*Grus canadensis pulla*) and collect up to 30 whooping crane (*Grus americana*) eggs for scientific research and enhancement of propagation or survival of the species. Permittee is currently authorized to take up to 6 Mississippi sandhill crane and whooping crane eggs per year.

PRT–754027

Applicant: Coalinga Cogeneration Company, Bakersfield, CA.

The applicant requests amendment to their application and has provided an amended habitat conservation plan for the incidental take of San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard (*Gambelia silus*) which may occur during construction and operation of a congeneration plant in Coalinga, California.

PRT–755488

Applicant: New York Zoological Society, Bronx, New York.

The aplicant requests a permit to import two captive-born female proboscis monkeys (*Nasalis larvatus*) from Japan Monkey Center, Institute and Museum of Primatology, Aichi, Japan, for captive-breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 24, 1991.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 91–2084 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Cancellation of a Notice of Intent To Prepare a Environmental Impact Statement on the Proposed Revision to the Permit to Mine Coal and the Proposed Approval of the Solid Waste Disposal Permit on Portions of the Centralia Coal Mine, Thurston County, WA

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

ACTION: Cancellation of a notice of intent to prepare a environmental impact statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) and the Thurston County Planning Department (Thurston County) are cancelling the notice issued in the **Federal Register** of February 9, 1990 (55 FR 4723) for the joint preparation of an environmental impact statement (EIS) on: (1) A proposed revision to the existing Federal permit to mine coal to change the approved postmining land use on portions of the Centralia Coal Mine; and (2) the proposed approval of a Thurston County solid waste disposal permit application to allow the construction and operation of a regional solid waste landfill on those same portions of the Centralia Coal Mine. The project has been cancelled by the proponents.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Project Leader, Office of Surface Mining Reclamation and Enforcement, Western Support Center, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202 (telephone: 303–844–3104 (commercial) or 564–3104 (FTS)).

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–2041 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

Upcoming Renewal of Concession Contract Within the Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to issue a Statement of Requirements soliciting bids from private individuals and corporations to operate commercial visitor facilities and services within Yellowstone National Park, Wyoming. The concession is currently operated by TW Recreational Services, Inc. The National Park Service is providing advance notice of this offering to afford interested parties the opportunity to inspect the facilities and services during the months of winter operation. The National Park Service expects to publish the Statement of Requirements in the near future.

ADDRESSES: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy., Box 25287, Denver, Colorado 80225 for additional information.

SUPPLEMENTARY INFORMATION: This action complies with the provisions of the National Environmental Policy Act and copies of these environmental documents may be obtained from the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

TW Recreational Services, Inc. has performed its obligations to the satisfaction of the Secretary of the Interior under an existing contract which expires by limitation of time on October 31, 1991, and, therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 stat. 969; 16 USC 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.1.

This provision, in effect, grants TW Recreational Services the opportunity to meet or equal the terms and conditions of any other proposals submitted in response to the Statement of Requirements which the Secretary may consider better than the proposal submitted by TWS Recreational Services.

Dated: December 21, 1990.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 91–1710 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–70–M

National Park Service.

Environmental Impact Statement on a Continental Scientific Research Drilling Operation in the Valley of Ten Thousand Smokes, Katmai National Park and Preserve, Alaska

AGENCY: United States Geological Survey, National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service (NPS) in cooperation with the United States Geological Survey (USGS) is beginning preparation of a draft environmental impact statement for Katmai National Park and Preserve by a contractor. The purpose of the environmental impact statement is to evaluate the impact of conducting a continental scientific research drilling operation in the Valley of Ten Thousand Smokes. The research drilling is proposed by the USGS, U.S. Department of Energy (DOE) and the National Science Foundation, representatives of which compose an Interagency Coordinating Group (ICG) for the national Continental Scientific Drilling Program. The National Academy of Sciences has determined that the Katmai area is uniquely suited for the proposed scientific research drilling primarily due to its simplicity, size and youth.

Primary objectives of the proposed continental scientific research drilling are to determine the behavior of explosive eruptions, to investigate metals transport and to test models for the cooling of igneous systems.

The environmental impact statement is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR part 1500. The environmental impact statement will be prepared in response to the operations plan for research drilling submitted to NPS by DOE on behalf of the ICG. It will be funded by agencies comprising the ICG. The NPS shall serve as the contracting agency for preparation of the environmental impact statement.

According to the operations plan, three scientific core holes would be drilled. Two would be close to Novarupta, the vent for the historic volcanic eruption of 1912. One of these would be drilled vertically to the depth of approximately 4,000 feet and the other at a 30 degree angle from the vertical to the depth of approximately 3,300 feet. The third hole, approximately three miles from Novarupta, would be drilled in the ashflow sheet to approximately 660 feet and would also be deviated 30 degrees. The drilling operation would span 16 months, with activity during two six-month periods and a winter shut-down during the intervening four-month period.

Alternatives to the proposed action include taking no action and a modification of the proposal. Of primary concern is that the proposed research drilling operation would occur in a congressionally designated wilderness area. Other issues to be evaluated in the environmental impact statement include access, water quality, hydrology,

vegetation, wildlife, subsistence, recreation, visitor use, visual quality and cultural resources.

As part of the scoping process, interested groups, organizations, individuals and government agencies are invited to comment on the proposal at anytime. If public scoping meetings are held, meeting times and dates will appear in a separate announcement. A draft times and dates will appear in a separate announcement. A draft statement is expected to be available for public review in 1992.

FOR FURTHER INFORMATION CONTACT: William B. Lawrence, Chief of Environmental Compliance, National Park Service, 2525 Gambell Street, room 107, Anchorage, Alaska 99503–2892 *Telephone:* (907) 257–2648.

Dated: January 17, 1991.

Paul Haertel,

Acting Regional Director, Alaska Region.

[FR Doc. 91–1971 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Cancellation of a Notice of Intent To Prepare a Draft Environmental Impact Statement; Proposed Fruita Mine Complex, Mesa and Garfield Counties, CO

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

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) is cancelling the notice issued in the **Federal Register** of February 1, 1984 (49 FR 4043) for the preparation of a draft environmental impact statement (EIS) on a proposed mining plan approval and permit for the Fruita coal mine complex proposed by Dorchester Coal Company near Fruita, Colorado in Mesa and Garfield Counties. The proponents have cancelled the project.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Project Leader, Office of Surface Mining Reclamation and Enforcement, Western Support Center, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202 (telephone: 303–844–3104 (commercial) or 564–3104 (FTS).

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–2042 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

Cancellation of a Notice of Intent To Prepare Draft Environmental Impact Statement for the Proposed Wolf Mountain Mine, Bighorn County, MT

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

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) and the Montana Department of State Lands (DSL) are cancelling the notice issued in the **Federal Register** of September 16, 1983 (48 FR 41653) for the preparation of a draft environmental impact statement (EIS) on a permit application package for the Wolf Mountain coal mine proposed by Peter Kiewit Mining and Engineering Company near Decker, Montana in Bighorn County. The proponents have cancelled the project.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Project Leader, Office of Surface Mining Reclamation and Enforcement, Western Support Center, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202 (telephone: 303–844–3104 (commercial) or 564–3104 (FTS).

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–2043 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *Allied Corporation, et al.*, was lodged with the United States District Court for the Northern District of California on December 21, 1990. This action was brought pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

Under the proposed Consent Decree, Allied-Signal Incorporated, the successor in interest of Allied Corporation, agrees to pay $10 million to the Defense Environmental Response Account. The funds are being paid to reimburse the United States for environmental response actions taken and to be undertaken at the United States Naval Weapons Station, Concord, California. Allied-Signal further agrees to perform environmental response actions at the facility known as the Bay Point Works.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC. 20530. All comments should refer to *United States* v. *Allied Corporation, et al* D.J. Ref. 90–11–3–26.

The proposed Consent Decree may be examined at the office of the United States Attorney, 450 Golden Gate Ave., room 16201, San Francisco, California 94102. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Ave., Bldg., 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. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $6.00 for copying costs ($0.25 per page) payable to "Aspen Systems Corporation."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–1979 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *National Cement Company, Inc.*, Civil Action No. 90–C–02728M was lodged with the United States District Court for the Northern District of Alabama on December 21, 1990. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Air Act arising from violations of New Source Performance Standards under 40 CFR part 60, subparts A and 000, specifically 40 CFR 60.8 and § 60.672(b)(c).

This proposed consent decree provides for payment of $24,000.00 in civil penalties in settlement of the action. In addition, National Cement must conduct performance tests semi-annually as of 12/1/90 for one year to

demonstrate its continuing compliance with the NSPS provisions.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Cement Company, Inc.*, D.O.J. Ref. 90–5–2–1–1428.

This Consent Decree may be examined at the offices of the United States Attorney, Northern District of Alabama, 200 NE., Atlanta, Georgia 30365, and at the offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–1978 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 1991, a proposed Consent Decree in *United States* v. *Union Research Co., Inc., et al.*, Civil No. 87–0355 B, was lodged with the United States District Court for the District of Maine resolving Counts II and III of the Complaint filed in this matter as to defendant IMC Magnetics, Corp. The proposed Consent Decree concerns defendant's response to an information request sent by the United States Environmental Protection Agency, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act as amended.

Under the terms of the Consent Decree, defendant will pay the United States $7,500, to settle the United States' claim (under Counts II and III of the Complaint), for injunctive relief and penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Research Co., Inc.*, D.O.J. Ref. 90–11–2–227.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, Boston, MA. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, (202 347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–1981 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 1991 a proposed Consent Decree in *United States* v. *Union Research Co., Inc., et al.*, Civil No. 87–0355 B, was lodged with the United States District Court for the District of Maine resolving Counts I and IV of the Complaint filed in this matter as to defendants Union Research Co., Inc ("Union") and Raymond Esposito ("Esposito"). The proposed Consent Decree concerns the response, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, to the existence of hazardous substances at the Union Chemical Site located in South Hope, Maine, and an Administrative Compliance Order issued pursuant to the Resource Conservation and Recovery Act, as amended.

Under the terms of the Consent Decree, defendants will reimburse the United States $20,000, plus interest, to settle the United States' claim for past response costs (Count I of the Complaint), and the United States' claim for injunctive relief and penalties (Count IV of the Complaint).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Research Co., Inc.*, D.O.J. Ref. 90–11–2–227.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, Boston, MA. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20044, (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the reference case and enclose a check in the amount of $4.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91–1999 filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

Union Pacific Railroad Co.; Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 18, 1991 a proposed consent decree in *United States* v. *Union Pacific Railroad Company* was lodged with the United States District Court for the District of Wyoming. The decree pertains to the Baxter/Union Pacific Tie Treating Site in Laramie, Albany County, Wyoming.

The proposed consent decree requires Union Pacific Railroad Company to pay the United States $253,317.01, which equals 86.6% of the costs sought in the Complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources

Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Pacific Railroad Company* (D. Wy.) and DOJ Ref. No. 90–11–3–692. The proposed consent decree may be examined at the office of the United States Attorney, District of Wyoming, 111 South Wolcott, Casper, Wyoming, or at the office of the Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $2.50 (25 cents per page reproduciton costs) payable to "Consent Decree Library".

George Van Cleve,

Deputy Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91–2000 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

International Fieldbus Consortium; National Cooperative Research Notifications

Notice is hereby given that, on January 4, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Fieldbus Consortium ("IFC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of the parties to this agreement, and (2) the nature and objectives of this agreement. The notificiations were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identity of the parties to IFC and its general areas of planned activity are given below.

The IFC has both active and passive members. The active members are: AECI Process Computing (Pty) Limited; Allen-Bradley Co. Incorporated; Asea Brown Boveri Kent-Taylor; Bailey Controls Company; Bristol Babcock; CEGELEC; Dresser Industries; Eckardt AG; Elcon Instruments, Endress & Hauser GmbH & Company; Fischer & Porter Company; Fisher Controls International, Inc.; Fuji Electric Company Limited; Hartmann & Braunn AG; Hitachi, Ltd.; Honeywell Inc.; Ludwig Krohne GmbH & Co. KG; M-System Co., Ltd.; Measurement Technology Limited; Merlin Gerin; Miller Electric Manufacturing Company; Moore Products Co.; Philips International BV; Ronan Engineering Company; Rosemount Incorporated; SMAR Equipamentos Industriais Ltda.; Samson Aktiengesellschaft Messund Regeltechnik; Ship Star Associates Inc.; Sieger Limited; Siemens Aktiengesellschaft-Ostliche; Softing GmbH; Tactical Controls Limited; Telemecanique Programmable Controls Division; The Foxboro Company; Toshiba Corporation; Valmet Automation Oy; Yamatake-Honeywell Co. Ltd.; Yokogawa Electric Corporation.

The passive members are: AEG Aktiengesellschaft-Automation Technology; April; Camille Bauer Incorporated; EPFL–LIT; Future Concepts Incorporated; ITT Barton; Magnetrol International; Neles-Jamesbury OY; The Procter & Gamble Company; Valtek Incorporated; Westinghouse Electric Corporation.

The purpose and objectives of IFC are to advocate and to undertake research and testing in support of a single international fieldbus standard through: (a) Demonstrations of the feasibility of a standard fieldbus in pilot installations, using prototype industrial automation devices; (b) facilitation of the development of tests to show whether devices of multiple vendors can operate on the same bus; (c) demonstrations at trade shows of the interoperability of devices from multiple suppliers; (d) facilitation of the development of test procedures, both for low speed dc-powered and high speed ac-powered media, to demonstrate the feasibility of intrinsic safety operations with multiple devices on a single bus; and (e) the sharing of the practical experience of IFC's work with relevant industry standards organizations, seeking their support for a standard.

IFC will not develop any products for sale. The results of its work will be publicly available, and those who are interested in the work of IFC are and will continue to be encouraged to join. The parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–1980 Filed 1–28–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 8, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of January 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Alpine Designs Corp. (wkrs)	Newport, VT	01/14/91	12/28/90	25,282	Jackets and pants.
Amboy knit (ILGWU)	Perth Amboy, NJ	01/14/91	12/28/90	25,283	Sweaters.
C-Cor Electronics, Inc. (wkrs)	Altoona, PA	01/14/91	01/03/91	25,284	Electronic equip.
C-Cor Electronics, Inc. (wkrs)	St. College, PA	01/14/91	01/03/91	25,285	Electronic equip.
Defini LTD (wkrs)	Newport, VT	01/14/91	12/28/90	25,286	Jackets and pants.
Head Sportswear (ILGWU)	Columbia, MD	01/14/91	01/05/91	25,287	Sportswear.
Hogan-Allnoch Co. (wkrs)	Houston, TX	01/14/91	12/28/90	25,288	Rainwear.
John A. Roberts, Inc. (Teamsters)	Newark, NJ	01/14/91	01/02/91	25,289	Games.
Lastec Inc. (wkrs)	Hillsboro, OR	01/14/91	12/03/90	25,290	Machines.
Lee Company (wkrs)	St. Joseph, MO	01/14/91	12/31/90	25,291	Jeans.
Leon Clothing (wkrs)	Boston, MA	01/14/91	12/26/90	25,292	Clothing.
Mannington Ceramic Tile (wkrs)	Mt. Vernon, TX	01/14/91	01/03/91	25,293	Wall tile.
Nagels & Sons, Gladioli Farm, Inc. (wkrs)	Three Rivers, MI	01/14/91	11/29/90	25,294	Bulbs.
New England Sportswear Co. (wkrs)	Peabody, MA	01/14/91	01/04/91	25,295	Clothing.
Northern Telecom (wkrs)	Grove, IL	01/14/91	12/30/90	25,296	Wiring.
Osicom Technologies (wkrs)	Rockaway, NJ	01/14/91	12/21/90	25,297	Micro computers.
Precision Rolled Products Inc. (USWA)	New Kensington, PA	01/14/91	01/06/91	25,298	Stainless steel shapes.
Rocky Mountain Industries, Inc. (wkrs)	Mills, WY	01/14/91	01/02/91	25,299	Engines and compressors.
Sea Gear, Inc. (wkrs)	Newport, VT	01/14/91	12/28/90	25,300	Jackets and pants.
Slalom Skiwear, Inc. (wkrs)	Newport, VT	01/14/91	12/28/90	25,301	Jackets and pants.
Storage Technology Corp. (wkrs)	Melbourne, FL	01/14/91	01/03/91	25,302	Printers.
StorageTek Printer Opera. (wkrs)	Melbourne, FL	01/14/91	01/03/91	25,303	Printers.
Tektronix, Inc. (wkrs)	Beaverton, OR	01/14/91	01/03/91	25,304	Oscilloscopes.
Westminister Knit (ILGWU)	Westminister, MD	01/14/91	12/28/91	25,305	Suits.

[FR Doc. 91-2076 Filed 1-28-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,139]

American Standard, Inc., Union Switch & Signal Division, Swissvale, PA.; Negative Determination on Reconsideration

The Department of Labor on reconsideration issued a Notice of Negative Determination on remand to apply for adjustment assistance for the workers and former workers of American Standard, Inc., Union Switch and Signal Division, Swissvale, Pennsylvania.

Signed at Washington, DC this 23rd day of January 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2078 Filed 1-28-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,076; Orval Kent Food Co., Inc., Philadelphia, PA.

TA-W-25,039; Lebanon Foundry and Machine Co., Lebanon, PA.

TA-W-25,115; Domtar Gypsum, Sweetwater, TX.

TA-W-25,153; Tycho Technology, Inc., Boulder, CO.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,070; Inselman Drilling Fluids, Ardmore, OK.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,081; Texaco, Schaffer Gas Plant, Skellytown, TX.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,105; Straits Forest Products, Inc., Port Angeles, WA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,065; Clarostat Mfg Co., Richmond, ME.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,161; Energy Resources, Inc., Brockway, PA.

U.S. imports of coal as a proportion of production were insignificant in the relevant time periods.

TA-W-25,100; Northern Continental Operating Co., Inc., Pittsburgh, PA.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,073; Lewis Bolt & Nut Co., Minneapolis, MN.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,063; Bunker Hill Mining Co., (U.S.), Inc., Kellogg, ID.

The investigation revealed that

criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,896; American Precision Industries, Inc., East Aurora, NY.

A certification was issued covering all workers separated on or after September 17, 1989.

TA-W-24,884; Rollic of Virginia, Inc., Lawrenceville, VA.

A certification was issued covering all workers separated on or after August 27, 1989.

TA-W-24,957; Rollic, Inc., Patchogue, NY.

A certification was issued covering all workers separated on or after October 1, 1989.

TA-W-24,957A; Rollic of North Carolina, Murfreesboro, NC.

A certification was issued covering all workers separated on or after October 1, 1989.

TA-W-25,079; Qualitex, Inc., Johnston, RI.

A certification was issued covering all workers separated on or after October 30, 1989.

TA-W-25,025; Arrow Co. (The), Bremen, GA.

A certification was issued covering all workers separated on or after September 21, 1989.

TA-W-25,025A; Arrow Co (The), Rome, GA.

A certification was issued covering all workers separated on or after September 21, 1989.

TA-W-25,025B; Arrow Co (The), Jasper, AL

A certification was issued covering all workers separated on or after September 21, 1989.

I hereby certify that the aforementioned determinations were issued during the month of January, 1991. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW. Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 1, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2077 Filed 1-28-91; 8:45 am]

BILLING CODE 4510-30-M

TA-W-22,386 Transco Exploration Partners, New Orleans, LA and TA-W-24, 928 Transco Exploration Company, Lake Charles, LA; and Operating At Various Locations in the Following States: TA-W-24,928A Colorado (Excluding Denver); TA-W-24,928B Louisiana (Excluding New Orleans), TA-W-24,928C Texas (Excluding Houston); Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 28, 1990, applicable to all workers of Transco Exploration Company, Lake Charles, Louisiana and all Transco Exploration Company workers operating in Colorado, except Denver, Louisiana, except New Orleans and Texas, except Houston. The certification notice was published in the **Federal Register** on November 6, 1990 (55 FR 46738). A Certification for workers of Transco Exploration Partners, New Orleans, Louisiana (TA-W-22,386) was issued on March 22, 1989 and published in the **Federal Register** on April 25, 1989 (54 FR 17840).

At the request of the Louisiana State Agency, the Department reviewed the subject investigations and certifications and found that the Transcontinental Gas Pipeline is the name of the original company. Transcontinental Gas Pipeline subsequently expanded its business and several subsidiaries were formed.

The name used to report wages paid and taxes as well as the name used for the employer ID number throughout the country is Transcontinetal Gas Pipeline.

Workers of Transco Exploration Company cited above and Transco Exploration Partners, New Orleans, Louisiana (TA-W-22,386) were employees paid under Transcontinental Gas Pipeline.

The amended notice applicable to TA-W-24,928 and TA-W-22,386 is hereby issued as follows:

All workers of Transco Exploration Company, Lake Charles, Louisiana and at various locations in Colorado, excluding Denver; Louisiana excluding New Orleans and Texas, excluding Houston, paid by Transcontinetal Gas Pipeline, who became totally or partially separated from employment on or after September 18, 1989 and all workers of Transco Exploration Partners, New Orleans, Louisiana, paid by Transcontinental Gas Pipeline, who became totally or partially separated from employment on or after January 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed In Washington, DC, this January 17, 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, UIS.

[FR Doc. 91-2079 Filed 1-28-91; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1991.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 6, 1991.

Pay grade	Monthly rate
(1) *Commissioned officers*	
O-10	$9,801.00
O-9	8,832.00
O-8	8,100.00
O-7	7,292.00
O-6	6,087.00
O-5	5,207.00
O-4	4,205.00
O-3	3,452.00
O-2	2,731.00
O-1	2,041.00
(2) *Commissioned officers with over 4 years active duty as an enlisted member or warrant officer*	
O-3E	$3,950.00
O-2E	3,290.00
O-1E	2,687.00
(3) *Warrant officers*	
W-4	$3,874.00
W-3	3,290.00
W-2	2,836.00
W-1	2,361.00
(4) *Enlisted personnel*	
E-9	$3,572.00
E-8	3,025.00
E-7	2,622.00
E-6	2,255.00
E-5	1,920.00
E-4	1,610.00
E-3	1,416.00
E-2	1,298.00
E-1	1,135.00

The publication of this new Schedule of Remuneration does not revoke any

prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 22, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–2080 Filed 1–28–91; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration, Student Data Form, OSHA 182, OSHA (1218), Ongoing.

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations. 7200 responses; 600 hours; 1 form; 5 minutes per response. The OSHA–182 will be used to collect information from OSHA Training Institute students on employer groups and emergency contact information. The information will be used in the event of an emergency situation arising; employer group data will be entered into the Office computer for historical reporting purposes and could also be used as a check system for tuition collection purposes.

OSHA Training Institute Course Evaluation Form, OSHA–49, OSHA (1218), Ongoing.

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations. 7200 responses; 1200 hours; 1 form; 10 minutes per response. The OSHA–49 form will be used to collect evaluation feedback information from students attending courses conducted by the OSHA Training Institute. Students will evaluate course content, relevance of course topics to job needs, effectiveness of laboratories and workshops, course materials, and training aids used. The collection and analysis of the evaluation information will be used to monitor if training objectives and goals are being met.

Extension

Employment and Training Administration Job Training Partnership Act Compliance Review.

Annually, Bienially, State or local governments, 54 respondents; 7,920 total hours; 164 hrs per response; no forms. To ensure that States operate Federally funded Training and Employment Programs in accordance with the requirements of the Job Training Partnership Act and its implementing regulations.

Signed at Washington, DC this 24th day of January, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–2081 Filed 1–28–91; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–9; Exemption Application No. D–7650, et al.]

Grant of Individual Exemptions; Metric Institutional Realty Advisors, Ltd. (MIRA), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were recieved by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978

section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 38236, 32847, August 10, 1990)* and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Metric Institutional Realty Advisors, Ltd. (MIRA) Located in Foster City, California

[Prohibited Transaction Exemption 91–9; Exemption Application No. D–7650]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to certain transactions between the retirement plans (the Plans) sponsored by Atlantic Richfield Company (ARCO) and ARCO controlled persons (as defined below) and parties in interest with respect to the Plans. The transactions involve the leasing, refinancing and disposition of real estate (the Real Estate) held by the Plans and managed by MIRA and the purchasing of goods with respect to the Real Estate; provided that:

(1) The party in interest is not:

(a) MIRA, any person directly or indirectly controlling, controlled by or under common control with MIRA (MIRA Controlled Person); and officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of MIRA or any MIRA Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which MIRA, any MIRA Controlled Person, or any officer, director of highly compensated employee (as defined above) of MIRA or any MIRA Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in MIRA or any MIRA Controlled Person;

(b) ARCO, any person directly or indirectly controlling, controlled by, or under common control with ARCO (ARCO Controlled Person); any officer, director, or highly compensated employee (as defined above) of ARCO or any ARCO Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which ARCO, any ARCO Controlled person, or any officer, director or highly compensated employee (as defined above) or ARCO or any ARCO Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in ARCO or any ARCO Controlled Person;

(c) Metropolitan Life Insurance Company (Met), any person directly or indirectly controlling, controlled by, or under common control with Met (Met Controlled Person); any officer, director, or highly compensated employee (as defined above) of Met or any Met Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Met, any Met Controlled Person, or any officer, director or highly compensated employee (as defined above) of Met or any Met Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in Met or any Met Controlled Person; or

(d) Any person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Plans' assets involved in the particular transaction;

(e) The term "interest" as applied above means with respect to ownership of an entity:

(i) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(ii) The capital interest or the profits of the entity if the entity is a partnership; or

(iii) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(f) A person is considered to own an interest held in any capacity if the person has or shares the authority:

(i) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest or

(ii) To dispose or to direct the disposition of such interest.

(2) At the time the transaction is entered into, the terms of the transactions are at least as favorable to the Plans as the terms generally available in an arm's-length transaction between unrelated parties.

(3) The terms of the transaction are negotiated by, or under the authority and general direction of MIRA, and MIRA alone, or in conjunction with ARCO, makes the decision to enter into the transaction.

(4) MIRA shall maintain for a period of six years from the date of each transaction for which relief is requested the records necessary to enable the persons described in subparagraph (b) of this section:

(a) to determine whether the conditions of this exemption have been met, except that:

(i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of MIRA, the records are lost or destroyed prior to the end of the six-year period, and

(ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(k) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required herein; and

(b) Except as provided in subdivision (a) of this subparagraph (3) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to herein are unconditionally available at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(i) any duly authorized employee or representative of the Department or the Internal Revenue service;

(ii) any fiduciary of a plan which is funded, in whole or part, by a trust with respect to which ARCO is a named fiduciary or any duly authorized employee or representative of such fiduciary; and

(iii) any participant or beneficiary of any plan which is funded, in whole or part, by ARCO or any duly authorized representative of such participant or beneficiary.

(5) None of the persons described in subdivision (b) of subparagraph (3) shall be authorized to examine the trade secrets or commercial or financial information which is privileged, confidential or of a propriety nature of either ARCO, MIRA or Met.

* Pursuant to 29 CFR § 2570.52, the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) have been applied to applications filed before September 10, 1990.

EFFECTIVE DATE: This exemption will be effective for transactions occurring on or after January 12, 1988.

TEMPORARY NATURE OF EXEMPTION: The exemption is temporary and will expire five years from the date the exemption is granted. Subsequent to the expiration of the exemption, the plans may continue to hold leases or refinancing agreements entered in to during the proposed five-year exemption period.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 14, 1990, at 55 FR 47553.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8971. (This is not a toll free number.)

Aetna Life Insurance Company (Aetna) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 91–10; Exemption Application No. D–7764]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Managed by Aetna

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate (as defined in Section V(e)) equity capital contribution (or the failure to make such additional contribution) by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of one or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved such modification or has not approved the exercise of such rights and (3) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts Managed by Aetna

The restrictions of certain sanctions of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined Section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared partnership investment on the basis of the fair market value of such interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) to the partnership by Accounts other than the General Account which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the partnership on the basis of the fair market value of such partnership interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-partner fails to provide all or any part of its proportionate share of an additional equity capital contribution, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the partnership by an Account up to the amount of such contribution not provided by the co-partner which result in an adjustment in the equity ownership interests of the Accounts in the partnership on the basis provided in the partnership agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the partnership, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproporationate basis of a co-partner's interest in the partnership in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Aetna on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the partnership even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved the acceptance of the offer [where all of the Accounts (other than the General Account) participating in such investment are not in agreement on how to proceed with respect to such offer], provided that the declining Acount[s] are first afforded the opportunity to buy out both the co-partner and "selling" Account's interests in the partnership.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a partnership agreement to purchase a co-partner's interest in the partnership at the price offered for such interest by a third party, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of the ERISA-Covered Accounts not to exercise such a right of first refusal even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved the exercise of the right of first refusal [where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to such right of first refusal], provided that the Accounts that approved the exercise of the right of first refusal are offered the opportunity to buy-out the co-partner on their own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved such sale [where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option], provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Aetna and its affiliates. This condition shall not apply to plans covering employees of Aetna and its affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of

potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, its affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to a Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner of shareholder, may acquire any property from, sell any property to, or borrow any funds from, Aetna, its affiliates, or any Account managed by Aetna or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Aetna or its affiliates for each of the transactions in this proposed exemption. Aetna and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Aetna maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of each participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Aetna, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of Aetna includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna,

(2) Any officer, director or employee of Aetna or person described in section V(a)(1), and

(3) Any partnership in which Aetna is a partner.

(b) An "Account" means any account managed by Aetna, including the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The "General Account" means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, partnership or partnership interest or interest in a debt.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 30, 1990 at 55 FR 45671.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

NBD Bank, N.A. (the Bank)

Located in Detroit, Michigan

[Prohibited Transaction Exemption 91–11 Exemption Application No. D–8046]

Exemption

The restrictions of section 406 (b)(2) and (b)(3) of the Act and the sanctions

resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Bank from the Woodward Funds (the Fund), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser, custodian, or transfer and dividend disbursing agent for the Fund, in connection with the investment by certain plans to which the Bank, or any of its affiliates, serves as a fiduciary (the Client Plans) as well as plans covering only employees of the Bnak or its affiliates (the Bank Plans) where the Bank or any affiliates is a fiduciary, provided that the following conditions are met:

(a) No sales commissions are paid by either the Client Plans or the Bank Plans (collectively, the Plans) in connection with the purchase or sale of shares of the Fund and no redemption fees are paid in connection with the sale of shares by the Plans to the Fund;

(b) Each Client Plan and each Bank Plan receives a rebate, either through cash or the purchase of additional shares of the Fund pursuant to an annual election made by the Plan, of such Plan's proportionate share of all fees charged to the Fund by the Bank;

(c) With respect to the Client Plans, a second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund (including a current prospectus for the Fund and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the investment of assets of a Client Plan in the Fund, the fees to be paid by the Fund to the Bank, and the purchase of additional shares of the Fund by the Client Plan with the fees rebated to the Client Plan by the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the Client Plan.

(e) With respect to the Bank Plans, no fees will be charged by the Bank or any of its affiliates to the Bank Plans for serving as either a trustee, directed trustee, custodian, or investment manager of the Bank Plans; and

(f) All dealings between the Plans and the Fund are on a basis no less favorable to the Plans than dealings with other shareholders of the Fund.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 14, 1990 at 55 FR 47556.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number).

Grant of Individual Exemption Austin Oral Surgery Associates Profit Sharing Plan (the Plan) Located in Austin, Texas

[Prohibited Transaction Exemption 91–12; Exemption Application No. D–8191]

Exemption

The restrictions of 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code shall not apply to the loan of $125,000 (the Loan) by the Plan to Austin Oral Surgery Associates, a party in interest with respect to the Plan, provided that the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction involving an unrelated third party.

For a more complete statement of facts and representations supporting the Department's decision to grant the exemption, refer to the notice of proposed exemption published on November 14, 1990 at 55 FR 47559.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department at (202) 523–7901.

International Association of Heat and Frost Insulation and Asbestos Workers Local Union No. 60 Pension Fund (the Plan) Located in Miami, Florida

[Prohibited Transaction Exemption 91–13; Exemption Application No. D–8297]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan (the Loan) of $88,000 for a term of ten years by the Plan to Asbestos Workers Local No. 60, a Plan sponsor and party in interest with respect to the Plan; provided that the terms of the Loan are at least as favorable as the Plan could obtain in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 14, 1990 at 55 FR 47550.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of January 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–2093 Filed 1–28–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8454, et al.]

Proposed Exemptions; UBS Securities, Inc. (UBS)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code)..

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of the **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

UBS Securities Inc. (UBS) Located in New York, New York

[Application No. D–8454]

Proposed Exemption

I. Transactions

A. Effective July 12, 1990, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct of indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2). Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective July 12, 1990, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in

[1] Pursuant to 29 CFR § 2570.52, the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) have been applied to applications filed before September 10, 1990.

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective July 12, 1990, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Nothwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective July 12, 1990, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which UBS or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

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[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) UBS;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with UBS; or

(3) Any member of an underwriting syndicate or selling group of which UBS or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after July 12, 1990.

Summary of Facts and Representations

1. UBS is a registered broker and dealer in securities under the Securities Exchange Act of 1934 and is a member of the New York Stock Exchange, other principal domestic and foreign exchanges, and the National Association of Securities Dealers. UBS is also a primary dealer in U.S. Government securities. The parent of UBS is the Union Bank of Switzerland, a Swiss company.

UBS is a full service U.S. investment bank, part of the UBS Capital Markets Group which maintains a long standing investment banking presence in key financial centers around the world. UBS offers its clients: (1) Investment banking services, including a broad range of debt and equity capital markets services, and specialized capabilities in real estate, corporate finance, mergers and acquisitions, and private placements; (2) market making and distribution of U.S. Government debt and equity securities complemented by fundamental research; and (3) market making and distribution of European, Japanese and other international equities supported by comprehensive research. UBS's mortgage department underwrites and trades a broad range of mortgage-backed securities and mortgage loans, and provides related investment banking services.

Trust Assests

2. UBS seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [4] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[5]

[4] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. UBS requested relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, UBS has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. UBS, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates made to date and all of the public offerings of certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, UBS has privately placed certificates on both a firm commitment and an agency basis. UBS may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually, installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. UBS requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in

which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[6]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis.[7]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except with respect to 30-year obligations, in which case the period may be as long as two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) a special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to UBS, the trust sponsor or the servicer. UBS represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to UBS. In some cases, however, affiliates of UBS may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates

[6] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[7] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relating to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[8] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. UBS will receive a fee in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what UBS receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be utilized by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). Typically, in these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. In some transactions, the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. When the service is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

[8] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

If the master servicer fails to advance funds, fails to call upon the credit support mechanisms to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) In cases where the master servicer and the insurer are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange

Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholder, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, deliquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is UBS's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is UBS's intention to attempt to make a market for any certificates for which UBS is lead or co-managing underwriter.

Retroactive Relief

25. UBS represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, UBS requests relief retroactive for transactions which have occurred on or after July 12, 1990, the date UBS originally filed its exemption application with the Department.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief if requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&Ps, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which UBS seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) UBS has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgate pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange, or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respect: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available for S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic

rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investment in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for a least one year and having been sold to investors other than plans for at least one year.[9]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

UBS represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[10] In these cases, a director or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[11] Likewise, issues are raised under sections 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, UBS represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of cerficates representing an interest in a trust may be a fiduciary with respect to an investing plan. UBS represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, UBS represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust, may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 532–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a purdent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of it its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 23rd day of January 1991.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration U.S. Department of Labor

[FR Doc. 91–2094 Filed 1–28–91; 8:45 am]

BILLING CODE 4510–29–M

[9] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular asset contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[10] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which UBS or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[11] The applicant represents that where a trust sponsor is an affiliate of UBS, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if UBS is not a fiduciary with respect to plan assets to be invested in certificates.

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for advancing the provision of civil legal assistance through the Law School Civil Clinical Programs (LSCCP). The Corporation may distribute up to twenty (20) one-time non-recurring grants to geographically distributed law schools of varying sizes. Each grant will be for up to 12 months and in an amount up to $75,000 per grant. All grants will be awarded pursuant to authority conferred by Section 1006(a)(1)(B) [(42 U.S.C. 2996e(a)(1)(B)] of the Legal Services Corporation Act of 1974, as amended. Each applicant is required to guarantee that a substantial portion (more than 50 percent) of the total funding for its LSCCP will come from non-Federal sources and that federally funded assets and projects will not be counted as part of any in-kind service.

Proposals for grants will be solicited from all law schools that are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit appropriate documentation of eligibility.

DATE: Grant proposals must be received by the Office of Field Services on or before February 28, 1991. Grant awards may be announced by April 1991.

ADDRESS: Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Mr. Charles T. Moses, III, Associate Director, Office of Field Services, (202) 863–1837.

SUPPLEMENTARY INFORMATION: Congress has recognized LSC support of clinical education by earmarking specific funds for law school clinical grants. This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs that address the civil legal needs of poor persons. This expansion may include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects that provide services to underserved segments of the population (e.g. Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

All proposals will be reviewed to ensure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC, following submission of non-binding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

I. Objectives of Legal Clinic Program Development/Expansion (25%)

The extent of the applicant's objectives (e.g., the number of clients to be served, or the complexity and number of cases to be closed by the LSCCP clinic) and quality of the applicant's objectives (e.g., clinic characteristics that would enhance the quality of basic legal services to be provided by the clinic, such as a high level of student supervision or the availability of complementary classroom courses) will be assessed in the context of the amount of funding requested and the clinic's prior grant history, if any. It is particularly important that the applicant's objectives address the topics of student training and delivery of legal services to the client-eligible population, including estimates of the number of cases to be closed. The applicant should also describe the substantive case types to be handled in the clinic and explain why those case types are appropriate for both clinical legal education and the specific locality.

II. Capability of Applicant to Accomplish Objectives (30%)

The proposed project design, management plan, staff level and experience, and clinic structure will be evaluated to determine whether the applicant can effectively accomplish its stated objectives.

The qualifications and experience of the clinic director and clinic staff will be evaluated to determine whether they can effectively administer the proposed clinic. Time and resource allocations will also be evaluated to assess the levels of supervision which will be provided to students.

III. Reasonableness of Costs in Relation to LSCCP Objectives and University Commitment to the LSCCP Objectives (30%)

To enable the reviewers to fairly assess the extent of the university's commitment and the nature of the budgeted costs, it is recommended that detailed information be provided with regard to these items.

Each applicant will need to show that it has, or will be able to obtain substantial (i.e., more than 50%) non-federal support for its clinical education program. In addition, if the proposed LSC-funded project is a portion of the applicant's clinical education program, a significant amount of the proposed LSC-funded project's budget must be funded through non-federal support. In order to maximize the direct delivery of legal services through one-time grants, proposals with a higher proportion of non-federal support will be given priority.

Budgeted costs and funding support for both the clinical program and the proposed LSCCP project should be separately identified on duplicate copies of the Part B forms. The narrative portion of the application should describe the history and/or project the future of the university's commitment to the clinical education program and, if applicable, the LSCCP project.

Evidence that the university's budgetary support levels will be maintained and/or increased beyond the grant term is also needed. The viability of the LSCCp project, beyond the grant term, must be specifically addressed.

Each applicant should demonstrate that it plans to make an adequate in-kind contribution to the project. Federally-funded assets and projects cannot be counted as part of the in-kind contribution. In order to maximize service delivery, indirect administrative costs may not be paid or deducated from LSC grant funds.

The applicant's budget submission (Part B) will be reviewed in the context of its stated objectives to determine whether projected costs are reasonable. Since the LSCCP grant, if award, will be a one-time, non-recurring grant, proposed purchases of capital acquisitions will not be favorably considered.

IV. Community Support (15%)

We recommend that the applicants explain how the proposed LSCCP clinic activities and services will complement the civil legal services provided by other local entities to low-income persons. The extent to which a cooperative effort exists among the applicant and LSC-funded programs, local courts, and bar associations should also be described. Increased attorney participation in the LSCCP clinic, either as adjunct faculty, consultants or supervising attorneys for internship with the private bar, is also encouraged by LSC.

It is recommended that letters of support or other evidence of support by LSC-funded programs, local courts, and bar associations be attached to the proposal.

To ensure nationwide participation and geographic distribution of the funds available, LSC/OFS has created seven regions to be used strictly for the purposes of this project. The regional boundaries are used to assure a geographic dispersion of project funds, as well as competition among a proportionate number of states and eligible law schools.

The seven (7) LSC/OFS Law School Clinical Program regions are listed below:

Region #1	South Carolina
Connecticut	Tennessee
Maine	*Region #4*
Massachusetts	Illinois
New Hampshire	Indiana
New Jersey	Michigan
New York	Ohio
Rhode Island	Kentucky
Vermont	*Region #5*
Region #2	Kansas
Delaware	Nebraska
District of Columbia	Iowa
Pennsylvania	Missouri
Maryland	Oklahoma
Puerto Rico	Texas
U.S. Virgin Islands	*Region #6*
Virginia	Alaska
West Virginia	Washington
Region #3	Oregon
Alabama	Idaho
Arkansas	Montana
Florida	Wyoming
Georgia	Minnesota
Louisiana	South Dakota
Mississippi	North Dakota
North Carolina	Wisconsin

Region #7	Nevada
Arizona	New Mexico
California	Utah
Colorado	Micronesia
Hawaii	Guam

Dated: January 23, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91–2028 Filed 1–28–91; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL COMMISSION ON CHILDREN

Hearing; National Commission on Children

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Meeting of the National Commission on Children to be held in San Francisco, California.

Meeting

Time

1 p.m.–5 p.m.—Monday, February 11, 1991

8:30 a.m.–5 p.m.—Tuesday, February 12, 1991

8:30 a.m.–4 p.m.—Wednesday, February 13, 1991

Place: Stanford Court Hotel, Nob Hill, San Francisco, California 94108

Status: Open to the public

Agenda: Commission Meeting

Contact: Jeannine Atalay, (202) 254–3800.

Dated: January 23, 1991.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 91–1975 Filed 1–28–91; 8:45 am]

BILLING CODE 6820–37–M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was formed by Joint Statement of the President and the nation's governors on July 31, 1990 to determine appropriate indicators for measuring the national education goals and a format for reporting annually to the nation on progress. This will be the third meeting of the Panel.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes interim reports from resource groups on measuring the national education goals.

DATES: The third meeting will be held on February 2, 1991.

ADDRESSES: The meeting is currently scheduled from 2:30–4 p.m. at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Kolb at the White House Office of Policy Development. The phone number is (202) 456–6515.

Dated: January 23, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91–2095 Filed 1–28–91; 8:45 am]

BILLING CODE 3127–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 28, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 92/93 Advancement: Program Application Guidelines.

Frequency of collection: One time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations applying for funding from the Advancement Program. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated number of respondents: 150.

Average burden hours per response: 32.

Total estimated burden: 4,800.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91–2069 Filed 1–28–91; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 1, 1991, from 9 a.m.–5:45 p.m. and on February 2 from 9 a.m.–6:15 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be Opening

Remarks, Report on Council Retreat, Update on Legislative and Program Issues, National Cultural Alliance Report, Briefing on Working Groups, Update on Regional Representatives Program, Public Relations/ Communications Discussion, International Activities, General Discussion: Issues of Concern to Council, Discussion with SAA Representatives, Council Role in Application Review, and Discussion with Program Directors and/or Application Review and/or Guidelines for the Arts in Education: SAEG & AISBEG, Design Arts, Visual Arts, Folk Arts, Expansion Arts, Music: Ensembles, Dance, Advancement, Opera-Musical Theater, Locals, Literature, Media Arts, Museum, Theater, and Policy, Planning and Research Programs.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of December 11, 1990.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 22, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–1973 Filed 1–28–91; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that an ad hoc meeting of the National Council on the Arts will be held on February 1, 1991 from 5:45 p.m.–6:15 p.m. in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of reviewing nominations for the National Medal of Arts to be awarded by President Bush sometime in 1991. This session will be closed to the public pursuant to subsections (6) and (9)(B) of section 552b of title 5, United States Code, and the determination of the Chairman of December 11, 1990, as amended.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 22, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–1972 Filed 1–28–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of senior executive service performance review board.

SUMMARY: Section 4314(c) of title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses and recertification. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register.**

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Joseph Mancias, Jr., Eugene Kinlow, and Syl Angel.

DATES: Comments must be received by February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170.

Linda Dodd-Major,

General Counsel.

[FR Doc. 91–1977 Filed 1–28–91; 8:45 am]

BILLING CODE 7502–02–M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export the special nuclear material noticed herein, the Commission

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of Appt., date received, application No.	Material type	Material in Kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 01/06/91, 01/11/91, XSNM2582.	93.45% Enriched Uranium	32.262	30.148	Fuel for BR-2 Reactor	Belgium.

does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

Dated this 23rd day of January 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Betty L. Wright,

Acting Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-2067 Filed 1-28-91; 8:45 am]

BILLING CODE 7590-01-M

NRC Requirements Regarding the Appropriate Amount of Property/Accident Recovery Insurance; Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of publication and request for comments.

SUMMARY: NUREG/CR-2601, "Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents", was used by the NRC as the basis for establishing the minimum coverage requirement of $1.06 billion of property/accident recovery insurance in 10 CFR 50.54(w). Addendum 1 to this report recalculates estimated insurance coverage needed for accident cleanup in light of cost increases since the original report and establishes a methodology for taking into account future inflation in accident cleanup costs.

DATES: The comment period expires April 1, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver comments to: 7920 Norfolk Avenue, Bethesda, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone(301) 492-1255.

SUPPLEMENTARY INFORMATION: Section 50.54(w) of title 10 of the Code of Federal Regulation requires that the NRC's power reactor licensees maintain at least $1.06 billion in insurance to cover the costs of cleaning up and decontaminating a reactor suffering an accident. The required $1.06 billion was based on a study by Pacific Northwest Laboratory (PNL), NUREG/CR-2601, that was published in 1982. PNL has since updated this report with Addendum 1, "Re-evaluation of the Cleanup Cost for the Boiling Water Reactor (BWR) Scenario 3 Accident From NUREG/CR-2601." [1] Addendum 1 recalculates estimated insurance coverage needed for accident cleanup in light of cost increases between 1982 and 1989. These costs could be as high as $1.22 billion to $1.44 billion, in 1989 dollars, for assumed escalation rates of 4 percent or 8 percent in the years following 1989. Addendum 1 also establishes a methodology for taking into account future inflation in accident cleanup costs. The NRC is interested in receiving comments on Addendum 1 with respect to the report's technical accuracy and the appropriateness of using the report as a basis for a mechanism to periodically recalculate and establish new insurance coverage requirements.

Dated at Rockville, Maryland, this 18th day of January 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-2066 Filed 1-28-91; 8:45 am]

BILLING CODE 7590-01-M

[1] Copies of NUREG/CR-2601, Addendum 1, Pacific Northwest Laboratory, October 1990, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082.

Nebraska Public Power District; Withdrawal of Application for Amendment To Facility Operating License

[Docket No. 50-298]

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Nebraska Public Power District (the licensee) to withdraw its September 28, 1990, application for proposed amendment to Facility Operating License No. DPR-46 for the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendment would have revised the technical specifications pertaining to the inclusion of the 161 kV line from the Omaha Public Power District as an off-site power source available to power the auxiliary electrical equipment.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on October 31, 1990 (55 FR 45884). However, by letter dated November 16, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 28, 1990, and the licensee's letter dated November 16, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Local Public Document Room, Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland this 22nd day of January 1991.

For the Nuclear Regulatory Commission

Paul W. O'Connor,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-2065 Filed 1-28-91; 8:45 am]

BILLING CODE 7590-01-M

OVERSIGHT BOARD

Regions 3 and 4 Advisory Board Meetings

AGENCY: Oversight Board.

ACTION: Meeting Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the regional advisory board meetings for Regions 3 and 4. The meetings are open to the public.

DATES: The meetings are scheduled as follows: 1. February 6, 1991, 12:30 to 4 p.m., Little Rock, AR, Region 3 Advisory Board. 2. February 15, 1991, 12:30 to 4:30 p.m., San Antonio, TX, Region 4 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Little Rock, AR—Statehouse Convention Center, Fulton Room, Three Statehouse Plaza.

2. San Antonio, TX—San Antonio Convention Center, Fulton Room, 200 East Market Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW, Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: A detailed agenda will be available at the meeting. Discussions will center around the activities of each region as related to the results of seller financing and the Standard Asset Management Disposition Agreement (SAMDA), the sale of multi-family properties in the affordable housing program, assessment of economic conditions of local real estate markets, and review and advise on the returns of RTC's delinquent real estate mortgages. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: January 24, 1991.

Jill Nevius,

Committee Management Officer Office of Advisory Board Affairs.

[FR Doc. 91–2075 Filed 1–28–91; 8:45 am]

BILLING CODE 2222–01–M

SMALL BUSINESS ADMINISTRATION

Secondary Market Sales; Servicing and Premium Protection Fees

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Small Business Administration (SBA) is requiring that on each SBA guaranteed portion of a loan sold in the secondary market the lender must retain a minimum 30 basis point servicing fee. If such guaranteed portion is sold at a premium, SBA requires the lender to retain a minimum 70 basis points as a premium protection fee.

DATES: With respect to guaranteed portions sold at a premium, the effective date is October 1, 1988. With respect to guaranteed portions not sold at a premium, the effective date is April 1, 1991.

FOR ADDITIONAL INFORMATION CONTACT: James W. Hammersley, Director, Office of Secondary Market Activities, room 800C, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone 202–653–5954.

SUPPLEMENTARY INFORMATION: In the fall of 1988, SBA implemented a revision of SBA Form 1086, Secondary Participation Guaranty and Certification Agreement. In such revision, SBA required lenders which sell SBA guaranteed portions of loans at a premium in the secondary market to retain a minimum 100 basis point fee. This fee was intended to lower the maximum coupon that a lender could sell, thus lowering the price an investor would pay for the guaranteed portion. At the time this fee was established it was not the intention of SBA to determine the size of a "normal" servicing fee as defined in Financial Accounting Standards Board (FASB) Technical Bulletin 87–3.

In February 1990, several accounting firms requested that the Securities and Exchange Commission (SEC) review the FASB definition of "normal" servicing fee as it pertains to SBA guaranteed portions. The SEC determined that in the absence of specific guidance from SBA, 100 basis points should be considered a normal servicing fee for SBA guaranteed portions.

SBA has the discretion to determine the appropriate servicing fee in conjunction with the sale of a guaranteed portion. In an effort to make that determination, it has examined the results of a survey performed by the National Association of Government Guaranteed Lenders and studied what the accounting profession means by "normal" servicing fee. Based on this analysis, SBA has determined that the normal servicing fee on SBA guaranteed portions sold in the secondary market is 30 basis points. This servicing fee applies to all guaranteed portions sold. With respect to guaranteed portions sold at a premium, in addition to the 30 basis point servicing fee, lenders are required to retain a minimum premium protection fee of 70 basis points. This fee is designed to lower the coupon that a lender can sell, thereby reducing the premium an investor would pay. Administration of this requirement will require no change in SBA documentation.

(Catalog of Federal Domestic Assistance 59.012, Small Business Loans)

Dated: January 17, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91–2063 Filed 1–28–91; 8:45 am]

BILLING CODE 8025–01–M

Flushing Capital Corp. Issuance of Small Business Investment Company License

[License No. 02/02–5516]

On February 14, 1989, a notice was published in the **Federal Register** (54 FR 6797) stating that an application has been filed by Flushing Capital Corporation, 137–80 Northern Boulevard, Flushing New York 11354, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business March 16, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application

and all other pertinent information, SBA issued License No. 02/02–5516 on December 24, 1990, to Flushing Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 15, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–2064 Filed 1–18–91; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0545]

InterEquity Capital Corp.; Issuance of Small Business Investment Company License

On September 20, 1990, a notice was published in the **Federal Register** (55 FR 38772) stating that an application has been filed by InterAgency Capital Corporation, 220 Fifth Avenue, suite 1001, New York, New York 10001, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business October 19, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/20–0545 on December 17, 1990, to InterEquity Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 22, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–2062 Filed 1–28–91, 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Coast Guard Federal Medical Care Recovery Act Records System

The Department of Transportation (DOT) herewith publishes a notice proposing to establish a system of records. The system does not duplicate any existing system.

Any person or agency may submit written comments on the proposed system to the U.S. Coast Guard (G–KRM–1), ATTN: CWO Glenn Brunner, 2100 Second Street, SW., Washington, DC 20593–0001. Comments to be considered must be received by February 18, 1991.

If no comments are received, the proposed system will become effective 30 days from date of issuance, (February 19, 1991). If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, January 18, 1991.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

SYSTEM NAME:

USCG Federal Medical Care Recovery Act (FMCRA) Record System.

SYSTEM LOCATION:

Office of Health and Safety, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, and retired members of the uniformed services and their eligible dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records containing all correspondence, memoranda, and related documents concerning potential and actual FMCRA claims, and copies of medical and dental treatment provided to the individual that is the subject of the claim, and copies of medical bills associated with civilian care provided at government expense.

b. Automated data processing (ADP) records containing identifying data on individuals, unit of assignment and address, home address, the amount of the claim, the amount paid to the government on the claim, dates of correspondence sent, due dates of reply, claim number, date claim opened, and date claim closed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. All information will be used in managing, processing, and collecting claims for the government. Information may be disclosed to attorneys and insurance companies involved in settling and litigating claims.

b. Information may be disclosed to the Department of Justice when necessary to take final action on claims.

c. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files are in folders. Portions of records are extracted in ADP data base. ADP data base will be maintained in hard disk and magnetic tape storage.

RETRIEVABILITY:

Name or social security number of member, retiree or dependent.

SAFEGUARDS:

Room and cabinets in which records are located are locked when unattended. Roving guard patrol during non-duty hours. Access to records limited to those directly involved in managing claims with a need to know. Records in ADP data base retrievable only to those with authorized access to ADP equipment and data base is protected by standard ADP security measures including the use of passwords.

RETENTION AND DISPOSAL:

Records are retained at USCG Headquarters for 1 year; transferred to a Federal Records Storage Facility and retained for an additional 5 years, 3 months for a total of 6 years, 3 months and destroyed thereafter.

SYSTEM MANAGER AND ADDRESS:

Office of Health and Safety, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Send a written request with the client's name, sponsor's name and social security number to the system manager. The request must be signed by the individual, or if a minor dependent, by the parent or guardian.

RECORD ACCESS PROCEDURES:

Write or visit Commandant (G–KRM–1), U.S. Coast Guard, Attn: FMCRA Section, 2100 Second Street, SW., Washington, DC 20593–0001.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure"

RECORD SOURCE CATEGORIES:

a. From the individual, or if a minor, the parent or guardian.

b. Medical facilities (U.S. Coast Guard, Department of Defense, Uniformed Services Treatment Facility, or Civilian Facility) where beneficiaries are treated.

c. Injury investigations.

d. Attorneys and insurance companies involved in the claim.

e. For Active Duty personnel—the Official Officer Service Records System; (DOT/CG 626), and the Enlisted Personnel Records System; (DOT/CG 629).

f. For reserve personnel—the Official Coast Guard Reserve Service Record System (DOT/CG 676).

Narrative Statement, Department of Transportation Office of the Secretary on behalf of the United States Coast Guard for establishment of the Federal Medical Care Recovery Act Claims System

The Office of the Secretary, on behalf of the Coast Guard, proposes to establish the Federal Medical Care Recovery Act system of records, DOT/CG 577 to cover all records on claims pursued under the Federal Medical Care Recovery Act.

The purpose of this notice is to establish the Federal Medical Care Recovery Act Claims System. The records contain claims and healthcare information, payment information and identifying data necessary to pursue and collect claims.

The probable or potential effects on the privacy interests of the general public are minimal. The data to be collected relates to Coast Guard members, retirees, and their beneficiaries.

A description of the steps taken to safeguard these records is given under the appropriate heading of the attached system of records notice.

The Routine Uses described in the record system notice satisfy the compatibility requirement of subsection (a)(7) of the Privacy Act in that the information is collected to allow the Coast Guard to pursue and collect claims under the Federal Medical Care Recovery Act, and the Routine Uses are for the pursuit and collection of those claims.

The purpose of the report is to comply with the Office of Management and Budget Circular, A–130, Appendix I, dated December 12, 1985.

[FR Doc. 91–1996 Filed 1–28–91; 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 January 18, 1991

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: 47356.
Date filed: January 15, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 12, 1991.
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests that the Department amend, Segment 4 of Northwest's certificate for Route 86–F by adding Boston, Massachusetts as a coterminal point for service to Bermunda.

Docket Number: 47358.
Date filed: January 15, 1991.
Due Date For Answers, Conforming Applications, or Motion to Modify Scope: February 12, 1991.
Description: Application of Spanair, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, seeks Third and Fourth Freedom authority to engage in charter foreign air transportation of persons, property and mail between any point or points in Spain and any point or points in the United States.

Docket Number: 47364.
Date Filed: January 18, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 15, 1991.
Description: Application of Compania Mexicana de Aviation, S.A. de C. V., pursuant to section 402 of the Act and subpart Q of the Regulations applies for an amendment of its foreign air carrier permit authorizing Mexicana to engage in scheduled foreign air transportation of persons, property and mail between points in Mexico and points in the United States in accordance with the United States-Mexico Air Transport Services Agreements of August 15, 1960.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91–1997 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ended January 18, 1991

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: 47353.
Date filed: January 16, 1991.
Parties: Members of the International Air Transport Association.
Subject: North/Mid/South Atlantic Resolution R–1. North/Mid/South Atlantic Resolutions R–2 To R–28.
Proposed effective date: March 14/ March 15, 1991.

Docket number: 47355.
Date filed: January 14, 1991.
Parties: Members of the International Air Transport Association.
Subject: Resos 024F/033F—Fares/Rates from Hungary.
Proposed effective date: Upon Necessary Government Approvals.

Docket number: 47361.
Date filed: January 18, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 459 (Reso 010hh—Special Amending Reso from USSR).
Proposed effective date: February 1, 1991.

Docket number: 47362.
Date filed: January 18, 1991.
Parties: Members of the International Air Transport Association.
Subject: North Atlantic-Mideast (Except Israel) Resos R–1 To R–14, TC12 Meet/P 0472 dated January 10, 1991—Minutes, TC12 Fares 0344 dated January 15, 1991—Fares Tables.
Proposed effective date: April 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91–1998 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. 90–21–IP–No. 2]

Supreme Corp., Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Supreme Corporation of Goshen, Indiana (Supreme), to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.217, Federal Motor Vehicle Safety Standard No. 217, "Bus Window Retention and Release." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on September 17, 1990, and an

opportunity afforded for comment (55 FR 38186).

S5.3.1 of Standard No. 217 specifies the region where the window release mechanisms must be located. Specifically, release mechanisms must be located 5 inches above the adjacent seat or 2 inches above the armrest, if any, whichever is higher. Supreme informed NHTSA that it had manufactured 188 buses which did not comply with S5.3.1 because the release mechanism was located approximately even with or 1 inch above the top of the adjacent seat. Supreme supported its petition for inconsequential noncompliance with the following:

(1) The location of the release mechanism does not affect motor vehicle safety since the location of the release mechanism is only a few inches different than that required in S5.3.1 of the standard.

(2) The location of the release mechanism is readily noticeable, observable and clearly identified.

(3) The location of the release mechanism is unobstructed and within the easy reach and access to the occupant of the seat or others in the bus.

(4) The location of the release mechanism was dictated by the size of the window which is larger than those installed in other model transit buses manufactured by Supreme; the larger size of the windows would enable an occupant to more readily exit from the bus in an emergency.

No comments were received on the petition.

In its petition, Supreme restricted its arguments narrowly, to the release mechanism that was located approximately even with or an inch above the top of the adjacent seat, and adjacent to the armrest. However, upon closer examination, including interior photographs of the bus, the agency noted that the window is released by operating two mechanisms. The second release mechanism is located on the bus wall slightly ahead of the seat cushion, but it also is located out of the zone of compliance with S5.3.1. Observation of this mechanism is unimpeded by any adjacent seat or armrest. Further, directly under the window and between the two release mechanisms is an "Exit" sign with arrows pointing towards each mechanism. Thus, even if the armrest that is adjacent to the seat is down and obscures the release mechanism that is located there, passengers will know by the arrow the location of the other mechanism that must be operated to release the window. Finally, due to the configuration of the buses in question, there appears to be sufficient distance between the bus wall and the edge of the armrest that a passenger could insert a hand to operate the release mechanism without raising the armrest after being directed to its location by the arrow.

Accordingly, in consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: January 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–2023 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, U.S.C. app. 1), notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. Each meeting will be in room 4234 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC.

On February 20, 1991, at 9 a.m., the Technical Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of proposed rules regarding:

—Gas monitoring at compressor buildings

—Burial of offshore pipelines

In addition, the Committee will informally discuss the following topics:

1. Hydrogen sulfide in gas pipelines
2. Amending pipeline operator plans and procedures
3. Excess flow valves
4. State grant formula allocation
5. Employer maintenance and submission of annual drug program data
6. Study on instrumented internal inspection devices
7. Study on need for improved inspection program for master meter systems
8. Legislative developments

On February 21, 1991, at 9 a.m., the Technical Hazardous Liquid Pipeline Safety Standards Committee will meet to discuss and vote on the technical feasibility, reasonableness, and practicability of a proposed rulemaking regarding burial of offshore pipelines.

In addition, the Committee will informally discuss the following topics:

1. Amending pipeline operator plans and procedures
2. Pipelines operating at 20 percent or less of specified minimum yield strength
3. State grant formula allocation
4. Employer maintenance and submission of annual drug program data
5. Study on instrumented internal inspection devices
6. Legislative developments

Each meeting will be open to the public, but attendance will be limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Rebecca Key, room 8417, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1640, not later than Friday, February 15, 1991, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committees before or after any meeting.

Dated: January 23, 1991.

Cesar De Leon,

Executive Director, Technical Pipeline Safety, Standards Committee and Technical Hazardous Liquid Pipeline Safety Standards Committee.

[FR Doc. 91–2037 Filed 1–28–91; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New.
Form Number: TD F 90–22.40.
Type of Review: New collection.
Title: Census of Blocked Iraqi Assets.
Description: The information will be used to monitor compliance with the Iraqi Sanctions Regulations.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Other (Single Report).
Estimated Total Reporting Burden: 1,000 hours.

OMB Number: New.
Form Number: TD F 90–22.41.
Type of Review: New collection.
Title: Census of U.S. Claims Against Iraq.
Description: This information will be used to assess options related to the blocking controls contained in the Iraqi Sanctions Regulations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 3 hours, 30 minutes.
Frequency of Response: Other (Single Report).
Estimated Total Reporting Burden: 7,000 hours.
Clearance Officer: Lois K. Holland, (202) 566–6579, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–1994 Filed 1–28–91; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0130.
Form Number: ATF F 4473, part II (ATF F 5300.9).
Type of Review: Extension.
Title: Firearms Transaction Record, Part II—Intrastate, Non Over the Counter.
Description: This form is used to establish the eligibility of the buyer and to determine the legality of the sale. It is sent to the chief law enforcement officer in the buyer's local jurisdiction to insure there is no barrier to the sale. It becomes part of the dealer's records and is used by law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 20,900.
Estimated Burden Hours Per Response/Recordkeeper: 24 minutes.
Frequency of Response: On Occasion.
Estimated Total Reporting/Recordkeeping Burden: 11,843 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–1995 Filed 1–28–91; 8:45 am]
BILLING CODE 4810–31–M

Customs Service

Availability of Customs Electronic Bulletin Board

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of information dissemination system.

SUMMARY: As part of its continuing effort to improve communication between the agency and the trade community, the Customs Service is establishing an electronic bulletin board through which it will make available to members of the trade community information similar to that which is currently provided through the Customs Automated Commercial System (ACS). This service will be known as the Customs Electronic Bulletin Board (CEBB).

DATES: The Customs Electronic Bulletin Board (CEBB) will become operational on January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Don Speakman or Rick Kopel at (202) 566–8216, U.S. Customs Service, Office of Information Management.

SUPPLEMENTARY INFORMATION: When the Customs Service initiated the Automated Commercial System, certain elements of the program, such as the Automated Broker Interface (ABI) and Automated Manifest System (AMS), included information which was intended to assist the trade community in its working with Customs. Until now, availability of this information was limited to ABI brokers and AMS carriers who were using ACS. In order to increase availability of this information within the international trade community, Customs is initiating an electronic bulletin board which will be accessible to persons with personal computers and telephone modems.

The Customs Electronic Bulletin Board (CEBB) is intended to provide timely information to the trade community. Among items of interest which will be placed in the CEBB will be:

- Customs Special Bulletins/Customs News Releases
- Commissioner's Speeches
- Federal Register Notices
- Trade Operations Instructions
- Trade Meeting Schedules
- Quota Status
- Currency Conversion Rates
- Customs Directives
- Customs Trade Quarterly

CEBB will be operating from Customs Headquarters in Washington, DC, and will have eight telephone lines which can accommodate modem speeds of 1200 to 9600 bps. Because of the limited number of lines, Customs recommends use of a modem with speeds in the higher range.

Instructions for Access to CEBB

Access to CEBB can be easily accomplished. All that is required is a personal computer with a communications package and a modem.

To gain access, the following steps should be followed:

1. Set the communications package as an ANSI terminal.
2. Set the Databits field to 8.
3. Set the Stopbits field to 1.
4. Set Parity to N.
5. Set Phone Number to (202) 535–5069.
6. For best results, have your terminal background color set to black.

The CEBB will provide the user the opportunity to browse the information and download the information to the user's equipment, making it possible to print hard copies of the information if desired. CEBB will be operational 24-hours a day.

Although CEBB will offer similar information dissemination benefits to those available in ABI and AMS, it will not be capable of processing incoming data. Its primary function is to facilitate the expedient transmittal of information to the trade community. CEBB is not intended to replace Customs current electronic processing systems.

Approved: January 24, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91–2060 Filed 1–28–91; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Delegation of Authority; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to delegation of authority.

SUMMARY: This document contains corrections to the delegation orders list, which was published Monday, October 29, 1990, (55 FR 43434).

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, (202) 566–4273 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The delegation orders were revised to reflect authorities redelegated to the Director, Austin Compliance Center and other officials in the Center. Also, other changes have been made to account for organizational changes and new office titles.

Need for Correction

As published, the delegation orders list contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the delegation orders list, which was the subject of FR Doc. 90–25432, is corrected as follows:

1. On page 43434, column 2, in the chart under Order No. 116 (Rev. 7), line 2 of the title, the word "Extension" is corrected to read "Extensions".

2. On page 43434, column 3, in the chart under Order No. 180 (Rev. 1), line 1 of the title, after the word "Request" add the word "Customer".

Dale D. Goode,

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

[FR Doc. 91–2090 Filed 1–28–91; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

[Department Circular—Public Debt Series—No. 3–91]

Treasury Notes of January 31, 1996, Series K–1996

Washington, January 17, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of January 31, 1996, Series K–1996 (CUSIP No. 912827 ZV 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The notes will be dated January 31, 1991, and will accrue interest from that date, payable on a semiannual basis on July 31, 1991, and each subsequent 6 months on January 31 and July 31 through the date that the principal becomes payable. They will mature January 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, January 24, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Non-competitive tenders as defined below will be considered timely if postmarked no later than Wednesday, January 23, 1991, and received no later than Thursday, January 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue

prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extend required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, January 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, January 29, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-2045 Filed 1-24-91; 10:30 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 2-91]

Treasury Notes of January 31, 1993, Series W-1993

Washington, January 17, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,500,000,000 of United States securities, designated Treasury Notes of January 31, 1993, Series W-1993 (CUSIP No. 912827 ZU 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be

determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 31, 1991, and will accrue interest from that date, payable on a semiannual basis on July 31, 1991, and each subsequent 6 months on January 31 and July 31 through the date that the principle becomes payable. They will mature January 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, January 23, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 22, 1991, and received no later than Thursday, January 31, 1991.

3.2. The per amount of Notes bid for must be stated on each tender. The minimum bid is $5,000 , and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accomparied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive ternders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, January 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be

in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, January 29, 1991. When payment has been submited with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to palce the Noted allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–2044 Filed 1–24–91; 10:30 am]

BILLING CODE 4810–40–M

Office of Thrift Supervision

[AC–1; OTS NO. 2772]

Magnolia Federal Bank For Savings, Hattiesburg, Mississippi 39402; Final Action; Approval of Conversion Application

Notice is hereby given that on January 16, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Magnolia Federal Bank For Savings, Hattiesburg, Mississippi for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Dallas, 500 E. John Carpenter Fwy., Irving, TX 75062.

Dated: January 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–2029 Filed 1–28–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 19
Tuesday, January 29, 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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

January 24, 1991.

TIME AND DATE: 10:00 a.m., Thursday, January 31, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Amos Hicks v. Cobra Mining Inc.*, et al., Docket No. VA 89-72-D. Issues include whether the judge erred in holding that Hicks was not discriminated against under section 105(c)(1) of the Mine Act. 30 U.S.C. § 815(c)(1).

STATUS: Closes [Pursuant to 5 U.S.C. § 552b(c)((10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

2. *Donald Northcutt, et al. v. Ideal Basic Industries, Inc.*, Docket No. CENT 89-162-DM. (Issues include consideration of Ideal Basic's Petition for Interlocutory Review.)

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids such as sign language interpreters, must inform the Commission in advance. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d). It was determined by a unanimous vote of Commissioners that the second part of this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk,

[FR Doc. 91-2145 Filed 1-25-91; 11:14 am]

BILLING CODE 6735-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-04]

TIME AND DATE: Wednesday, February 6, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
5. Inv. No. 731-TA-457 (F) (Heavy Forged Handtools from The People's Republic of China)—briefing and vote.
6. Inv. Nos. 731-TA-465, 466, and 468 (F) (Sodium Thiosulfate from The Federal Republic of Germany, The People's Republic of China, and the United Kingdom)—briefing and vote.
7. Inv. Nos. 731-TA-487-494 (P) (Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdom)—briefing and vote.
8. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Dated: January 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-2167 Filed 1-25-91; 1:40 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, February 5, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Ave. SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5420—Recommendations to FAA: Oversight and Management of the Designated Pilot Examiner Program.

NEWS MEDIA CONTACT: Alan Pollock 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: January 25, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-2213 Filed 1-25-91; 3:20 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of January 28, February 4, 11, and 18, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 28

Friday, February 1

10:00 a.m.
Briefing on Status of Final Rule on License Renewal—Part 54 (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Adoption of Final Rule Containing Revisions to the Commission's Rules of Practice in Order to Further Streamline the High-Level Waste Licensing Process

Week of February 4—Tentative

Friday, February 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 11—Tentative

Tuesday, February 12

1:30 p.m.
Annual Briefing on Medical Use of Byproduct Material (Public Meeting)

Friday, February 15

10:00 a.m.
Briefing on Reactor Operator Requalification Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 18—Tentative

Friday, February 22

10:00 a.m.
Briefing on Committee to Review Generic Requirements (CRGR) Process (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: January 25, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-2210 Filed 1-25-91; 3:20 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m. on January 24, 1991 and 10:00 a.m. on January 25, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Decision of the Governors of the Postal Service in Docket No. R90–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268–001, Telephone (202) 789–6840.

[FR Doc. 91–2154 Filed 1–25–91; 11:30 am]

BILLING CODE 7710–FW–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:20 p.m. on Tuesday, January 22, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to staff recommendations regarding certain internal practices.

In calling the meeting, the Board determined, on motion of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman L. William Seidman, and Vice Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, D.C.

Dated: January 24, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–2126 Filed 1–24–91; 4:54 pm]

BILLING CODE 6714–01–M

federal register

Tuesday
January 29, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, and 202

Title I Property Improvement and Manufactured Home Loans; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, and 202

[Docket No. R-90-1446; FR-2623-P-01]

RIN 2502-AE67

Introduction; Title I Property Improvement and Manufactured Home Loans; Approval of Lending Institutions; Reform of the Title I Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend 24 CFR parts 200, 201, and 202 with regard to the insurance of lenders against losses arising out of property improvement and manufactured home loans. The proposed changes in part 200 would delete obsolete provisions. The proposed changes in parts 201 and 202 are directed towards the following major areas of reform:

1. Broadening participation by qualified lending institutions through the use of loan correspondents, while eliminating any role in the program by loan brokers and other unregulated or unsupervised third parties.
2. Establishing higher qualification standards for lenders and dealers, and more objective criteria for lenders and loan correspondents to use in approving loans.
3. Requiring greater oversight of dealers through more personal contact between lenders and borrowers and through site inspections of dealers' work prior to disbursement of loan proceeds.
4. Requiring more secure collateral for both property improvement and manufactured home loans.
5. Encouraging on-site repossession and resale of manufactured homes to reduce claim losses for lenders and HUD.
6. Adding debt collection provisions for the Title I program.

DATES: Comments must be received by April 1, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Each comment should include the commenter's name and address and should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, but the sender may request confirmation of receipt by calling the Rules Docket Clerk at voice, (202) 708–2084; TDD (202) 708–3259. (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2880. Hearing-or speech-impaired individuals may call HUD's TDD number, which is (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Requirements

The information collection requirements in part 201 of this rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) and have been assigned OMB Control Number 2502–0328. The information collection requirements in part 202 of this rule have been submitted to OMB for approval under the same Act; these requirements have previously been assigned OMB Control Number 2502–0017.

The estimated public reporting burden for each collection of information in part 202 is provided elsewhere in the preamble. Public reporting burden is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments on the burden estimates or on any other aspect of these information collection requirements, including suggestions for reducing the burden, should be sent to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Introduction

Under Title I, section 2 of the National Housing Act, the Department insures approved lending institutions for losses sustained from defaulted property improvement loans and manufactured home loans. The regulations implementing these programs are contained in 24 CFR part 201. The regulations in 24 CFR part 202 relate to the approval of property improvement and manufactured home lending institutions. In addition, certain sections in 24 CFR part 200 contain provisions relating to the Title I program. The Department proposes to amend 24 CFR parts 200, 201, and 202.

On October 25, 1985, the Department published in the **Federal Register** a final rule which contained comprehensive revisions to the regulations in part 201. One purpose of that final rule, which became effective on January 15, 1986, was to eliminate certain abuses in the Title I program. Included in the rule were more rigorous procedures for dealer approval and supervision by lenders, more thorough credit underwriting, and more extensive certifications of dealer performance.

Various provisions in part 201 have been amended since January 15, 1986. The most recent amendments to part 201 were published on August 31, 1989, and became effective on October 9, 1989. Among other things, they prohibited the financing of furniture with manufactured home loan proceeds and provided for the collection of higher manufactured home loan insurance charges during the early years of the loan, when the risks of default are greatest. Although those regulatory changes were significant, the Department has concluded that additional changes are needed to reduce the potential for fraud and misrepresentation, to preserve the program's actuarial soundness, and to make the program accessible to borrowers in that area that are presently unserved.

On November 3, 1989, the Department issued a Title I letter (TI–402) requesting that lenders furnish comments and suggestions on possible changes that would make the program more readily available to qualified lenders and borrowers across the nation, while preserving the program's actuarial soundness and avoiding the pitfalls and problems of third-party involvement in the loan origination process. The Department also published a Notice in the **Federal Register** (55 FR 369, January 4, 1990), requesting public comments on

the same subject. The Department received a total of 70 written comments as a result of these two solicitations, including 54 from Title I lenders, seven from home improvement dealers or dealer representatives, and three from industry associations. The changes being proposed by this rule incorporate a number of suggestions for reform made by the respondents.

The regulatory changes in this proposed rule are designed to achieve the following objectives for Title I reform:

1. Broadening participation by qualified lending institutions through the use of loan correspondents, while eliminating any role in the program by loan brokers and other unregulated or unsupervised third parties.
2. Establishing higher qualification standards for lenders and dealers, and more objective criteria for lenders and loan correspondents to use in approving loans.
3. Requiring greater oversight of dealers through more personal contact between lenders and borrowers and through site inspections of dealers' work prior to disbursement of loan proceeds.
4. Requiring more secure collateral for both property improvement and manufactured home loans.
5. Encouraging on-site repossession and resale of manufactured homes to reduce claim losses for lenders and HUD.
6. Adding debt collection provisions for the Title I program.

To assist the reader, all references in the following pages to specific sections in parts 200, 201 and 202 are to the sections as they are proposed for amendment, unless the text clearly indicates otherwise.

General Program Reforms

The Department is proposing a number of program reforms that are applicable to both the property improvement and manufactured home loan programs. These reforms include qualification standards for lenders and loan correspondents, prohibiting loan brokers, dealer approval and supervision, credit underwriting procedures and requirements, refinancing and assuming loans, lender efforts to cure default, claim filing, insurance reserves, waivers, and debt collection. In later sections, other reforms that are specific to the property improvement or the manufactured home loan program will be addressed.

Qualification Standards for Lenders

The Department proposes to amend the minimum net worth and minimum warehouse line of credit requirements for Title I lenders in part 202. The minimum net worth requirement for nonsupervised lenders and for those supervised institutions that are not members of the Federal Reserve System or whose accounts are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration would be increased from $100,000 to $250,000. Other supervised lenders, which are not currently covered by a minimum net worth requirement, would also need a minimum net worth of $250,000. In addition, the Department proposes to increase the minimum warehouse line of credit requirement for nonsupervised lenders from $250,000 to $500,000. These changes are in line with the Department's objective of higher qualification standards for lending institutions holding Title I contracts of insurance.

Title I lenders previously approved by the Secretary would have three years to meet these new requirements. Financial institutions making application for approval to originate, purchase, sell and/or service Title I loans after the effective date of these changes would be required to meet them immediately.

Approval of Loan Correspondents

To encourage more financial institutions to participate in the origination of Title I loans, the Department is proposing to creat a new category of approved lending institutions, to be known as "loan correspondents." As defined in §§ 201.2(q) and 202.2(b), a loan correspondent would be a financial institution approved by the Secretary for the purpose of originating Title I direct loans for sale or transfer to a sponsoring financial institution holding a valid Title I contract of insurance.

A loan correspondent would be required to have and maintain a minimum net worth of $100,000, and would have a principal-agent relationship with one sponsoring lender; sponsoring lenders would be able to purchase Title I loans from more than one loan correspondent. Loan correspondents would be permitted to maintain branch offices only with the prior approval of the Secretary.

Although this rule proposes that loan correspondents be approved by the Secretary, the Department invites comments on the alternative of permitting loan correspondents to be approved and supervised by their sponsoring lenders.

Approved Lending Areas

The Department proposes to amend part 202 at § 202.1(c) to provide that a Title I lender or loan correspondent would be authorized to originate Title I loans only within a specific geographic area approved by the Secretary. Lenders and loan correspondents could be approved for expanded lending areas if the Department determines that they are capable of proper loan origination in compliance with the program regulations within those areas.

Other Changes Affecting Lender Approval

The Title I lender approval regulations, at 24 CFR 202.3, currently require that an approved lender be a chartered institution, a permanent organization having succession, or a trust. The Department proposes to exclude trusts as a type of business entity eligible to be approved as a Title I lender because of the undue burden in approving and administering trusts. The difficulties of separating the roles of the lender, as holder of its own loans and as trustee for trust assets, greatly complicate the process of lender approval and supervision required for trusts, as compared to the approval and supervision of corporations. Very few trusts have applied for approval as Title I lenders, and the Department expects no adverse effect on the public as a result of this change. Although the Department proposes to delete the express reference to trusts in § 202.3, a trust could still be approved as a Title I lender if it is a "permanent organization having succession."

In a separate proposed rule to be published soon, the Department expects to propose a number of changes to the mortgagee approval regulations contained in 24 CFR 203.1 through 203.7. Those regulations apply to mortgage and loan insurance programs except the Title I program; they are similar in many respects to the Title I lender approval regulations in Part 202. One change to the mortgagee approval regulations now under consideration concerns whether the phrase "permanent organization having succession," as used in § 203.2(a), should include certain general partnerships as well as certain limited partnerships which do not fall within the class of limited partnerships specifically described in the second sentence of § 203.2(a). For approximately five years, the Department has interpreted the phrase in that way. If the Department makes a final decision to expand the mortgagee approval regulations to specifically describe the standards for approval of general and limited partnerships, it is likely that a

corresponding change will be made in part 202. Therefore, commenters on this rule are invited to express their views on partnerships as Title I lending institutions.

The mortgagee approval rule is also expected to propose that mortgage servicing be limited to mortgagees approved for servicing by the Department. Commenters should anticipate that such a change, if adopted, could also be applied to the Title I program, so that loan servicing would be limited to Title I lending institutions approved by the Department for servicing. Interested persons are invited to express their views on whether Title I loan servicing should be limited to approved lending institutions. Each of these matters will be discussed in more detail, with an explanation of the rationale, in the forthcoming mortgagee approval rule.

Referrals From Loan Brokers

For some time, the Department has had under consideration the question of whether the current program regulations permitted the use of loan brokers or other third-party sources of loan referrals in the origination of Title I direct loans. After a detailed review of the issue, the Department concluded that such referrals were not permitted by the regulations, and resulted in programmatic abuses that were detrimental to the best interests of borrowers, lenders and the Department. On August 22, 1990, the Department issued a Title I letter (TI–405) advising all lenders that, for all credit applications dated on or after November 1, 1990, lenders were prohibited from accepting any referrals from a loan broker, mortgage broker, real estate broker, or other third party having a financial interest in any direct loan transaction.

This rule proposes several changes in the program regulations that would reinforce the prohibition against loan broker involvement enunciated in TI–405. In the definition of "direct loan" in § 201.2(i), the refenerce to "a person acting at the direction of the borrower who is not a dealer" would be changed to read "a person acting at the direction of the borrower who does not have a financial interest in the loan transaction." This change should make it clear that the borrower could obtain assistance in understanding and completing the credit application from a personal advisor such as a family member, friend or attorney, but not from someone with a financial interest in whether the borrower obtains the loan. The other change would add a new § 201.25(d), stating that neither the lender nor the borrower may pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker, or any other party in connection with any Title I loan.

As a alternative to these changes, the Department invites comments on an approach that would permit loan brokers to make referrals to approved Title I lenders, but only under the following conditions:

1. Each loan broker would be subject to an initial approval, annual reapproval, and periodic monitoring by the lender, to assure that the requirements of the Title I program are being met. The lender would be held accountable for all program violations by loan brokers with which the lender does business.

2. The loan broker would not be permitted to accept a referral fee from any party to the loan transaction other than the lender.

3. At the time of loan application, the loan broker would be required to disclose to the borrower that a referral fee will be included in the fees paid in advance to the lender, and to state the amount of that fee. The borrower would also be advised that it is not necessary to utilize the services of a loan broker to obtain a Title I loan.

Commenters who favor this alternative should indicate what controls would need to be instituted by lenders and the Department to ensure that the loan proceeds are used only for the purposes specified on the loan application, and to minimize the risks of fraud or misrepresentation by the loan broker and the borrower. The present prohibition against loan brokers will remain in effect while the Department evaluates the comments and makes its decision on whether this alternative is feasible.

Dealer Approval and Supervision

The Department proposes to amend § 201.27(a) to change the qualification requirements for dealer approval and reapproval. Approval as a property improvement dealer would require that the dealer have and maintain a minimum net worth of $25,000, and the dealer must have demonstrated business experience as a property improvement contractor or supplier. Approval as a munufactured home dealer would require that the dealer have and maintain a minimum net worth of $50,000; in addition, the dealer must have demonstrated business experience in manufactured home retail sales. A dealer may not be reapproved if it is unable to meet the appropriate minimum net worth requirement. The Department is also proposing that the documentation obtained by the lender to support a dealer's application for approval or reapproval be expanded to include consumer credit reports on the owners, principals, and officers of the dealership.

Section 201.27(a)(4) would also be amended to specify that, at a minimum, the lender shall visit each approved dealer's place of business at least once in every six months to review the dealer's Title I performance. The present regulations state only that visits must be conducted "periodically during the year," and many lenders have asked for a more definitive time period.

Credit Investigation Procedures

The Department is proposing a number of significant changes to the credit investigation procedures in § 201.22(a). Section 201.22(a)(2) would be amended to require that the lender verify the validity of the borrower's Social Security Number through such documentation as may be prescribed by the Secretary. This provision is to implement section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100–242), which authorizes the Department to require that applicants and participants in any HUD program disclose and furnish documentation to verify their Social Security Numbers as a condition of eligibility. On September 27, 1989, the Department published a final rule (at 54 FR 39680) which added a new § 201.6 to the Title I regulations to require this disclosure and verification; however, this final rule did not specify how or at what point in the loan origination process the requirement was to be met. This amendment to § 201.22(a) would clarify that Social Security Number verification should be done by the lender at an early stage of the credit examination process.

Section 201.22(a)(2) would also be amended to require that, upon receipt of the credit application, the lender must conduct a fact-to-face or telephone interview with the borrower. The purpose of this interview would be to ascertain the accuracy and completeness of the information on the credit application, to question the borrower on the likelihood of incurring additional debts that could affect creditworthiness, and to determine the source of the funds needed for the borrower's initial payment. The Department believes that conducting this interview at an early point in the process will be useful in identifying situations where a dealer, contractor, or other party has exerted undue influence

on the borrower to overstate income or understate debts on the credit application.

In § 201.22(a)(6), the Department would clarify that, for any property improvement loan, the lender must verify that the borrower is not over 30 days delinquent on any senior mortgage or deed of trust on the property being improved. Section 201.22(a)(7) would include in the regulations a requirement that the lender must verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal government. The Department intends initially to prescribe use of its Credit Alert Interactive Voice Response System (CAIVRS), but could prescribe a different manner of verification if CAIVRS is modified or terminated.

Finally, § 201.22(a)(8) would be amended to require that the lender obtain written verification of the existence of all funds needed for the borrower's initial payment if such payment will exceed two percent of the loan amount. At present, verification of the source of funds for the initial payment is required only for manufactured home loans. This proposal would extend the verification requirement to all Title I loans where the fees and charges to be paid in cash by the borrower exceed two percent of the loan amount.

Income Requirements for Borrowers

Section 201.22(b) presently requires that, for any manufactured home loan, the borrower's income will be considered adequate only if the borrower's housing expenses and total fixed expenses do not exceed maximum percentages of net effective income established by the Secretary and published by Notice in the **Federal Register**. The Department proposes to amend § 201.22(b) to extend the use of maximum expense-to-income ratios to property improvement loans and to specify these ratios in the regulations rather than in a **Federal Register** Notice. In addition, the present ratios of 38 percent of net effective income for housing expenses and 53 percent of net effective income for total fixed expenses would be changed to 29 percent and 41 percent of effective gross income, respectively, to conform to the practice in lending community and in other FHA loan and mortgage insurance programs. The Department would also add a new § 201.22(b)(2) to clearly define all of the terms used in calculating these ratios.

In a separate rulemaking to be published in the near future, the Department will be proposing amendments to the Manufactured Home Construction and Safety Standards in 24 CFR part 3280. Among other things, these amendments would require that all manufactured homes be constructed to standards that will result in greater energy efficiency and lower fuel costs for homeowners. The establishment of new preemptive energy conservation standards for manufactured housing was mandated by section 568 of the Housing and Community Development Act of 1987 (Pub. L. 100–242). Because of statutory requirements on rulemaking in connection with manufactured housing standards, the Department expects that these new energy conservation standards will not become effective until 1992. At that time, the expense-to-income ratios adopted as a result of this proposed rule will be reevaluated to determine whether higher ratios should be permitted for borrowers who are purchasing energy-efficient homes, in recognition of the fact that these borrowers will be spending less of their income on fuel costs for heating and cooling.

Notice Requirements

The Department proposes to add new §§ 201.26 (a)(7) and (b)(7) to require that, prior to loan disbursement, the lender must provide the borrower with a written notice that (a) states that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid, and (b) constitutes the borrower's agreement to HUD's imposition of penalties and administrative costs as required by law. In the case of a direct property improvement loan, this notice would also constitute an acknowledgement of the borrower's post-disbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent. A copy of the notice, signed by the borrower, would be retained by the lender and submitted to HUD as part of its insurance claim. The lender would also have to provide a similar notice to an assumptor prior to execution of the assumption agreement (see § 201.19(c)(2)).

The Debt Collection Act of 1982, at 31 U.S.C. 3717, requires that the Federal government assess penalties and administrative costs with regard to delinquent debts owed to the United States. However, such penalties and costs may not be assessed on a debt if the loan agreement or contract prohibits assessing such charges or expressly limits such charges. Since Title I debts arise out of loans made by private lenders, and the United States stands in the shoes of such lenders when the loan obligations are assigned to the United States with claim submissions, the United States obtains no greater rights than were held by the private lenders and therefore has been unable to assess such charges. The borrower's assent to the imposition of such charges in the event of an assignment to the United States would enable the Department to assess such charges. The Department considered amending § 201.12, Requirements for the note, to require that the note contain a provision obligating the borrower to pay administrative costs and penalties if assessed by the United States after an assignment, but concluded that a separate notice to, and acknowledgement and agreement from, the borrower would be preferable.

Refinancing Delinquent Loans

Section 201.19(a)(1)(i) provides that, if an existing loan is in default and its maturity has been accelerated, it may not be refinanced unless the acceleration is rescinded and the loan is reinstated in accordance with § 201.50(c). This provision permits a lender to offer the option of refinancing at any time until the lender has sent the notice of default and acceleration required by § 201.50(b) and the 30-day notice period has expired. Even after that time, the lender could offer refinancing if the borrower brought the loan current or executed an acceptable modification agreement or repayment plan. Because of this open-ended time period for refinancing, some lenders have refinanced loans many months after the date of default, with the consequence that the refinanced loan balance includes excessive amounts of accrued but unpaid interest. This practice increases the Department's claim exposure if the borrower defaults a second time.

The Department proposes to correct this problem by revising § 201.19(a)(1)(i) to provide that an existing loan that is in default may not be refinanced for an amount greater than the original principal balance of the loan. This change should have the effect of bringing about more rapid decisions by lenders and borrowers on whether or not to refinance the loan, before the accrual of interest becomes an obstacle to refinancing.

Loan Assumptions

The Department has had a long-standing policy of permitting the assumption of Title I loans at the

discretion of the lender, but has never established any conditions on assumptions or on the qualifications of assumptors, except in the case of the refinancing of an already assumed loan (see § 201.19(a)(1)(iv)). The Department now proposes to add a new § 201.19(c) to provide specific requirements relating to the assumption of Title I loans.

Under § 201.19(c)(1) as proposed, an existing Title I loan may be assumed, provided that the assumptor (a) meets the borrower eligibility and credit underwriting requirements of the regulations, and (b) executes an assumption agreement that is satisfactory to the lender and signed by the assumptor and the original borrower or previous assumptor at the time of assumption. The Department believes that an assumptor should be subject to the same credit underwriting standards and procedures as the original borrower.

The Department recognizes that many borrowers are unaware that the assumption of their loan obligation does not normally release them from liability for repayment of the loan. Nevertheless, if the assumptors have demonstrated their creditworthiness over a period of time, there does not seem to be any reason why the original borrower should continue to be held liable. Therefore, § 201.19(c)(3) proposes that the original borrower would be automatically released from liability after the assumptor (and any subsequent assumptors) have made regular installment payments on the loan for a period of 24 consecutive months without any period of default. Under these conditions, the prior approval of the Secretary would not be required. Assumptors would be automatically released from liability if subsequent assumptors meet the same conditions (see § 201.19(c)(4)).

Definition of Default

"Default" is defined in § 201.2(h) as a failure by the borrower to make any payment due under the note or a failure to perform any other obligation under the note or security instrument; however, other provisions in the Title I regulations relating to default refer only to monetary defaults. As a matter of practice, Title I claims have been filed by lenders only for monetary defaults, and the Department has advised lenders not to declare non-monetary defaults if borrowers remain current on their loan payments. The Department proposes to rectify this inconsistency by amending § 201.2(h) to limit "default" to a failure to make any payment due under the note, and to provide that the date of default would be 30 days after the first failure to make an installment payment on the note which is not covered by subsequent payments.

Lender Efforts to Cure Default

At present, § 201.50(a) requires that, before taking action to accelerate the maturity of a loan in default, the lender or its agent must arrange for a face-to-face meeting with the borrower and attempt to secure an agreement to cure the default, either by bringing the loan current or by refinancing the loan, or to execute a modification agreement or enter into a repayment plan for bringing the loan current by a later date. If the lender is unable to arrange a face-to-face meeting, the default may be discussed with the borrower by telephone; however, the lender must document the loan file showing the efforts made to arrange a face-to-face meeting.

After almost five years of experience with these requirements, the Department has concluded that they should be modified to give lenders the option of either a face-to-face meeting or telephone contact. At the same time, § 201.50(a) would be amended to make it clear that the lender is expected to contact the borrower and any co-makers or co-signers, to discuss the reasons for the default as well as the borrower's plans to bring the loan current. Since the definition of "borrower" in § 201.2(c) would include anyone who is obligated for the repayment of the loan obligation, the lender is expected to contact all assumptors, original borrowers, and any co-makers and co-signers who are still liable for repayment on assumed loans.

Claim Filing Procedures

The Department is proposing to make a number of changes to the claim filing procedures in §§ 201.54 and 201.55. In § 201.54(b), the present regulations provide for maximum claim filing periods of 12 months after the date of default for manufactured home purchase loans and 18 months after the date of default for manufactured home lot loans and combination loans. The Department proposes to amend this section to change the maximum claim filing period for any manufactured home loan to three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default. This change recognizes that the lender cannot submit an insurance claim to the Department until the property has been sold, and basing the claim filing period solely on the date of default has resulted in a large number of claims being filed after the deadline through no fault of the lender.

Section 201.54(b) would also be amended to provide that the Secretary may extend the claim filing period in a particular case, but only where the lender can show clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by litigation related to the loan, or because management control of the lender or the Title I loan portfolio has been assumed by a Federal or State supervisory or regulatory agency. Many lenders have asked for a more definitive statement of the bases upon which the claim filing period may be extended.

The Department also proposes to add a new paragraph (b)(3) to § 201.54, which would consist of the text of present § 201.4. Section 201.4 provides that if a borrower is in the military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and is in default on a Title I loan, any period of military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim. The Department believes that it is more appropriate for this provision to be in § 201.54 than in its current location in the regulations. Section 201.4 would be reserved.

The Department proposes to amend § 201.54(c) to provide that any supplementary claim must be filed within six months after the date of payment of the initial claim. In addition, the Department proposes to charge a reprocessing fee, in an amount to be established by the Secretary, for any supplemental claim and any resubmission of an initial claim that was denied due to the claim application or supporting documentation being incomplete. This reprocessing fee would be a nominal amount to cover the additional cost to the Department of processing such claims.

The Department also proposes to amend § 201.54(e), which requires that the loan obligation be valid and enforceable when assigned to the United States in connection with an insurance claim. This section would be amended to state that, upon notification to the lender that the obligation may not be either valid or enforceable against the borrower, the Department may: (a) Deny the claim and reassign the note to the lender, or (b) require that the lender repurchase a paid claim and accept reassignment of the note. This amendment is to clarify the regulatory language in § 201.54(e) and does not represent any change in the Department's policy that it is the lender's responsibility to resolve any issue of validity or enforceability of the loan obligation, whether the issue is identified before or after a claim is paid.

Finally, the Department proposes to amend § 201.55(b)(2) to eliminate the present language authorizing the payment of interest for three additional months beyond the date of default, if the Secretary finds good cause for the extension. This provision has never been used in the four years since it was added to the regulations, and the Department sees no need for its retention.

Insurance Coverage Reserve Accounts

The Department proposes to amend §§ 201.32(a) and (b) to eliminate the present requirement for a ten percent annual deduction from a lender's insurance coverage reserve account after the lender has held a Title I contract of insurance for more than five years. In its place, the Department is proposing to reduce a lender's reserves only for loans which the lender reports as paid-in-full and loans which have reached maturity. No adjustment would be made for loans that are terminated through default and submission of an insurance claim. Adjustments for non-claim terminations would be made by deducting ten percent of the amount disbursed, advanced or expended by the lender in originating the loan or in purchasing it from another lender.

Under this new system, lenders would have the benefit of retaining reserves for the full period of time that a loan or group of loans are in the lender's portfolio. The Department believes that this is a more equitable approach than the present annual deduction, and should result in the lender having more reserves available at any time for the payment of claims.

The Department is proposing that this new adjustment procedure would be applicable to all non-claim terminations occurring on or after the effective date of these regulations. Because many of the loans in a lender's portfolio on the effective date may have been subject to ten percent annual deductions in prior years, the Department plans to implement a one-time reserve adjustment which will give loan-by-loan credit for all annual adjustments previously taken. This one-time adjustment is applicable to individual loans and will not affect the lender's total reserve balance.

The Department also proposes to amend § 201.32(a) to provide for the establishment of separate contracts of insurance with separate reserve accounts for lenders making both property improvement and manufactured home loans. This provision would be applicable only for loans made after the effective date of these regulations; at that time, a lender which plans to originate or purchase both property improvement and manufactured home loans would have to decide which loans will be reported under its present contract number and which will be reported under a newly assigned number.

Section 201.32(d)(1) would also be amended to permit the earmarking of reserves transferred from another lender when a determination is made that it is in the Secretary's interest to do so. The Department anticipates that the earmarking of reserves would be utilized primarily in situations where it appears that (a) a lender may be purchasing a group of loans for the purpose of accessing a sizeable reserve account to supplement a low reserve balance on its existing loan portfolio, or (b) a lender may be purchasing another lender's loans at a considerable discount because of the lack of available reserves on the part of the selling lender, and would be using its existing reserves for the payment of claims on the loans being purchased. In either of these cases, the Secretary's liability for the payment of insurance claims could be increased beyond the level envisioned by the Title I statute, and the Department feels that earmarking is necessary to assure that this result does not occur.

Waiver Provisions

Section 201.5 states that the Secretary may waive the regulations, subject to statutory requirements, when it is determined that their enforcement would impose an injustice upon a lender that has substantially complied with the regulations in good faith and the waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender had been in full compliance. This provision is authorized by section 2(e) of the National Housing Act, which provides that the Secretary may waive the lender's noncompliance with the regulations. The Department proposes to amend § 201.5 so that it reads the same as the statute. In addition, § 201.5 would be amended to provide that the Secretary may waive any regulatory provision, subject to statutory limitations, if the Secretary finds that application of such provision would adversely affect achievement of the purposes of the Act. This amendment would allow for greater flexibility when warranted by conditions beyond the lender's control.

Debt Collection Requirements

The Department proposes to add a new subpart G to part 201, consisting of §§ 201.60 through 201.63. This new subpart would codify existing Title I debt collection practice and procedures, and would be applicable to debts owed to the Department by defaulted borrowers, as well as debts owed to the Department by Title I lenders arising from repurchase demands and unpaid insurance charges. In the case of debts owed by defaulted borrowers, § 201.61 would establish the principal amount of the debt, usually referred to as the "legal debt," and § 201.62 would establish the basis for the collection of interest, penalties, and administrative costs in connection with the debt.

Property Improvement Loan Reforms

Reforms that are specific to the property improvement loan program are being proposed in the areas of equity requirements for certain loans, completion certificates for direct loans, property inspections, and proceeding against the loan security.

Equity Requirements for Certain Loans

The Department proposes to add a new § 201.20(a)(3) and to amend § 201.26(a)(1) to require that, for any property improvement loan in excess of $5,000, the borrower shall have equity in the property being improved at least equal to the loan amount. Acceptable procedures for determining the market value of the property and evaluating whether the borrower has sufficient equity in the property will be established by the Secretary, and lenders will be given notice of the procedures.

For many years, the Department has required that Title I property improvement loans over a certain amount be secured by a mortgage or deed of trust on the property being improved. However, lenders have not been required to determine the market value of the property or to evaluate whether the property had sufficient value, over and above the unpaid balances of other loans on the property, to support the Title I loan. No appraisal has been required as a condition for determining the eligibility of the property; instead, lenders and the Department have relied mainly on the creditworthiness of the borrower in deciding whether a loan should be made. With the high claim losses that have been experienced in recent years, the Department has decided that borrower eligibility should be based in part on whether the market value of the property being improved is sufficient to support the Title I loan and other loans that are using the property as loan security.

In most cases, the determination of whether the borrower has sufficient equity to support the Title I loan will be based upon the market value of the property prior to the improvements being undertaken. However, the Department recognizes that there may be situations where the pre-improvement value of the property indicates that the borrower has some equity, but not enough to equal the loan amount. In those situations, lenders will be permitted to consider the post-improvement value in determining whether there is sufficient equity to support the Title I loan. Consideration of the post-improvement value should benefit some borrowers in areas of the nation where property values have leveled off or declined.

Completion Certificates for Direct Loans

Section 201.40(b)(1) presently requires that the completion certificate on a direct property improvement loan be signed by both the borrower and the contractor or seller. The Department has concluded that this procedure imposes an unwarranted requirement on the contractor or seller to certify that the property improvements are eligible under the Title I regulations, when the contractor or seller is not a party to the loan transaction. In addition, some lenders and borrowers have encountered difficulties in obtaining contractor certifications when more than one contractor was involved in carrying out the improvement work. Accordingly, the Department proposes to amend § 201.40(b)(1) to remove the requirement that the contractor or seller sign the completion certificate on a direct property improvement loan.

Section 201.40(b)(1) would also be amended to require that, if the borrower fails to submit a completion certificate within the time limits specified in this section, an on-site inspection shall be conducted by the lender or its agent to verify the eligibility of the improvements and determine whether the improvements have been completed.

Property Inspections

Section 201.40(b)(2) presently requires that the lender or its agent conduct an on-site inspection for any property improvement loan of $7,500 or more, and for 10 percent of all property improvement loans under $7,500. The Department proposes to amend § 201.40(b)(2) to eliminate the inspection requirement for loans under $7,500; however, it would be retained for all direct property improvement loans of $7,500 or more. If the borrower will not cooperate in permitting an on-site inspection, the lender would be required to report that fact to the Secretary.

The Department also proposes to add a new § 201.26(a)(6) to require that the lender or its agent conduct an on-site inspection for any dealer property improvement loan of $7,500 or more. This inspection would be conducted after receipt of the completion certificate and prior to the disbursement of funds to the dealer. Its purpose would be to verify that the terms and conditions of the improvement contract have been met, and to avoid problems such as incomplete or shoddy work by some dealers that have occurred in the past.

Proceeding Against the Loan Security

At present, § 201.51(a)(1) provides that, after acceleration of maturity on a secured property improvement loan, the lender may either proceed against the loan security or make a claim under its contract of insurance. However, if the lender elects to proceed against the loan security, it may not submit an insurance claim except under the circumstances in § 201.51(a)(2). Section 201.51(a)(2) permits a lender holding a mortgage or other security instrument senior to its Title I loan to proceed against the property under the senior security instrument and later submit an insurance claim under certain circumstances.

The Department is proposing to amend §§ 201.51(a) (1) and (2) to provide that the lender may proceed against the property and later submit an insurance claim if the lender (a) obtains a HUD-approved appraisal of the property; (b) proceeds agaisnt the secured property in compliance with all applicable State and local laws; and (c) takes all actions necessary to preserve its rights to obtain a valid and enforceable deficiency judgment against the borrower. The Department expects that giving lenders the opportunity to pursue foreclosure and to file a claim for any deficiency will reduce claim losses for both lenders and the Department. This change in procedure will permit lenders to pursue foreclosure whenever it appears that this action could result in recovery of the full unpaid balance on the Title I loan. At the same time, it would permit the lender to file an insurance claim if this expectation is not realized.

Manufactured Home Loan Reforms

Reforms that are specific to the manufactured home loan program are being proposed in the areas of nonfinanceable items, site inspections, refinancing of combination loans, proceeding against the loan security, and maximum loan amounts for repossessed homes.

Nonfinanceable Items

The Department proposes to amend §§ 201.10 (b)(1) and (d)(1) by deleting subparagraph (ii) in each case. Subparagraph (ii) provides that the wholesale (base) price of itemized specialty items, as detailed in the manufacturer's invoice, may be included in calculating the maximum loan amount. Section 201.2(ii), which would also be deleted, defines "specialty items" as including extended warranty or service contracts and the purchase of wheels and axles. This amendment would prohibit these items from being included in the calculation of the maximum loan amount.

The Department is concerned about the growing practice of wheels and axles being sold by the borrower without the lender's permission, in violation of the Title I regulations and the certifications made by the borrower on the placement certificate. Given the small dollar amounts involved and uncertainties of proving whether the wheels and axles were removed by the dealer or the borrower, it would be difficult to prosecute such violations under the U.S. Criminal Code. However, the problem can be prevented by eliminating the purchase of wheels and axles as an item that can be financed. The rental of wheels and axles would continue to be eligible for financing, either as part of the freight charges in the manufacturer's invoice or as part of the dealer's charge for transporting the home to the homesite.

The Department also proposes to amend § 201.25(b)(2) to delete subparagraphs (ii) and (iii). These subparagraphs provide that the premiums paid by the borrower for up to three years of comprehensive and extended hazard insurance, secured interest protection insurance, flood insurance, extended warranty coverage, or an extended service contract may be included in the loan amount, as long as the total principal obligation does not exceed the limits prescribed in § 201.10.

In response to audit findings on the Title I manufactured home loan program by the Department's Office of Inspector General, the Department has conducted an extensive evaluation of the "soft costs" that are typically included in the loan amount, but add little or no value in the event that the borrower defaults on the loan and the home must be repossessed. Some of these cost items (transportation, set-up, skirting, air conditioning, and sales taxes) are needed to make the home usable and livable, and they usually cannot be deferred or paid for in some other way.

If these cost items were not eligible for financing, the borrower would have no choice except to pay for them in cash, thereby increasing what is already a substantial downpayment. However, the costs of insurance premiums, extended warranty coverage, and extended service contracts are generally payable on an annual basis, and they could be eliminated from the loan without severely impacting on the borrower's cash investment in the manufactured home.

In an earlier proposed rule published in the Federal Register on August 15, 1988 (53 FR 30697), the Department had proposed to reduce the number of years of hazard insurance coverage that could be financed with a Title I manufactured home loan from three years to one year. When the final rule was published on August 31, 1989 (54 FR 36258), the Department indicated that it was postponing the matter for further study. The Department has now concluded that the financing of hazard insurance coverage should be eliminated entirely.

Site Inspections

The Department is proposing to add a new § 201.26(b)(6) to require that the lender or its agent conduct a site-of-placement inspection in connection with any manufactured home purchase loan or combination loan. This inspection would be conducted prior to the disbursement of funds to the dealer or seller, or before final approval in the case of an uninsured loan being refinanced under Title I. If the lender uses an agent to conduct this inspection, the agent may not be a manufactured home dealer.

The purpose of the site-of-placement inspection would be to verify that (a) the terms and conditions of the purchase contract have been met; (b) the manufactured home and any itemized options and appurtenances have been delivered and installed; (c) the manufactured home has been properly erected or installed on the homesite without any structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational; and (d) for any dealer loan, the placement certificate executed by the borrower and the dealer is in order. Conducting this inspection prior to the disbursement of loan funds will ensure that the problems of incomplete delivery of manufactured home accessories and equipment and improper placement and installation of the home, which have plagued the program in the past, will be avoided.

Since all manufactured homes would be inspected before loan funding or final approval, the procedures in §§ 201.26(b)(6) through (8) of the present regulations, which provide for making partial disbursements when some of the items to be financed with the loan proceeds have not been delivered or completed, would no longer be necessary. Therefore, the Department proposes to delete these sections.

Refinancing of Combination Loans

The regulations already provide for using loan proceeds for the purchase or refinancing of a manufactured home and lot in combination, for the refinancing of a borrower's existing uninsured combination loan, and for refinancing a borrower's existing uninsured manufactured home lot in connection with the purchase of a manufactured home. However, the regulations do not address the situation where the owner of a manufactured home desires to refinance the home in connection with the purchase of a suitably developed lot on which to place the home. This situation is occurring with some frequency in places where manufactured home rental parks are being converted to either cooperative or condominium ownership. Permitting homeowners in these parks to refinance their existing homes and to use whatever equity they might have in that home toward the purchase price of the underlying lot would encourage continued home ownership.

To address this situation, the Department proposes to add new §§ 201.10(f)(5) and 201.11(c)(4) and to amend §§ 201.19(a)(3), 201.21(b)(1) and 201.23(d) to permit the proceeds of a combination loan to be used for the purchase of a manufactured home lot in connection with the refinancing of a manufactured home already owned by the borrower. Section 201.10(f)(5) would provide that the maximum loan amount for this type of loan could not exceed the lesser of (a) the cost to the borrower of prepaying the existing loan on the home, plus the purchase price of the lot, or (b) the appraised value of the home and lot, as determined by a HUD-approved appraisal, up to a maximum of $54,000. Section 201.11(c)(4) would limit the maximum term to the same time limit as any other combination loan. Section 201.19(a)(3) would specify that this type of loan shall be subject to all of the requirements of the regulations except for the execution of a placement certificate. Section 201.23(d) would be amended to provide that the borrower's equity in the home may be accepted in lieu of all or part of the required downpayment on the combination loan; however, this procedure may not result in the borrower receiving any cash payment if the borrower's equity in the home exceeds the required downpayment.

Proceeding Against the Loan Security

Section 201.51(b)(1) presently states that, when a manufactured home loan is in default and the lender cannot contact the borrower during the notice period required by § 201.50(b), the lender or its agent shall make a visual inspection of the property, determine whether the property is vacant or abandoned, and prepare an inspection report. It also provides that the lender shall take reasonable steps to preserve and maintain the property if this does not constitute trespass.

The Department proposes to redesignate this section as § 201.51(b)(2) and amend it to require that a visual inspection and preparation of a condition report be carried out by the lender or its agent on *all* manufactured home loans prior to foreclosure or repossession. If the lender determines that the borrower has abandoned the property, the lender would be expected to take immediate steps to secure and preserve the property. In cases of abandonment, the lender would not have to send a notice of default and acceleration to the borrower or any other person who remains liable for the repayment of the loan obligation, unless required to do so by State law.

The Department also proposes to amend § 201.51(b)(3) to require that the HUD-approved appraisal of the property be performed on the homesite, unless the site owner requests in writing that the home be removed before the appraisal can be performed. The Department believes that this requirement will encourage on-site repossession and resale of manufactured homes, and will result in higher resale prices and lower claim losses.

In a related change, § 201.55(b)(3) would be amended to explicitly state that the costs of site inspection and property appraisal in connection with the repossession are eligible for reimbursement as part of the lender's insurance claim.

Maximum Loan Amount for Repossessed Homes

At present, § 201.10(b)(3) provides that the maximum loan amount for the purchase of a repossessed manufactured home that was previously insured under Title I shall be the *greater* of 90 percent of the purchase price or 90 percent of the appraised value plus the cost of transportation, set-up and other items. Similarly, § 201.10(d)(3) provides that

the maximum loan amount for the purchase of a repossessed or foreclosed manufactured home and lot that was previously insured under Title I shall be the greater of 95 percent of the purchase price or 95 percent of the appraised value. These two provisions were included in the regulations in a belief that they would help prevent "low ball" appraisals by independent fee appraisers, which would drive down the resale price of repossessed or foreclosed properties.

Since December 1987, all appraisals of repossessed or foreclosed units have been carried out under a contract with the Department, and thus, low appraisals by independent fee appraisers is no longer an issue. In addition, the Department has determined that the application of this maximum loan amount calculation and the minimum downpayment provisions in § 201.23 always result in the purchase price, and the the appraised value, being the determinant of the loan amount. As a consequence, if the purchase price is higher than the appraised value, the Department may be insuring a loan amount that is greater than the value of the property.

After a detailed review of this issue, the Department has concluded that these sections should be deleted from the regulations and §§ 201.10 (b)(2) and (d)(2) should be amended to indicate that the maximum loan amount for all existing manufactured homes and home and lot combinations would be based upon the lesser of the purchase price of the appraised value.

Amendments to Part 200

Part 200 contains miscellaneous provisions relating to the loan and mortgage insurance programs of the Department under Titles I and II of the National Housing Act. The Department proposes to remove subparts F and R from part 200.

Subpart F, Property Improvement Loan Procedures and Processing, is a general description of the Title I program as it existed in 1971, when the subpart was published. Subpart F has never been amended, even though there have been many changes in the Title I program since its publication, including the addition of the manufactured home loan program. The Department proposes to remove this subpart to avoid conflicts which may arise from the disparities between the subpart and part 201.

The Department also proposes to remove Subpart R, Claims Collection Standards, which has not been revised since 1983. As noted earlier, provisions relating to Title I debt collection would be included in a new subpart G of part 201.

Conforming and Clarifying Amendments

The Department proposes to amend various other sections of the regulations in 24 CFR part 201 to conform them to the changes discussed above. In addition, the Department proposes to make other amendments for the purpose of clarifying the text of the regulations. Conforming and clarifying amendments are being proposed to §§ 201.1, 201.2, 201.3, 201.10, 201.11, 201.17, 201.21, 201.25, 201.26, 201.30, 201.54 and 201.55.

Applicability of Proposed Amendments

Provisions relating to the approval or reapproval of lenders, loan correspondents and dealers would applicable to all applications for approval or reapproval received on or after the effective date of these regulations. Provisons relating to the process of loan origination would be applicable to all loans for which loan applications are approved on or after the effective date of the regulations. Provisons relating to loan servicing, claim filing, and insurance coverage reserve accounts would be applicable to all loans in existence on or after the effective date of the regulations, regardless of when they have been or will be reported for insurance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it would not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the majority of financial institutions participating in the Title I program are large depository institutions and none of the proposed changes pose undue burdens for small entities seeking to conduct Title I loan transactions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule are directed to lenders and borrowers, and would not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. The rule involves requirements for property improvement and manufactured home loans insured by the Department. Any effect on the family would likely be indirect and insignificant.

Public Reporting Burden

The information collection requirements in Part 202 of this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520); these requirements have previously been assigned OMB Control Number 2502-0017. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each collection of information in Part 202 of the rule.

Information collection and recordkeeping requirements	Reference in this rule	HUD form used	Estimated number of respondents	Hours per response	Total burden hours
Application for approval as a Title I lending institution	§ 202.1(b)	92001-L	300	1.0	300
Application supplement, Schedule I: Lender's qualifications for Title I Program.	§ 202.1(b)	92001-LC	300	1.0	300
Application supplement, Schedule II: Lender's information for HUD data base.	§ 202.1(b)	92001-LD	300	1.0	300
Notification of new Title I Branch Office	§ 202.3(f)	92001-LB	300	1.0	300
Notification of Corporate changes in lending institution	§ 202.3(i)	92001-LK	1,400	0.5	700
Yearly verification report on lending institution	§ 202.3(g)	92001-LV	7,000	1.0	7,000
Recordkeeping	§§ 202.2-202.6	No form prescribed	7,000	0.25	1,750

Regulatory Agenda

This rule was listed as item number 1179 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;
14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and
14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

24 CFR Part 202

Approval of lending institutions, Credit insurance, Administrative practice and procedure, Government contracts.

Accordingly, the Department proposes to amend 24 CFR parts 200, 201, and 202 as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 would continue to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701 through 1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); subpart T is also issued under sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-11).

2. In subpart F, Property Improvement Loan Procedures and Processing, and subpart R, Claims Collection Standards, §§ 200.165 through 200.179, 200.900, and 200,905 would be removed, and subparts F and R would be reserved.

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 would continue to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 201.1 would be revised to read as folllows:

§ 201.1 Purpose.

These regulations implement the provisions of section 2 of Title I of the National Housing Act (12 U.S.C. 1703). They contain the requirements under which an approved financial institution may obtain insurance on loans made for the alteration, repair or improvement of property, for the purchase of a manufactured home and/or the lot on which to place such home, for the purchase and installation of fire safety equipment in existing health care facilities, and for the preservation of historic structures. The insurance granted by the Secretary of Housing and Urban Development shall be available only for loans involving property located within a State. The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio at any time, as reflected in the total amount of insurance coverage contained in insurance coverage reserve accounts established by the Secretary. As limited by the amount of insurance coverage in such reserve accounts, the insurance can cover up to 90 percent of the loss on any individual loan.

5. Section 201. 2 would be amended by removing paragraph (ii); by redesignating paragraphs (g) through (o) as paragraphs (h) through (p); by redesignating paragraphs (p) through (hh) as paragraphs (r) through (jj); by redesignating paragraphs (jj) through (ll) as paragraphs (kk) through (mm); by adding new paragraphs (g) and (q); and by revising paragraphs (c), (h), (i), (o), (r), (ll)(2), and (mm) to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Borrower* means one who applies for and receives a loan insured under this part, or one who is obligated for the repayment of a loan obligation insured under this part.

* * * * *

(g) *Debtor* means the borrower, any co-maker or co-signer, and any assumptor who is liable for the repayment of a defaulted loan obligation insured under this part.

(h) *Default* means a failure by the borrower to make any payment due under the note, when such failure continues for a period of 30 days. For the purpose of these regulations, the "date of default" shall be consider as 30 days after the first failure to make an installment payment on the note which is not covered by susequent payments, when applied to the overdue installments in the order in which they became due.

(i) *Direct loan* means a loan for which a borrower makes application directly to a lender without any assistance from a dealer. The credit application, signed by the borrower, may be filled out by the

borrower or by a person acting at the direction of the borrower who does not have a financial interest in the loan transaction. The lender may disburse the loan proceeds solely to the borrower or jointly to the borrower and other parties to the transaction. If a dealer takes legal action required by State law in order for the lender to obtain a valid and enforceable lien against the property, such acation by the dealer will not convert an otherwise direct loan to a dealer loan.

* * * * *

(o) *Lender* means a financial institution which (1) Holds a valid Title I contract of insurance and continues to be approved by the Secretary under 24 CFR Part 202 to originate, purchase, service, and/or sell loans insured under this part; (2) is under suspension or holds a Title I contract of insurance that has been terminated, but which remains responsible for servicing or selling Title I loans which it holds and is authorized to file insurance claims on such loans, or (3) is approved by the Secretary under 24 CFR Part 202 as a loan correspondent for the purpose of originating Title I direct loans for sale or transfer to a sponsoring lending institution which holds a valid Title I contract of insurance and is not under suspension.

* * * * *

(q) *Loan correspondent* means a financial institution approved by the Secretary to originate Title I direct loans for sale or transfer to a sponsoring financial institution which holds a valid Title I contract of insurance and is not under suspension.

(r) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify in the invoice as follows:

The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (i) The wholesale (base) prices for the manufactured home and itemized options, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (ii) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; and (iii) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of—and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning—trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchaser at any date.

* * * * *

(11) * * *

(2) Whether or not available on an optional basis, do not increase or decrease the wholesale (base) prices for the sale of a specific home or options or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice, for a specific sale to a retail dealer;

* * * * *

(mm) *Wholesale (base) price list* means the price list(s), as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

6. Section 201.3 would be revised to read as follows:

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan which has been made or for which a loan application has been approved before the effective date of the amendment.

7. Section 201.4 would be removed and reserved.

8. Section 201.5 would be revised to read as follows:

§ 201.5 Waivers.

(a) *Waiver of regulatory requirements.* The Secretary in an individual case (or in a class of cases) may waive any requirement of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act.

(b) *Waiver of lender's noncompliance.* The Secretary may waive a lender's noncompliance with any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

9. Section 201.10 would be amended by revising paragraphs (b) and (d) and by adding a new paragraph (f)(5) to read as follows:

§ 201.10 Loan amounts.

* * * * *

(b) *Manufactured home purchase loans.*

(1) The total principal obligation for a loan to purchase a new manufactured home shall not exceed the sum of the following itemized amounts, up to a maximum of $40,500:

(i) 125 percent of the sum of the wholesale (base) price of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) Transportation to the homesite, including the rental of wheels and axles, (if not included in the freight charges), set-up and anchoring charges, not to exceed $600 per module;

(iv) Skirting costs, not to exceed $400;

(v) The actual cost to the borrower of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary;

(vi) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer; and

(vii) Any applicable charges authorized at § 201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home shall not exceed the lesser of

(i) 90 percent of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and 90 percent of any itemized amounts allowed under paragraphs (b)(1) (iii) through (vii) of this section, if incurred; or

(ii) 90 percent of the purchase price of the home,

up to a maximum of $40,500.

(3) The purchase price of a new manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(1) of this section. The purchase price of an existing manufactured home financed with a manufactured home purchase loan includes the retail costs to the borrower of the home as equipped and furnished, as itemized in the purchase contract, including any itemized amounts allowed under paragraphs (b)(1) (iii) through (vii) of this section, if incurred.

* * * * *

(d) *Combination loans.* (1) The total principal obligation for a loan to purchase a new manufactured home and a lot on which to place the home shall not exceed the sum of the following itemized amounts, up to a maximum of $54,000:

(i) 125 percent of the sum of the wholesale (base) price of the home and any itemized options, and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) Transportation to the homesite, including the rental of wheels and axles (if not included in the freight charges), set-up and anchoring charges, not to exceed $900 per module;

(iv) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer;

(v) The appraised value of the developed manufactured home lot (as determined by a HUD-approved appraisal, including on-site water and utility connections, sanitary facilities, site improvements and landscaping) or the purchase price, whichever is less;

(vi) The actual cost to the borrower or the appraised value (as determined by a HUD-approved appraisal) of appurtenances to the home such as a permanent foundation, garage, carport to patio; and

(vii) Any applicable charges authorized at § 201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home and lot shall not exceed the lesser of

(i) 95 percent of the total appraised value of the home, the lot, and any appurtenances (as determined by a HUD-approved appraisal), plus 95 percent of any applicable charges authorized at § 201.25(b); or

(ii) 95 percent of the purchase price of the home, the lot, and any appurtenances, up to a maximum of $54,000.

(3) The purchase price of a new manufactured home and a lot financed with a combination loan includes the retail costs to the borrower, as itemized in the purchase contract(s), of all items set forth in paragraph (d)(1) of this section. The purchase price of an existing manufactured home and lot financed with a combination loan includes the retail costs to the borrower of the home, the lot, and any appurtenances, as itemized in the purchase contract(s), including any applicable charges authorized at § 201.25(b).

* * * * *

(f) * * *

(5) The total principal obligation of the combination loan which results from a borrower's existing uninsured manufactured home purchase loan being refinanced in connection with the purchase of a manufactured home lot shall not exceed

(i) The cost to the borrower of prepaying the existing loan on the home, plus the purchase price of the lot; or

(ii) The appraised value of the home and lot (as determined by a HUD-approved appraisal), whichever is less,

up to a maximum of $54,000.

* * * * *

10. Section 201.11 would be amended by revising paragraph (c)(2) and by adding a new paragraph (c)(4) to read as follows:

§ 201.11 Loan maturities.

* * * * *

(c) * * *

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

* * * * *

(4) The term of the combination loan which results from a borrower's existing uninsured manufactured home purchase loan being refinanced in connection with the purchase of a manufactured home lot shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

11. Section 201.17 would be revised to read as follows:

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan.

12. Section 201.19 would be amended by revising the section title and paragraphs (a)(1) (i) and (iv) and (a)(3) (ii) and (iii); by adding a new paragraph (a)(3)(iv); by revising the title of paragraph (b); and by adding a new paragraph (c), to read as follows:

§ 201.19 Refinanced and assumed loans.

(a) * * *

(1) * * *

(i) A loan that is in default may not be refinanced for an amount greater than the original principal obligation of the loan;

* * * * *

(iv) The refinancing of a loan for an assumptor shall be subject to all of the requirements of this part except §§ 201.20 (b) and (c), 201.21 (b) through (e), 201.23, and 201.26; however, a lender may not refinance a loan for an assumptor unless the original borrower and any intervening assumptors have been released from any liability for repayment of the loan in accordance with paragraphs (c)(3) and (c)(4) of this section, or the Secretary has approved a release of the original borrower and any intervening assumptors in accordance with § 201.24(e).

(3) * * *

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all the requirements of this part applicable to the particular type of loan, except §§ 201.23 and 201.26(b)(4);

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part; and

(iv) Refinancing of an existing uninsured manufactured home purchase loan in connection with the purchase of a manufactured home lot shall be subject to all of the requirements of this part, except § 201.26(b)(4).

(b) *Note and security requirements for refinanced loans.* * * *

(c) *Assumed loans.*

(1) An existing insured property improvement loan or manufactured home loan may be assumed, subject to

(i) A determination by the lender that the assumptor is eligible under § 201.20(a) or 201.21(a) and meets the requirements of § 201.22, and

(ii) The execution of an assumption agreement satisfactory to the lender and signed by the assumptor and the original borrower or previous assumptor at the time of assumption.

The lender shall not permit an assumption under any other circumstances, and shall include appropriate provisions in any note or security agreement to enforce this prohibition.

(2) Prior to the execution of the assumption agreement, the lender shall provide the assumptor with a written notice, to be signed by the assumptor and returned to the lender, that

(i) States that the loan being assumed is insured by HUD and describes the actions the Secretary may take to recover the debt if the assumptor defaults on the loan and an insurance claim is paid, and

(ii) Constitutes the assumptor's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

The signed notice shall be retained in the loan file.

(3) The original borrower and any co-maker or co-signer shall be released from liability for the repayment of a loan obligation insured under this part after the assumptor and any subsequent assumptor have made regular installment payments on the loan for a period of 24 consecutive months without any period of default. If this condition is met, the prior approval of the Secretary under § 201.24(e) is not required.

(4) An assumptor and any co-maker or co-signer shall be released from liability for the repayment of a loan obligation insured under this part after the subsequent assumptor or assumptors have made regular installment payments on the loan for a period of 24 consecutive months without a period of default. If this condition is met, the prior approval of the Secretary under § 201.24(e) is not required.

(5) Evidence of the release of liability under paragraphs (c)(3) or (c)(4) of this section shall be retained in the loan file. The lender shall furnish such evidence to any person who has been released, upon request of that person

13. Section 201.20 would be amended by adding a new paragraph (a)(3) to read as follows:

§ 201.20 Property improvement loan eligibility.

(a) * * *

(3) For any property improvement loan in excess of $5,000, the borrower shall have equity in the property being improved at least equal to the loan amount. Acceptable procedures for determining the market value of the property and evaluating whether the borrower has sufficient equity in the property will be established by the Secretary, and lenders will be given notice of the procedures.

* * * * *

14. Section 201.21 would be amended by revising paragraphs (b)(1), (c)(2), and (c)(3), and the title of paragraph (c), and by adding a new paragraph (c)(4), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(b) * * *

(1) The loan proceeds may be used for the purchase or refinancing of a manufactured home, a suitably developed lot on which to place a manufactured home already owned by the borrower, or a manufactured home and a suitably developed lot for the home in combination. The loan proceeds may also be used to refinance an existing manufactured home already owned by the borrower in connection with the purchase of a manufactured home lot, or to refinance a lot already owned by the borrower in connection with the purchase of a manufactured home. Where the proceeds are for a manufactured home purchase loan or combination loan, the home must be the borrower's principal residence. Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home must be placed on the lot and occupied as the borrower's principal residence within six months after the date of the loan.

* * * * *

(c) *Construction, transportation and installation requirements.* * * *

(2) During any period of transportation from the factory to the borrower's homesite, the structural integrity of the manufactured home shall be maintained so that it will be livable and durable.

(3) The installation or erection of the manufactured home on the homesite shall comply with the manufacturer's requirements for anchoring, support, stability and maintenance. Any permanent foundation shall be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3).

(4) For any manufactured home purchase loan or combination loan involving a sale of the manufactured home by a dealer, the dealer shall inspect the manufactured home, as installed or erected on the homesite, for structural damage or other defects resulting from the transportation and installation of the home. The dealer shall also test the performance of the home's plumbing, mechanical and electrical systems to assure that they are fully operational.

* * * * *

15. Section 201.22 would be amended by redesignating paragraphs (a) (3), (4), (5), and (6) as paragraphs (a) (4), (5), (8), and (9), respectively; by adding new paragraphs (a) (3), (6), and (7); and by revising paragraphs (a) (2), (4), and (8) and paragraph (b) to read as follows:

§ 201.22 Credit requirements for borrowers.

(a) * * *

(2) The lender shall obtain a separate dated credit application on a HUD-approved form, executed by the borrower and by any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation, for each loan made. The lender shall verify that the borrower's Social Security Number is valid, through such documentation as may be prescribed by the Secretary. Upon receipt of the credit application, the lender shall conduct a face-to-face or telephone interview with the borrower to ascertain that the information on the application is accurate and complete.

(3) The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and of any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

(4) The lender shall determine the total amount of the borrower's existing and proposed Title I loans to ensure that

the loan amounts in § 201.10 are not exceeded.

* * * * *

(6) For any property improvement loan, the lender shall verify that the borrower is not over 30 days delinquent on any senior mortgages or deeds of trust on the property being improved.

(7) The lender shall verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal government.

(8) The lender shall obtain written verification of the existence of all funds of the borrower required for the borrower's initial payment, if such payment will be in excess of two percent of the loan.

* * * * *

(b) *Income requirements.* (1) For any title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as borrower's other housing expenses and recurring charges. For the borrower's income to be considered adequate, the ratio of housing expenses to effective gross income generally may not exceed 29 percent, and the ratio of total fixed expenses to effective gross income generally may not exceed 41 percent. If either of these expense-to-income ratios is exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of other factors concerning the borrower's income and creditworthiness which support approval of the loan.

(2) In determining whether the borrower's income is adequate, the following definitions are applicable:

(i) *Effective gross income* is defined as continuing income from all sources which may reasonably be expected to be available during the first two years of the loan obligation.

(ii) *Total fixed expenses* is the sum of the borrower's housing expenses and other recurring charges.

(iii) *Housing expenses* includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

(iv) *Other recurring charges* includes all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, child care, and any other debt where the obligation is expected to continue for six months or more.

* * * * *

16. Section 201.23 would be amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 201.23 Borrower's initial payment.

* * * * *

(b) * * *

(3) Nothing other than the borrower's equity in an existing manufactured home and any moveable appurtenances may be traded-in a new home and accepted in lieu of full or partial cash downpayment. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the value of the home and appurtenances, as determined by a HUD-approved appraisal, less the total of all liens on the home and appurtenances.

* * * * *

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the manufactured home and lot. Where the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan. However, this procedure may not result in the borrower receiving any cash payment as a result of the loan transaction.

17. Section 201.25 would be amended by revising paragraphs (b)(1)(i)–(iv) and (2)(i)–(iii), and by adding a new paragraph (d), to read as follows:

§ 201.25 Charges to borrower to obtain loan.

* * * * *

(b) * * *

(1) * * *

(i) Fees for architectural and engineering services;

(ii) Building permit costs;

(iii) Credit report costs; and

(iv) A fee for an inspection of the property by the lender or its agent as required under § 201.26(a) or § 201.40(b)(2), not to exceed $50.

* * * * *

(2) * * *

(i) State and local sales taxes paid by the borrower;

(ii) Credit report costs; and

(iii) A fee for an inspection of the property by the lender or its agent as required under § 201.26(b)(6), not to exceed $50.

* * * * *

(d) *Fees and charges which may not be paid.* The lender may not pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker or any other party in connection with a loan insured under this part.

18. Section 201.26 would be amended by revising paragraphs (a)(1) and (2); by redesignating paragraphs (a)(6), (b)(9), and (b)(10) as (a)(8), (b)(8), and (b)(9), respectively; by adding new paragraphs (a)(6) and (a)(7); and by revising paragraphs (b)(2) (iii) and (iv), (3) (i), (iii), (v) and (vi), (4), (6), and (7), and adding a new paragraph (b)(3)(vii) to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2);

(ii) The interest of the borrower in the property is valid, through such title or other evidence as is acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated; and

(iii) For any loan in excess of $5,000, the borrower has equity in the property being improved at least equal to the loan amount.

(2) If the borrower plans to use a dealer or contractor to carry out the improvement work, the lender shall obtain a copy of the proposal or contract which describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

* * * * *

(6) For any dealer loan where the principal obligation is $7,500 or more, the lender or its agent shall conduct an on-site inspection of the improved property. The inspection shall be conducted after receipt of the completion certificate. The purpose of the inspection is to verify that the terms and conditions of the improvement contract have been met, and the completion certificate executed by the borrower and dealer is in order.

(7) For any property improvement loan, the lender shall provide the borrower with a written notice, to be

signed by the borrower and returned to the lender, that

(i) States that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717; and

(iii) In the case of a direct loan, constitutes an acknowledgement of the borrower's post-disbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent in accordance with § 201.40(b).

The signed notice shall be retained in the loan file.

* * * * *

(b) * * *

(2) * * *

(iii) Copies of itemized statements of other costs, fees and charges, whether paid by the borrower or financed with the loan proceeds; and

(iv) The note, security instrument and copies of all other documents relating to the loan transaction.

(3) * * *

(i) The manufactured home being financed with a manufactured home purchase loan or combination loan will be occupied as the borrower's principal residence;

* * * * *

(iii) The initial payment required under § 201.23 was made, and no part of the initial payment was borrowed from or otherwise advanced or paid to or for the benefit of the borrower by the dealer or seller, the manufacturer or any party to the transaction, and if any part of the initial payment was obtained through a gift or loan, the source of the gift or loan and the security for any such loan was disclosed on the credit application;

* * * * *

(v) While any portion of the loan obligation on a combination loan is unpaid, the manufactured home will not be moved to a new site;

(vi) Prior to disbursement of the proceeds of a manufactured home loan, the borrower will pay in full the unpaid balance on any other insured manufactured home loan secured by a different property, unless the Secretary waives this requirement; and

(vii) Except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of value in excess of $10 from the manufacturer or dealer as an inducement for the consummation of the transaction.

(4) For any manufactured home purchase loan or combination loan involving a sale of the manufactured home by a dealer, the lender shall obtain a placement certificate, on a HUD-approved form and signed by the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) The manufactured homesite meets the requirements of § 201.21(e);

(ii) The structural integrity of the manufactured home was maintained during the process of transporting the home to the borrower's homesite;

(iii) The manufactured home has been installed or erected on the homesite in accordance with the manufacturer's requirements for anchoring, support, stability and maintenance;

(iv) If the manufactured home is placed on a permanent foundation, such foundation has been constructed in accordance with the requirements of § 201.21(c)(3);

(v) The dealer has performed the inspection and tests required under § 201.21(c)(4) and has determined that the manufactured home has sustained no structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational;

(vi) Any initial payment required under § 201.23 was made by the borrower, and no part of the initial payment was loaned, advanced or paid to or for the benefit of the borrower by the manufacturer, dealer, or any other party to the loan transaction;

(vii) Except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of value in excess of $10 from the manufacturer or dealer as an inducement for the consummation of the transaction; and

(viii) Any discount points to be paid by the dealer to the lender under § 201.13 are from the dealer's own resources and will not be reimbursed by the borrower, the manufacturer, or any other party.

* * * * *

(6) For any manufactured home purchase loan or combination loan, the lender or its agent shall conduct a site-of-placement inspection to verify that:

(i) The terms and conditions of the purchase contract have been met;

(ii) The manufactured home and any itemized options and appurtenances included in the purchase price of the home or to be financed with the loan proceeds have been delivered and installed;

(iii) The manufactured home has been properly erected or installed on the homesite without any structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational; and

(iv) For any dealer loan, the placement certificate executed by the borrower and the dealer is in order.

(7) The lender shall provide the borrower with a written notice, to be signed by the borrower and returned to the lender, that

(i) States that the loan will be insured by the HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid, and

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

The signed notice shall be retained in the loan file.

* * * * *

19. Section 201.27 would be revised by redesignating paragraphs (a) (3) and (4) as (a) (5) and (6); by revising paragraphs (a) (1) and (2); and by adding new paragraphs (a) (3) and (4) to read as follows:

§ 201.27 Requirements for dealer loans.

(a) * * *

(1) The lender shall approve only those dealers which, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply otherwise with the requirements of this part. However, in no case shall the lender approve a dealer that is unable to meet the following minimum qualifications:

(i) A property improvement dealer shall have and maintain a net worth of not less than $25,000 in assets acceptable to the Secretary, and shall have demonstrated business experience as a property improvement contractor or supplier; and

(ii) A manufactured home dealer shall have and maintain a net worth of not less than $50,000 in assets acceptable to the Secretary, and shall have demonstrated business experience in manufactured home retail sales.

(2) The lender's approval of a dealer shall be documented on a HUD-approved form, signed and dated by the dealer and the lender under applicable criminal and civil penalties for fraud

and misrepresentation, and containing information supplied by the dealer on its trade name, places of business, type of ownership, type of business, and names and employment history of the owners, principals, officers, and salespersons. The dealer shall furnish a current financial statement and such other documentation as the lender deems necessary to support its approval of the dealer. The lender and consumer credit reports on the owners, principals, and officers of the dealership.

(3) The lender shall require each dealer to apply annually for reapproval. The dealer shall furnish the same documentation as is required under paragraph (a)(2) to support its application for reapproval. In no case shall the lender reapprove a dealer that is unable to meet the minimum net worth requirements in paragraph (a)(1).

(4) The lender shall supervise and monitor each approved dealer's activities with respect to Title I loans involving the dealer that are insured under this part. The lender shall visit each approved dealer's places of business at least once in every six months to review its Title I performance and compliance. The lender shall maintain a file on each approved dealer which contains the executed dealer approval form and supporting documentation required under paragraph (a)(2), together with documentation of the lender's experience with Title I loans involving the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises. If the lender determines that pertinent dealer records relating to one or more Title I transactions are needed to enable the lender to review the dealer's Title I performance and compliance, whether acting at the Secretary's request or in connection with a periodic review visit or when considering the dealer's request for reapproval, the lender shall require the dealer to furnish such records to the lender.

* * * * *

20. Section 201.30 would be amended by revising paragraph (a) to read as follows:

§ 201.30 Reporting of Loans for Insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase from a dealer or loan correspondent. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report will be required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement.

* * * * *

21. Section 201.32 would be amended by revising paragraphs (a), (b), and (d)(1) to read as follows:

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* (1) The Secretary shall establish an insurance coverage reserve account for each lender. Separate Title I contracts with separate reserve accounts shall be established for lenders that are originating, purchasing or holding both property improvement and manufactured home loans.

(2) The amount of insurance coverage in each reserve account shall equal 10 percent of the amount disbursed, advanced or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans, and less the adjustments for non-claim terminations of loans made in accordance with paragraph (b) of this section.

Additional adjustments will be made for sales, purchases, or other transfers of loans, as described in paragraph (d).

(b) *Adjustment for non-claim terminations.* On a monthly basis, the Secretary shall adjust the amount of insurance coverage in the lender's reserve account by deducting 10 percent of the amount disbursed, advanced or expended by the lender in connection with any loan which the lender reports as paid in full and on any loan which has reached its maturity date, provided that such adjustment shall not reduce the amount of insurance coverage in the reserve account to less than $50,000. No adjustment shall be made for loans that are terminated through default and submission of an insurance claim.

* * * * *

(d) * * *

(1) In all cases involving the sale, assignment or transfer of loans sold without recourse, guaranty, guarantee, or repurchase agreement, the Secretary shall transfer insurance coverage to the reserve account established for the transferee lender in an amount equal to 10 percent of the actual purchase price or the net unpaid principal balance, whichever is lesser, but not to exceed the amount of insurance coverage in the transferor lender's reserve account prior to the transfer. Insurance coverage shall be added to the existing amount of insurance coverage in the transferee lender's reserve account. Insurance coverage may be transferred with earmarking when a determination is made that it is in the Secretary's interest to do so.

* * * * *

22. Section 201.40 would be amended by revising paragraphs (b)(1), (b)(1)(iii) and (b)(2) to read as follows:

§ 201.40 Post-disbursement loan requirements.

* * * * *

(b) *Requirements on property improvement loans.*

(1) After receiving the proceeds of a direct property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower shall submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) * * *

(iii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of value in excess of $10 from any contractor or supplier as an inducement for the consummation of the loan transaction.

The borrower shall submit the completion certificate promptly upon the work's completion, but not later than six months after the disbursement of the loan proceeds, with one six-month extension if necessary. If the borrower fails to submit a completion certificate within these time limits, an on-site inspection shall be conducted in accordance with paragraph (b)(2) of this section.

(2) The lender or its agent shall conduct an on site inspection on any direct property improvement loan where the principal obligation is $7,500 or more. This inspection shall be conducted after receipt of the completion certificate from the borrower. Its purpose is to verify the eligibility of the improvements and whether the work has been completed. If the borrower will not cooperate in permitting an on-site inspection, the

lender shall report this fact to the Secretary.

23. Section 201.50 would be amended by revising paragraph (a) to read as follows:

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has timely serviced the loan with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan in the event of default, the lender or its agent shall contact the borrower and any co-maker or co-signer, either in a face-to-face meeting or by telephone, to discuss the reasons for the default and to obtain an agreement to either

(1) Cure the default by bringing the loan current immediately or by refinancing the loan, or

(2) Execute a modification agreement or enter into a repayment plan for bringing the loan current by a later date.

If the borrower and the co-makers or co-signers cannot be located or indicate a refusal to meet or discuss the default, or refuse to consent to its cure or to a modification agreement or a repayment plan, the lender may proceed to take action under paragraph (b) of this section. The lender shall document the results of its efforts to contact the borrower and any co-maker or co-signer, including placing in the file a copy of any modification agreement or any agreement reflecting an acceptable repayment plan.

* * * * *

24. Section 201.51 would be amended by redesignating paragraphs (b)(2) as (b)(1) and (b)(1) as (b)(2), and by revising paragraphs (a) (1) and (2) introd. text, (a)(2) (ii) and (iii), (b) (2) and (3) to read as follows:

§ 201.51 Proceeding against the loan security.

(a) * * *

(1) After acceleration of maturity on a defaulted secured property improvement loan, the lender may either proceed against the loan security under its Title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, it may submit an insurance claim only if it complies with the requirements of paragraph (a)(2) of this section.

(2) A lender may proceed against the secured property under its Title I security instrument and later submit a claim under its contract of insurance only if:

(i) * * *

(ii) In proceeding against the secured property, the lender complies with all applicable State and local laws; and

(iii) The lender takes all actions necessary to preserve its rights to obtain a valid and enforceable deficiency judgment against the borrower.

* * * * *

(b) * * *

(2) Prior to foreclosure or repossession, the lender or its agent shall make a visual inspection of the property and prepare a report on its condition for placement in the loan file. If the lender determines that the borrower has abandoned the property, the lender shall take immediate steps to secure and preserve the property, including any furnishings, equipment and appurtenances covered by the security instrument. In any case of abandonment, the lender need not send the notice of default and acceleration specified in § 201.50(b) to the borrower or any other person who remains liable for the repayment of the loan obligation, unless required to do so by State law.

(3) The lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower. This appraisal shall be performed on the homesite, unless the site owner requests in writing that the home be removed before the appraisal can be performed, and it should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred. Where the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and the appraised value shall be based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

25. Section 201.54 would be amended by revising paragraphs (a), (b), (c), and (e), to read:

§ 201.54 Insurance claim procedure.

(a) *Claim application.* A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form, executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by all documents and materials required by the Secretary for claim review. The claim submission shall contain original copies of the note, the security instrument, any judgment obtained by the lender against the borrower, and related documents and forms, except where State or local law requires their retention by the lender or a governmental body such as a court. As appropriate, the claim application shall be supported by the following:

* * * * *

(b) *Maximum claim period.* (1) An insurance claim shall be filed not later than the following dates:

(i) For property improvement loans—nine months after the date of default.

(ii) For manufactured home loans—three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default.

(2) The Secretary may extend the claim filing period in a particular case, but only where the lender can show clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by:

(i) Litigation related to the loan; or

(ii) Management control of the lender or the Title I loan portfolio having been assumed by a Federal or State supervisory or regulatory agency.

(3) If a borrower is a "person in military service" as that term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and is in default on a loan insured under this part, any period or military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim.

(c) *Supplementary claims and resubmitted claims.* (1) Any supplementary insurance claim shall be filed not later than six months after the date of payment on initial claim.

(2) A reprocessing fee, in an amount prescribed by the Secretary, will be charged for any supplemental claim or any resubmission of an initial claim which was denied due to the claim application or supporting documentation being incomplete.

* * * * *

(e) *Valid and enforceable obligation when assigned.* The loan obligation evidenced by the note must be both valid and enforceable against the debtor at the time the note is assigned to the United States of America. Upon notification to the lender that for stated reasons the obligation may not be either

valid or enforceable against the borrower, the Secretary may

(1) Deny a claim and reassign the loan note to the lender, or

(2) Require the lender to repurchase a paid claim and accept reassignment of the loan note.

If a claim is denied and the lender subsequently obtains as valid and enforceable judgment against the borrower for the unpaid balance of the loan, the lender may resubmit the claim with an assignment of the judgment.

* * * * *

26. Section 201.55 would be amended by revising paragraphs (a)(2) and (b) (2) and (3) to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(a) * * *

(2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

* * * * *

(b) * * *

(2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes and site rental, where appropriate), plus actual costs not to exceed $600 per module of removing and transporting the home to a dealer's lot or other off-site location.

* * * * *

27. Part 201 would be amended further by adding a new subpart G, Debts Owed to the United States Under Title I. Subpart G would consist of §§ 201.60 through 201.63, to read as follows:

Subpart G—Debts Owed to the United States Under Title I

Sec.I

Subpart G—Debts Owed to the United States under Title I

§ 201.60 General.

(a) *Applicability.* The provisions in this subpart apply to the collection of debts owed to the United States arising out of the Title I program. These debts include, but are not limited to

(1) Unpaid balances of loans assigned to the United States by insured lenders as the result of defaults by borrowers,

(2) Unpaid insurance charges owed by lenders, and

(3) Unpaid obligations of lenders arising from repurchase demands.

(b) *Departmental debt collection regulations.* Except as modified by this subpart, collection of debts arising out of the Title I program are subject to the Department's debt collection regulations in subpart C of Part 17 (§§ 17.60, *et seq.*).

§ 201.61 Claims against debtors—principal amount of debt.

(a) *Liability.* A debtor shall be liable to the Secretary for the principal amount of the debt, as described in paragraph (b), (c), or (d), as appropriate.

(b) *Property improvement notes.* In the case of an assigned note for a property improvement loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(a)(1), plus amounts described in §§ 201.55(a) (3), (4), and (5).

(c) *Manufactured home notes.* In the case of an assigned note for a manufactured home loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(b)(1), plus amounts described in §§ 201.55(b) (3) through (8).

(d) *Assigned judgments.* In the case of an assigned judgment for a property improvement loan or a manufactured home loan, the principal amount of the debt shall be the amount of the judgment.

§ 201.62 Claims against debtors—interest, penalties, and administrative costs.

(a) *Interest.* In addition to the principal amount of the debt, the debtor shall be liable for the payment of interest. Interest shall accrue on the principal amount of the debt as of the date of default, as defined in § 201.2(h), as follows:

(1) In the case of a debt based upon the assignment of a defaulted note, interest shall be assessed at the lesser of the rate specified in the note or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(2) In the case of a debt based upon the assignment of a judgment, interest shall be assessed at the lesser of the rate specified in the judgment or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

§ 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

28. The authority citation for 24 CFR part 202 would continue to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Title I, Sec. 2, National Housing Act (12 U.S.C. 1703).

29. Part 202 would be amended by redesignating §§ 202.5 and 202.6 as §§ 202.7 and 202.8, respectively; by revising §§ 202.1 through 202.4; and by adding new §§ 202.5 and 202.6 to read as follows:

§ 202.1 Approval of financial institutions.

(a) *Purpose.* This part establishes minimum standards and requirements for the approval of financial institutions to participate in the property improvement and manufactured home loan insurance programs under title I, section 2 of the National Housing Act (12 U.S.C. 1703).

(b) *Approval as a lender.* A request for approval to become a title I lender shall be made on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. The issuance of a title I contract of insurance to a financial institution shall constitute an agreement between the financial institution and the Secretary which shall govern participation in the title I loan insurance program.

(c) *Approved lending area.* A title I lender or loan correspondent may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of the lending area of the

lender or loan correspondent shall be subject to a determination by the Secretary that the lender or loan correspondent has the capability to carry out proper loan origination in compliance with 24 CFR Part 201 with the expanded area.

§ 202.2 Definitions.

As used in this part, the term:

(a) *Lender* means a financial institution which

(1) holds a valid title I contract of insurance and continues to be approved by the Secretary under this part to originate, purcahse, service, and/or sell loans insured under 24 CFR part 201; or

(2) is under suspension or holds a title I contract of insurance that has been terminated, but which remains responsible for servicing or selling title I loans which it holds and is authorized to file insurance claims on such loans.

(b) *Loan correspondent* means a financial institution approved by the Secretary to orginate title I direct loans for sale or transfer to a sponsoring financial institution which holds a valid title I contract of insurance and is not under suspension.

(c) *Supervised institution* means a financial institution which is a member of the Federal Reserve System or whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. The term also includes any financial institution which is subject to inspection and supervision by a governmental agency that is required by law or regulation to make periodic examinations of its books and accounts.

(d) *Nonsupervised institution* means a financial institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and which is not required by law or regulation to submit to periodic inspection and supervision by a governmental agency.

(e) *Governmental institution* means a Federal, State or municipal agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

§ 202.3 General Approval requirements.

To be approved for participation in the title I property improvement and manufactured home loan programs as either a lender or a loan correspondent, the financial institution shall establish to the satisfaction of the Secretary that it meets, and will continue to meet, the following general requirements:

(a) It shall be a chartered institution or a permanent organization having succession.

(b) It shall employ trained personnel competent to perform their assigned responsibilities in consumer lending activities, and shall have adequate staff and facilities to originate and/or service title I loans.

(c) It shall ensure that all employees who will report title I loans for insurance on behalf of the lender shall be corporate officers or shall otherwise be authorized to bind the lender in matters involving the origination of title I loans.

(d) It shall comply with title VIII of the Civil Rights Act of 1968, Executive Order 11063, the Equal Credit Opportunity Act, and other Federal laws relating to consumer lending activities.

(e) It shall not use escrow funds collected from borrowers for any purpose other than that for which they were received.

(f) It shall remain responsible to the Secretary for all actions taken by its lending and servicing branches and agents.

(g) It shall file a yearly verification report on a form prescribed by the Secretary.

(h) It shall submit a copy of its latest financial statement and such other information as the Secretary may request, and shall submit to an examination of that portion of its records which relates to its title I lending activities.

(i) It shall provide prompt notification, on a form prescribed by the Secretary, of all corporate changes, including but not limited to mergers, terminations, changes in name or location, control of ownership, and character of business.

(j) Except for governmental institutions, as defined in § 202.2, it shall pay an application fee and an annual fee, including an additional fee for each branch office authorized to originate and/or report title I loans for insurance. The fee shall be in such amount as the Secretary may require to assist in defraying the cost of approving and supervising lenders and loan correspondents for participation in the title I program.

(k) No lender or loan correspondent, nor any officer, director, principal or employee of a lender or loan correspondent, shall:

(1) Be under suspension, debarment, or other restrictions under 24 CFR parts 24 or 25 or under similar procedures of any other Federal agency; or

(2) Be indicted for or convicted of an offense which reflects adversely upon the lender or loan correspondent's integrity or its ability to participate in the title I program.

§ 202.4 Requirements for supervised lenders.

In addition to the general approval requirements in § 202.3, a supervised institution shall meet the following requirements:

(a) A supervised institution shall have and maintain a net worth of not less than $250,000 in assets acceptable to the Secretary.

(b) Supervised institutions which were approved prior to (insert the effective date of this rule) shall have until September 1, 1994 to meet the net worth requirements of paragraph (a).

(c) A supervised institution shall provide prompt notification to the Secretary in the event of termination of its supervision by its supervisory agency.

§ 202.5 Requirements for nonsupervised lenders.

In addition to the general approval requirements in § 202.3, a nonsupervised institution shall meet the following requirements:

(a) A nonsupervised institution shall have and maintain a net worth of not less than $250,000 in assets acceptable to the Secretary, and shall have and maintain a reliable warehouse line of credit or other funding program acceptable to the Secretary of not less than $500,000 for use in originating or purchasing title I loans.

(b) Nonsupervised institutions which were approved prior to (insert the effective date of this rule) shall have until September 1, 1994 to meet the net worth and warehouse line of credit requirements of paragraph (a).

(c) Within 75 days of the close of its fiscal year and at such other times as may be requested by the Secretary, a nonsupervised institution shall file with the Secretary an audit report and financial statements in a form acceptable to the Secretary, consisting of a balance sheet, a statement of operations and retained earnings, an analysis of net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds. The audit report and financial statements shall be based upon an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States.

§ 202.6 Requirements for loan correspondents.

In addition to the general approval requirements in § 202.3, a loan correspondent shall meet the following requirements:

(a) A loan correspondent shall have and maintain a net worth of not less than $100,000 in assets acceptable to the Secretary.

(b) A loan correspondent may maintain branch offices for the purpose of originating title I loans only with the prior approval of the Secretary.

(c) A loan correspondent shall have a principal-agent relationship with only one sponsoring title I lender, and may sell or transfer its title I loans only to that sponsoring lender. A sponsoring lender may purchase or have transferred to itself title I loans originated by more than one loan correspondent. Each sponsoring lender must request approval of its loan correspondents from the Secretary.

(d) Within 75 days of the close of its fiscal year and at such other times as may be requested by the Secretary, a loan correspondent shall file with the Secretary an audit report and financial statements in a form acceptable to the Secretary, consisting of a balance sheet, a statement of operations and retained earnings, an analysis of net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds. The audit report and financial statements shall be based upon an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States.

(e) A loan correspondent and its sponsoring lender shall provide prompt notification to the Secretary if their loan correspondent agreement is terminated.

* * * * *

Dated: January 16, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–1680 Filed 1–28–91; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Terminal Control Areas and Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-9]

RIN 2120-AD01

Establishment of the Washington Tri-Area Terminal Control Area and Revocation of the Washington, DC, Terminal Control Area and Revocation of the Radar Service Areas at Baltimore-Washington Airport and Dulles Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) in the greater Baltimore/Washington, DC, area. Because the TCA will serve airports located in three different areas, Washington, DC; Maryland; and Virginia; the TCA will be established as the Washington Tri-Area TCA. The TCA will encompass four major airports: Andrews Air Force Base, Baltimore-Washington International, Dulles International, and Washington National. The TCA will consist of airspace from the surface or higher within a 20-mile radius of each airport to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Andrews Air Force Base, Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport and to substantially increase safety while accommodating the legitimate concerns of airspace users. Establishment of this TCA will impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver; and restrictions on student pilot operations. Andrews Air Force Base and Washington National Airport are currently served by the Washington, DC, TCA which is rescinded concurrent with the establishment of the Washington Tri-Area TCA. Baltimore-Washington International Airport and Dulles International Airport are currently served by Airport Radar Service Areas (ARSA) which are rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Huff, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Aeronautical and Procedures Service Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3075.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCAs provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

Baltimore-Washington International Airport and Dulles International Airport qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 29 TCAs. The FAA is proposing to take action to modify or implement the application of these proven safety techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of the FAA's analysis of the airspace and a review of both the comments received and discussions with the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can be identified and necessary corrective action taken.

The TCA configuration adopted here has been developed through substantial public participation. Initially, informal airspace meetings were held on Decmber 5, 8, and 12, 1988, to permit local aviation interests and airspace users an opportunity to present input on the design of the proposed Washington Tri-Area TCA. In addition, TCA Ad Hoc Users Committee, sponsored by the Virginia Department of Aviation, met on January 10 and 17, 1989, and February 1, 1989. The purpose of the Ad Hoc Users Committee was to develop a TCA design to meet the needs of the flying community while providing the greatest safety. Technical assistance was provided to the committee by FAA Procedures Specialists and personnel from Washington National Airport, Baltimore-Washington International Airport, and Dulles International Airport. After the initial meetings and extensive coordination with and Ad Hoc Users Committee, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, the TCA configuration was further adjusted to reflect the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on January 16, 1990 (55 FR 01544). Comments were received in response to the NPRM. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received 153 comments pertaining to the TCA proposal. The FAA has considered these comments in the adoption of the final TCA design. The FAA believes that the final TCA design adopted promotes the safe and efficient use of airspace while satisfying ATC requirements.

Some comments addressed subject areas that were not relevant to this

rulemaking action; therefore, they will not be discussed. Those subject areas included controller staffing, pilot education, building a common radar facility for the Washington metropolitan area, waivers, and rules enforcement.

Thirty-eight comments supported implementing the proposed Washington Tri-Area TCA as published in the NPRM, and four comments opposed establishing the Washington Tri-Area TCA.

The preprinted recommendations of the Capital Area Association of Flight Instructors (CAAFI) were attached to a significant number of comments. CAAFI recommended that the maximum limits of the TCA remain at 20 nautical miles (NM) and 10,000 feet MSL and that the FAA provide, by Special Federal Aviation Regulations, for direction of flight and communications requirements for aircraft operations within the visual flight rules (VFR) corridors; provide a special VFR chart for the Washington Tri-Area TCA similar to that found on the reverse side of the Anchorage VFR Terminal Area Chart; install a VOR in the vicinity of Clarksburg, MD, at the intersection of the center lines of the two VFR corridors; and establish a cutout for Leesburg Municipal/Godfrey Field. Seventy-three comments supported all of CAAFI's recommendations while others supported at least one or more of its recommendations.

Almost all comments requested that the TCA consist of airspace from the surface or higher within a 20-mile radius of each airport up to and including 10,000 feet MSL as proposed in the NPRM. Five comments opposed establishing the ceiling of the proposed TCA at 10,000 feet MSL and suggested a lower altitude. Conversely, the Air Transport Association suggested raising the ceiling of the proposed TCA to 12,500 feet MSL with a 30–NM radius around each airport and lowering the base altitude limits (floor) in Area G surrounding Dulles International Airport.

The FAA is establishing the Washington Tri-Area TCA to consist of airspace from the surface or higher within a 20-mile radius of each airport up to and including 10,000 feet MSL. The FAA believes that this action will provide the highest degree of safety while preserving the most efficient use of the available terminal airspace.

Comments supporting CAAFI's recommendations, along with nine other comments, requested that altitude requirements for the direction of flight through the VFR corridors be established by a special air traffic rule, an amendment to Federal Aviation Regulations (FAR) part 93. Conversely, one comment suggested that no specific flight altitudes be established for the VFR corridors, thereby allowing pilots to fly through the VFR corridors at any altitude below the floor of the TCA.

The FAA does not believe that an amendment to FAR part 93 is necessary. However, recommended altitudes for flights through various areas of uncontrolled airspace will be indicated on a TCA flyway chart on the reverse side of the Washington Tri-Area VFR Terminal Area Chart.

Comments supporting CAAFI's recommendations, along with five other comments, requested that the FAA establish dedicated frequencies for aircraft transiting through areas of uncontrolled airspace in the TCA. Dedicated frequencies would allow pilots the ability to communicate with ATC personnel who would monitor (but not control) traffic in the VFR corridors. The FAA finds that this subject falls outside the confines of the intended rulemaking action. However, investigation of this suggestion revealed that the FAA ATC facilities in the TCA do not have the personnel, equipment, or workload flexibility to adhere to this suggestion. In regard to the commenters' request to have a discreet frequency to aid in traffic monitoring and/or ATC advisories, the FAA will publish a VFR flyway chart which will depict recommended VFR altitudes through the flyway areas. Adherence to the recommended altitudes in the flyway areas will provide a margin of safety between uncontrolled aircraft in the flyway.

Comments supporting CAAFI's recommendations and three additional comments requested that special charting be implemented for the Terminal Area Chart for the proposed Washington Tri-Area TCA. The special charting should show established instrument flight rules (IFR) routes and suggested VFR routes, similar to the chart on the reverse side of the Anchorage VFR Terminal Area Chart. The FAA agrees with these comments and has developed a VFR flyaway planning chart for the Washington Tri-Area TCA which will be charted on the reverse side of the VFR Terminal Area Chart.

Fourteen comments, as well as those comments supporting the recommendations of CAAFI, suggested that the FAA install a VOR or a navigational aid (NAVAID) in the vicinity of Clarksburg, MD, for precise navigational guidance through certain uncontrolled airspace areas. The FAA has determined that the adoption of this suggestion is not necessary. The current area NAVAID's and VFR landmarks are sufficient to assist pilots in navigating through the area either in the TCA or in uncontrolled airspace.

A few errors were noted in the NPRM for the establishment of the Washington Tri-Area TCA. First, different comments noted the incorrect names for two airports on the map in the NPRM for the establishment of the Washington Tri-Area TCA. Fallston Airport was incorrectly labeled as Albrecht, and Easton Municipal was incorrectly labeled as Ewing. The FAA will correctly label the airports on future maps of the Washington Tri-Area TCA.

Second, the north/south line establishing the eastern boundary of Area E between Dulles International and Washington National was incorrectly aligned and designated. The eastern boundary line of that area should be 4½ miles east of and parallel to the north/south line establishing the western boundary of Area E between Dulles International and Washington National. This final rule realigns and redesignates the eastern boundary line of Area E in the correct location between Dulles International and Washington National Airports.

Third, Leesburg Municipal/Godfrey Field Airport, VA, traffic pattern altitude was stated as 800 feet MSL. This was a mistake. Instead of 800 feet MSL, the sentence should have read 800 feet above ground level (AGL). Expressed in MSL, the traffic pattern altitude for the airport is 1,200 feet MSL.

The Virginia Department of Aviation, the Maryland Department of Aviation, the commenters supporting the recommendations of CAAFI, and three other commenters requested a cutout for Leesburg Municipal/Godfrey Field Airport. The majority of the requests were predicated on plans by the Town of Leesburg to increase the traffic pattern altitude at the airport. However, due to unforeseen circumstances, the Town of Leesburg will not be imlementing the change in traffic pattern altitude at the airport: the traffic pattern altitude at Leesburg Municipal/Godfrey Field Airport will remain at 1,200 feet MSL.

The floor of the TCA over Leesburg Municipal/Godfrey Field Airport will be established at 1,500 feet MSL. The FAA believes that, should the pilot elect to avoid flying in the TCA, ample room will exist between the traffic pattern altitude at the airport and the floor of the TCA to allow access by uncontrolled VFR aircraft to and from the airport without entering the TCA. In addition, the 1,500 feet MSL floor of the TCA in Area B north of Dulles Airport will

contain turbojet departures from Dulles Airport within the confines of the TCA. This is based upon a calculated climb rate of 300 feet per mile for turbojets departing runway one left at Dulles Airport.

Three comments objected to the establishment of VFR corridors in the proposed Tri-Area TCA. In the NPRM, the FAA did not suggest establishing VFR corridors through the proposed TCA. However, the airspace areas underneath the floor of the TCA in Areas E between Dulles International/ Washington National and Andrews Air Force Base/Baltimore-Washington International are colloquially referred to as "VFR corridors." In lieu of VFR corridors through the TCA, the FAA will establish the floor of Area E at an altitude of 3,000 feet MSL. This action will allow more airspace for uncontrolled aircraft to traverse underneath certain areas of the proposed TCA without contacting approach control facilities or control towers in the area. The same objective as VFR corridors will be met but with more airspace for uncontrolled aircraft operations.

Two comments suggested lowering the floor of Area E to 2,500 feet MSL to alow for additional airspace between controlled and uncontrolled air traffic, while five comments suggested raising the floor of Area E to 3,500 feet MSL due to the proximity of rising terrain in those areas.

The FAA is establishing the floor of Area E at 3,000 feet MSL, as proposed in the NPRM. This altitude will allow terrain and obstruction clearance for VFR aircraft traversing underneath the floor of Area E. It also will provide ample airspace for uncontrolled aircraft to operate below the floor of Area E thereby providing adequate separation from traffic within the TCA. The proposed TCA airspace section of Area E between Andrews Air Force Base and Baltimore-Washington International has been eliminated. The airspace which was contained in that section of airspace will be incorporated in Area C. The reason for this action is outlined below.

Two comments from personnel at Andrews Air Force Base opposed the establishment of Area E between Andrews Air Force Base and Baltimore-Washington International citing that airspace section of Area E, with a base altitude of 3,000 feet MSL, conflicts with published instrument approaches and vectoring procedures at Andrews Air Force Base. They stated that the published instrument approaches and vectoring procedures would have to be changed in order to contain the aircraft within the confines of the TCA. The changes would raise the glide slope angle to greater than 3.3° which is unacceptable by the Department of the Air Force standards. The commenters also expressed concern that military representatives were not invited to participate in the pre-NPRM planning stages.

The FAA will eliminate that section of Area E between Andrews Air Force Base and Baltimore-Washington International to correct the conflicting procedure which was inadvertently incorporated in the development of Area E. This section of airspace will be incorporated into Area C with an established floor of 2,500 feet MSL. This action will contain the instrument approaches and vectoring procedures to Andrews Air Force Base within the confines of the TCA.

The FAA made every effort, during the pre-NPRM planning stages, to notify all persons and/or organizations who may be affected by, or interested in, the proposal. The notices of the informal airspace meetings were sent to military personnel at Andrews Air Force Base, since they fall within the prescribed parameters of the FAA's required mailing list.

Seven comments expressed concern with the intersection of the projected center lines of the proposed Area E, between Dulles International/ Washington National and Andrews Air Force Base/Baltimore-Washington International, in proximity to the Montgomery County Airpark, Gaithersburg, MD. The commenters stated that VFR aircraft entering or exiting those areas would converge in the vicinity of Montgomery County Airpark, thereby increasing the amount of air traffic over that airport. The commenters believe this increased amount of traffic would create an unsafe situation for aircraft in the traffic pattern at Montgomery County Airpark.

The FAA agrees that the above-mentioned situation may result in increased VFR traffic in the vicinity of Montgomery County Airpark. To minimize the increase of uncontrolled aircraft operations projected for the area, the FAA will outline recommended VFR routes on the VFR flyway chart to be printed on the reverse side of the VFR Terminal Area Chart. The recommended VFR routes will direct air traffic away from the Gaithersburg area. Also, the recommended VFR routes will be published with recommended VFR altitudes which are above the traffic pattern altitude at Montgomery County Airpark. This action will assist in providing additional separation between aircraft operating at the airpark and aircraft transiting underneath the floor of the TCA in that area.

Additional comments suggested that the sections of Area E between Dulles International/Washington National and Andrews Air Force Base/Baltimore-Washington International be realigned to coincide with several established NAVAID's in the vicinity. This suggestion would provide increased navigational guidance assistance for VFR flights through the areas. Also, it would alleviate the funneling effect of VFR air traffic in the vicinity of the Montgomery County Airpark.

The FAA is unable to adopt this suggestion based on the fact that the realignment of the sections of Area E would place uncontrolled aircraft in proximity to arriving and departing ATC controlled aircraft operations within the parameters of the TCA. Furthermore, as previously stated, ample separation will exist between aircraft flying underneath the floor of the TCA in the area of Montgomery County Airpark and the traffic pattern altitude at the airpark.

Seventeen commenters objected to the establishment of Area E between Dulles International and Washington National due to the proximity of the airport traffic area (ATA) at Davison Army Air Field. The commenters expressed that uncontrolled VFR aircraft in the southern section of Area E between Dulles International and Washington National would be forced to contact Davison Army Airfield ATC to obtain permission to fly through Davison Army Airfield ATC, and that the frequency changes would cause an inconvenience to pilots. Also, the commenters expressed that Davison Army Airfield would be unable to accommodate the need and requests of VFR pilots. To address this problem, the commenters suggested realigning Area E to the west of Davison Army Airfield ATA or lowering the altitude of the ATA.

The FAA is unable to realign Area E between Dulles International and Washington National because realignment of the airspace to the west to clear Davison Army Airfield ATA would place Area E too close to IFR arrivals at Dulles International from the south. Also, the FAA does not propose to modify the ATA at Davison Army Air Field. Air traffic personnel at Davison Army Airfield have assured the FAA that they will be able to provide air traffic service in accommodating the needs of pilots requesting flight through the ATA. Should a pilot choose to circumnavigate Davison Army Airfield ATA, ample airspace to the west of the ATA in Area E and recognizable VFR

landmarks are available to accommodate this action.

Several commenters requested a larger cutout for Manassas Municipal/Harry P. Davis Field. The commenters also requested that the description of the cutout for Manassas be described with existing NAVAID's or with easily recognizable geographical landmarks.

The FAA has agreed to provide a larger cutout area for Manassas Municipal/Harris P. Davis Field. That section of the TCA airspace, Area F, has been redesigned by expanding the area to the northwest of Manassas and by realigning the shape of the airspace to coincide with the runway configuration at the airfield. The airspace, as proposed in the NPRM, has been reduced to the east of Manassas. This action will allow more airspace separation between controlled aircraft on instrument approaches to Dulles International from the south and uncontrolled aircraft. The base altitude (floor) of Area F will be changed from 2,000 feet MSL, as proposed in the NPRM, to 1,900 feet MSL. The altitude adjustment is necessary in order to accommodate the expansion of Area F to the northwest. The base altitude of 1,900 feet MSL is the minimum vectoring altitude in that area. Controlled IFR flights inbound to Dulles International from the west and southwest are descended to 1,900 feet MSL for a base leg entry for the instrument approaches from the south. The altitude adjustment in Area F will contain the previously mentioned controlled aircraft operations within the confines of the TCA.

Two commenters suggested that the floors of the TCA outer areas surrounding Dulles Airport, Areas D and E, are artificially low and should be raised to allow for student pilot training. This action also would provide a sufficient amount of altitude separation from the mountainous terrain west of the airport and avoid turbulence likely to be encountered in the vicinity of the mountainous terrain. The FAA can not support this suggested modification to the TCA. The floors of the TCA were established in order to contain IFR procedures at Dulles International in the TCA. The FAA believes that the floor of the TCA in Area D west of Dulles International will allow ample airspace for safe uncontrolled aircraft operations in the vicinity of the mountainous terrain.

One comment suggested that the letter designations for the various areas of the TCA (Area A, Area B, etc.) be reassigned to coincide with the ascending order of the floors of the TCA. The commenter stated that this redesignation would provide an easy reference for the pilot to know that Area C has a lower floor than that of Area D, and so on.

The FAA does not support this redesignation. The lettering of the different areas of the TCA defines the areas in the legal description. The lettering of the areas appears only on the maps in the NPRM and the Final rule. These maps are not to be used for navigational purposes. The lettering of the different areas of the TCA will not appear on the Washington Tri-Area VFR Terminal Area Chart.

Several commenters stated that currently there is a lack of visual references or landmarks depicted on the Washington VFR Terminal Area Chart for VFR navigation through the proposed Tri-Area TCA. When the new Washington Tri-Area TCA becomes effective, the current Terminal Area Charts will become obsolete and should not be used for navigating purposes. Simultaneously with the effective date of the Washington Tri-Area TCA, the FAA will issue a new VFR Terminal Area Chart to be used for navigational purposes with the new TCA. On the reverse side of the Washington Tri-Area VFR Terminal Area Chart, the FAA will publish a VFR flyway chart. To assist the flying public, this chart will contain the recognizable VFR landmarks published on the Terminal Chart plus additional VFR landmarks, recommended VFR routes and altitudes, and IFR routes in the Washington metropolitan area.

Five commenters were concerned that high performance aircraft would use the exclusion areas of the TCA at high speeds. The commenters suggested that separate rulemaking action be initiated to impose speed restrictions on aircraft operating beneath the floors of the TCA. The FAA believes that a separate rulemaking action to address this issue is not necessary because this issue has been addressed in FAR part 91.117. In addition, the VFR flyway chart will contain a recommended maximum air speed for flights in the flyway areas.

One comment requested that Area D in the vicinity of Montgomery County Airpark, Gaithersburg, MD, be modified to exclude the airport from the proposed TCA. The FAA does not agree with this request. The airspace above Montgomery County Airpark is used to accommodate IFR transitions for IFR aircraft approaching Dulles International Airport from the north. Therefore, the floor of the TCA in the vicinity of Montomery County Airpark will be established at the highest possible altitude to contain the IFR transitions within the confines of the TCA, thereby affording controlled aircraft the safety and ATC services offered to the maximum extent possible, while still permitting operations below the floor in that area.

One comment suggested that Andrews Air Force Base be excluded from the TCA because there are very few air carrier operations at Andrews Air Force Base. Before the establishment of the Washington Tri-Area TCA, Andrews Air Force Base was serviced by the Washington, DC, TCA. Although Andrews Air Force Base has very few air carrier operations, it was included in the Washington, DC, TCA and will be included in the Washington Tri-Area TCA to afford the best possible safety and ATC service to the President and Vice-President of the United States as well as to those passengers who may be heads of state or foreign dignitaries. The FAA does not desire to discontinue those services.

Two comments addressed an exclusion (cutout) for the Martin State Airport, MD, and one comment asked for an exclusion for Essex Skypark, MD. The comments noted that when aircraft depart these airports, and the pilots do not desire to enter the TCA, they would be forced to enter Restricted Areas R–4001A and R–4001B due to their proximity to these airports.

The FAA does not believe that a cutout is necessary for either Martin State Airport or Essex Skypark. ATC-controlled aircraft are routinely routed to Baltimore-Washington International in the vicinities of these two airports, and the TCA airspace in those areas is necessary to contain the aircraft operations in a controlled environment. The amount of airspace provided for VFR operations at the Martin State and Essex airports is ample to prevent violation of R–4001A and R–4001B.

One commenter requested that Restricted Area R–4001B be eliminated to increase the TCA boundary in that area. It was further suggested that R–4001A then be modified to conform to the new shape of the TCA airspace in that area. Also, the commenter suggested that restricted areas should be highlighted on TCA charts so that pilots can readily see and avoid the areas.

The FAA does not believe that R–4001A and R–4001B need to be eliminated to increase the size of the TCA in that area. The size and shape of R–4001A and R–4001B were based on the needs and the request of the military agency utilizing the special use airspace to contain its military operations within the designated restricted area, which is used year round. The military has not indicated a change in its military operations in that area, which would

necessitate a change in the restricted airspace. The TCA airspace in section D which is contained in R–4001A and R–4001B becomes Restricted Area airspace when the restricted areas are active (closed to air traffic). Conversely, the aforementioned sections of Restricted Area airspace become TCA airspace when R–4001A and R–4001B are inactive (opened to air traffic). Currently, restricted areas are highlighted and so noted on aeronautical charts, and the FAA sees no need to modify the existing method of denoting restricted areas on aeronautical charts.

Additional comments stated that the 12–NM radius of the proposed TCA at Dulles International and the Baltimore-Washington National should be reduced to 10 nautical miles in order to be consistent with the shape of the TCA radius at Washington National and Andrews Air Force Base.

The FAA does not support this position. Despite the fact that this is one TCA encompassing four major airports, each airport was treated as a separate and unique entity during the design and construction of the TCA. The design configuration addressed the needs and requirements for each airport.

Two comments requested a cutout for Glascock Airfield, VA, because pilots are unable to contact ATC for an authorization to enter the TCA while the aircraft are still on the ground at the airfield. The FAA does not believe that a cutout for Glascock Airfield is necessary. To address the problem cited by the comments, a Letter of Agreement outlining departures procedures from Glascock Airfield has been established between the FAA ATC facility in the area and the local aircraft operators.

One comment suggested that special rulemaking action be taken to require pilots to fly through uncontrolled areas of the TCA with the lights of the aircraft on. According to the comment, this procedure would facilitate the pilot's ability to sight VFR aircraft traversing uncontrolled areas of the TCA. The FAA does not believe that this comment should be addressed by special rulemaking action to amend Federal regulations. However, the FAA believes that this procedure is a good operational practice for pilots during VFR flights and will make every effort to pass this suggestion on to pilots during various pilot briefings. Furthermore, this recommended procedure will be included on the VFR flyway chart along with other recommended good operating practices.

One commenter objected to the loss of the Baltimore-Washington ARSA and the establishment of the Tri-Area TCA. He stated that the new TCA would hamper student cross-country flights at Baltimore International Airport.

Although the new TCA would impose certain operating rules and requirements on students conducting VFR flight operations within the TCA, the FAA believes that the Tri-Area TCA will not deter nor hamper student cross-county VFR flights at Baltimore-Washington International Airport. The VFR route structures at the airport allow ample airspace for student cross-country flights to and from the airport.

Of the comments received objecting to the establishment of the Tri-Area TCA, one commenter stated that there has never been a midair collision in the Washington, DC, metropolitan area, according to his recollection; therefore, a new TCA for the area is not needed. Another commenter stated that the FAA is establishing the Tri-Area TCA as a response to midair collisions which occurred elsewhere. According to the commenter, the midair collisions were between controlled and uncontrolled aircraft and occurred outside the lateral limits of the TCA's.

Since 1969, there has not been a midair collision in the Washington DC area involving aircraft which the TCA is designed to protect. The intent of the Tri-Area TCA and the overall TCA program is to minimize the possibility of near midair and midair collisions in the future, and the rule adopted serves this purpose. Also, based on the establishment criteria for a TCA, the number of passenger enplanements and the number of aircraft operations, both Baltimore-Washington International and Dulles International Airports more than qualify for the establishment of a TCA.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Baltimore-Washington International Airport and Dulles International Airport. Also, concurrent with the establishment of this TCA, the Washington, DC, TCA, which serves Andrews Air Force Base and Washington National Airport, is rescinded. Andrews Air Force Base, Baltimore-Washington International Airport, Dulles International Airport, and Washington National Airport will be served with the establishment of the Washington Tri-Area TCA. Baltimore-Washington International Airport and Dulles International Airport are each currently served by an ARSA which is rescinded concurrent with the establishment of this TCA. The TCA accommodates current traffic flows and provides a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that the establishment of a TCA at Baltimore-Washington International Airport and Dulles International Airport is in the interest of flight safety and will result in a greater degree of protection for the largest number of people during flight in the terminal areas.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not major as defined in the Executive Order; therefore, a full regulatory analysis that includes the identification and evaluation of cost reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Benefit-Cost Analysis

Costs

The FAA estimates the total cost of implementing the Washington Tri-Area TCA to be $5.2 million (discounted, 15 years) in 1989 dollars. This estimate

represents the costs to the FAA for additional personnel and equipment. At the time that the regulatory evaluation for the Notice of Proposed Rulemaking (NPRM) was being prepared, the FAA assumed that the only cost for aircraft operators within and transiting those ARSAs was the opportunity cost derived from foregoing alternate uses of the money used to purchase and maintain Mode C transponders approximately one year ahead of schedule. Phase I of the Mode C rule requires aircraft to have Mode C transponders when operating within 30 nautical miles of a TCA primary airport as of July 1989. Phase II requires aircraft operating within an ARSA to have Mode C transponders by December 1990. The opportunity cost estimate for Mode C transponders was based on the premise that if the NPRM were to become a rule, it would go into effect approximately one year before implementation of Phase II of the Mode C rule. Now this premise has changed since the TCA is expected to go into effect after Phase II. Thus, the issue of opportunity cost is not applicable for evaluating this final rule.

The FAA does not believe parachutists, balloonists, ultra-light and sailplane owners, or fixed base operators will be significantly affected by this rule. Letters of agreement and cutouts are expected to be executed, where advisable, to ensure minimum affect on these operators.

Benefits

This rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced aviation fatalities and property damage as the result of a lowered likelihood of midair collisions because of increased positive control in airspace. The increased positive control in airspace will be achieved by establishing the Washington Tri-Area TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency of FAA air traffic controllers.

Since deregulation of the airline industry in 1978, passenger enplanements have been on a dramatic rise. This has led to large increases in aircraft operations, particularly for part 121 (Large Transport Category Aircraft) aircraft operators. As a result of this increased traffic density, the potential increased risk of midair collisions has become a concern. Since 1978, the FAA has implemented additional regulatory initiatives primarily aimed at mitigating this potential safety problem. Some of those safety initiatives included establishing TCAs, establishing ARSAs, and modifying TCA design configurations. Most recently, the FAA has implemented rules expanding Mode C and mandating Terminal Collision Avoidance Systems (TCAS) on large air carrier aircraft. All of these regulatory actions are aimed at enhancing aviation safety by lowering the likelihood of midair collisions. As a continuation of this effort to enhance aviation safety, the FAA announced in 1987 the proposed conversion of nine ARSAs into TCAs. The Washington Tri-Area TCA represents two of these TCA initiatives.

The potential safety benefits of the Washington Tri-Area TCA, while positive, will be less than would otherwise be expected to accrue in the absence of the Mode C and TCAS rules. Virtually all of the TCA's safety benefits are considered to be inextricably linked to the Mode C and TCAS rules since the TCA essentially extends the effects of those two rules. Subsequently, the TCA's safety benefits cannot be estimated separately from those two rules. The Mode C and TCAS rules are expected to generate total potential safety benefits of $2.1 billion (discounted, 15 years).

Nevertheless, this rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale. This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (CNMACs) incidents in lieu of actual midair collisions. (As defined by the FAA, a CNMAC is an incident where two aircraft come within 100 feet of each other and the fact that they do not actually collide is not due to an action on the part of the pilots but, rather, it is due purely to chance.) Since midair collisions involving part 135 aircraft and especially Part 121 aircraft are rare, the use of CNMACs will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this rule. Simple regression analyses were prepared for this evaluation. They focused on CNMACs and aircraft operations in 23 TCAs plus a random sample of 23 of the 79 ARSAs that existed in 1988 (based on CNMAC data for 1986 and 1987). The results of these analyses indicate that TCAs have approximately 68 percent fewer CNMACs annually, on average, than ARSAs. While there is no demonstrated relationship between CNMACs and actual midair collisions, the lower CNMAC rate suggests more effective separation of aircraft in congested areas.

As the result of these findings, if the Baltimore-Washington and Dulles ARSAs had remained intact and the Mode C and TCAS rules were not in effect, the Baltimore-Washington and Dulles Terminal Areas would be expected to experience a combined average of 4 critical near midair collisions (CNMACs) annually or 61 CNMACs over the next 15 years. However, since the ARSAs will become a TCA, the number of CNMACs is expected to be reduced to a combined average of 1.3 annually or 19 CNMACs over the next 15 years. Thus, over the next 15 years, this rule could result in the reduction of 42 CNMACs. However, it is important to note that the vast majority of these potential CNMACs will never occur as predicted primarily because of the Mode C and TCAS rules.

Another potential benefit of this rule will be improved operational efficiency of air traffic controllers. Under this rule, Mode C transponder requirements will ease controller workload per air-traffic-controlled aircraft because of the reduction in radio communications. It also will make potential traffic conflicts more readily apparent to the controller. Because of improved operational efficiency, the impact on the controller workload will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. Improved operational efficiency should generate other types of benefits in the form of a reduced number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the Dulles and Baltimore-Washington ARSAs to a TCA and increasing the controlled air space around the current Washington TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers and equipment. If the Dulles and Baltimore-Washington ARSAs and the Washington TCA had remained intact, additional air traffic controllers and equipment would not be required. Thus, the potential benefits of improved operational efficiency, though not considered to be quantifiable in monetary terms in this evaluation, would be attributed to the Washington Tri-Area TCA rather than either the Mode C or TCAS rules.

This rule, in effect, creates one TCA by converting two former ARSAs (Baltimore-Washington and Dulles) and expanding the boundaries around the former Washington TCA (Washington National and Andrews Air Force Base). The expansion of the TCA airspace around Washington National and Andrews Air Force Base also could result in a reduction of CNMACs, just as

the conversion of the two former ARSAs could. However, the FAA does not believe that the expansion of TCA airspace around the former Washington TCA will significantly reduce CNMACs to the extent that the conversion of the two ARSAs will. The rule will only expand the ceiling from 7,000 to 10,000 feet MSL and lateral boundaries by only 5 nautical miles, around airspace that was already controlled by a TCA. In addition, since Washington National and Andrews Air Force Base were already a TCA, they were already reaping the benefits of a lowered likelihood of CNMACs.

Comparison of Benefits and Costs

The total cost that would accrue from implementation of the Washington Tri-Area TCA is estimated to be $5.2 million (discounted 15 years). The potential safety benefits of this rule will be the lowered likelihood of midair collisions primarily from the conversion of the former ARSAs to a TCA. However, the precise number of midair collisions avoided and their respective monetary values cannot be estimated independent of the Mode C and TCAS rules because such safety benefits are inextricably linked with the Mode C and TCAS rules. Nevertheless, the FAA contends that even with the Mode C and TCAS rules in effect, the estimated cost of the TCA relative to the reduction in the likelihood of midair collisions and the improved operational efficiency of ATC makes this rule cost-beneficial. In addition, even when the potential cost of the Washington Tri-Area TCA is added to the costs of other TCAs and ARSAs established since Phase I of the Mode C rule plus the costs of the Mode C and TCAS rules, the total collective costs, $814 million (discounted), are still less than the total collective benefits, $2,129 million (discounted). (See the Regulatory Evaluation in the docket for a more detailed discussion of the costs and benefits.)

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The FAA contends that this rule will have no cost impact on small entities. Therefore, a regulatory flexibility analysis is not required.

International Trade Impact Assessment

This rule will only affect U.S. terminal airspace operating procedures at and in the vicinity of the Washington Tri-Area TCA. This rule will not impose a competitive trade disadvantage to foreign firms from the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade disadvantage from either the sale of United States aviation products or services in foreign countries.

Federalism Implications

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

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a major under Executive Order 12291; and (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Airspace, Aviation safety, Terminal control areas.

The Amendment

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

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

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

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

§ 71.401(b) [Amended]

2. Section 71.401(b) is amended by removing the Washington, DC, description and adding the new Washington Tri-Area, description to read as follows:

Washington, DC [Removed]

Washington Tri-Area, DC [New]

Primary Airports and Navigational Aid
Andrews AFB (ADW) (lat. 38°48'40" N., long. 76°52'05" W.)
Baltimore-Washington International (BWI) (lat. 39°10'30" N., long. 76°40'10" W.).
Washington National (DCA) (lat. 38°51'07" N., long. 77°02'17" W.).
Dulles International (IAD) (lat. 38°56'39" N., long. 77°27'26" W.).
Armel VORTAC (AML) (lat. 38°56'04" N., long. 77°28'01" W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Armel VORTAC; within a 7-mile radius of the Baltimore VORTAC; within a 7-mile radius of the Andrews VORTAC; and within a 7-mile radius of the Washington VOR; excluding the airspace bounded on the north by an east/west line 1.5 miles north of the Fort Meade NDB (lat. 39°05'04" N., long. 76°45'37" W.), on the east by a north/south line 2 miles east of the Fort Meade NDB, and on the south and west by the 7-mile radius of the Baltimore VORTAC; excluding that airspace bounded to the north by an east/west line along lat. 38°46'20" N., on the east by a north/south line along long. 76°54'25" W., to the 7-mile radius of the Andrews VORTAC, and on the west by a north/south line along long. 76°59'30" W., to the 7-mile radius of the Washington VOR; excluding Prohibited Area P-56.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at lat. 38°41'35" N., long. 77°01'19" W., then counterclockwise along the 10-NM DME arc of the Andrews VORTAC to lat. 38°58'25" N., long. 76°52'52" W., then counterclockwise along the 10-NM DME arc Washington VOR to lat. 38°57'07" N., long. 77°12'51" W., to lat. 38°46'29" N., long. 77°13'14" W., then counterclockwise along the 10-NM DME arc of the Washington VOR to the point of beginning; and that airspace beginning at lat. 39°05'23" N., long. 77°18'19" W., then counterclockwise along the 12-NM DME arc of the Armel VORTAC to lat. 38°46'22" N., long. 77°18'59" W., to the point of beginning; and that airspace beginning at lat. 39°07'18" N., long. 76°54'39" W., then

clockwise along the 12–NM DME arc of the Baltimore VORTAC to lat. 38°58'22" N., long. 76°37'30" W., to the point of beginning; excluding that airspace designated as Area A, Area F, and Prohibited Area P–56.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at lat. 38°39'25" N., long. 77°13'29" W., then counterclockwise along the 15–NM DME arc of the Washington VOR to lat. 38°36'36" N., long. 77°03'47" W., then counterclockwise along the 15–NM DME arc of the Andrews VORTAC to lat. 38°55'40" N., long. 76°35'10" W., then counterclockwise along the 15–NM DME arc of the Baltimore VORTAC to lat. 39°06'16" N., long. 76°58'16" W., then counterclockwise along the 15–NM DME arc of the Washington VOR to lat. 39°04'27" N., long. 77°12'04" W., then counterclockwise along the 15–NM DME arc of the Armel VORTAC to lat. 39°05'02" N., long. 77°12'35" W., to the point of the beginning; and that airspace beginning at lat. 39°08'58" N., long. 77°18'11" W., then counterclockwise along the 15–NM DME arc of the Armel VORTAC to lat. 38°42'46" N., long. 77°19'06" W., to the point of beginning; excluding that airspace designated as Area A, Area B, Area F, Prohibited Area P–56, and that airspace contained in Restricted Area R–4001B when active.

Area D. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL between the 15–NM radius and the 20–NM radius of the Andrews VORTAC, the Washington VOR, and the Baltimore VORTAC beginning at lat. 38°40'20" N., long. 76°28'37" W., to lat. 39°02'09" N., long. 76°16'12" W., then counterclockwise along the 20–NM DME arc of the Baltimore VORTAC to lat. 39°21'19" N., long. 77°01'09" W., to lat. 39°16'31" N., long. 77°20'51" W., to lat. 39°08'58" N., long. 77°18'11" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to lat. 39°04'27" N., long. 77°12'04" W., then clockwise along the 15–NM DME arc of the Washington VOR to lat. 39°06'16" N., long. 76°58'16" W., then clockwise along the 15–NM DME arc of the Baltimore VORTAC to lat. 38°55'40" N., long. 76°35'10" W., then clockwise along the 15–NM DME arc of the Andrews VORTAC to lat. 38°36'36" N., long. 77°03'47" W., then clockwise along the 15–NM DME arc of the Washington VOR to lat. 38°43'12" N., long. 77°18'08" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to lat. 38°42'46" N., long. 77°19'06" W., to lat. 38°36'41" N., long. 77°19'19" W., then counterclockwise along the 20–NM DME arc of the Washington VOR to lat. 38°31'47" N., long. 77°06'11" W., then counterclockwise along the 20–NM DME arc of the Andrews VORTAC to the point of beginning; excluding the airspace contained in Restricted Areas R–4001A and R–4001B when active.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between the 15–NM radius and the 20–NM radius of the Armel VORTAC beginning at lat. 38°43'20" N., long. 77°38'11" W., to lat. 38°39'05" N., long. 77°41'32" W., then counterclockwise along the 20–NM DME arc of the Armel VORTAC to lat. 38°36'38" N., long. 77°34'07" W., then along the boundary of Restricted Area R–6608A to lat. 38°36'11" N., long 77°25'08" W., then counterclockwise along the 20–NM DME arc of the Armel VORTAC to lat. 38°37'06" N., long. 77°19'52" W., then counterclockwise along the 20–NM DME arc of the Washington VOR to lat. 38°36'41" N., long. 77°19'19" W., to lat. 38°42'46" N., long. 77°19'06" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 39°08'56" N., long. 77°37'57" W., to lat. 39°13'13" N., long. 77°41'16" W., then clockwise along the 20–NM DME arc of the Armel VORTAC to lat. 39°15'49" N., long. 77°23'46" W., to lat. 39°16'31" N., long. 77°20'51" W., to lat. 39°08'58" N., long. 77°18'11" W., then counterclockwise along the 15–NM DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 38°42'46" N., long. 77°19'06" W., to lat. 39°08'58" N., long. 77°18'11" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to lat. 39°05'02" N., long. 77°12'35" W., to lat. 38°39'25" N., long. 77°13'29" W., then clockwise along the 15–NM DME arc of the Washington VOR to lat. 38°43'12" N., long. 77°18'08" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to the point of beginning.

Area F. That airspace extending upward from 1,900 feet MSL to and including 10,000 feet MSL beginning at the point along a line northwest of the Manassas Municipal/Harry P. Davis Field one mile parallel to runway 16L localizer course and the 12–NM DME arc of the Armel VORTAC (lat. 38°44 09" N., long. 77°29'57" W.), then northwest along the line to Interstate Highway 66, then west along Interstate Highway 66 to U.S. Highway 29, then west along U.S. Highway 29 to the 12–NM DME arc of the Armel VORTAC (lat. 38°47'12" N., long. 77°38'23" W.), then counterclockwise along the 12–NM DME arc of the Armel VORTAC to the point of beginning.

Area G. That airspace extending upward from 4,500 feet MSL to and including 10,000 feet MSL between the 15 NM radius and the 20 NM radius of the Armel VORTAC beginning at lat. 39°08'56" N., long. 77°37'57" W., to lat. 39°13'13" N., long. 77°41'16" W., then counterclockwise along the 20–NM DME arc of the Armel VORTAC to lat. 38°39'05" N., long. 77°41'33" W., to lat. 38°43'20" N., long. 77°38'11" W., then clockwise along the 15–NM DME arc of the Armel VORTAC to the point of beginning; and that airpsace beginning at lat. 39°02'09" N., long. 76°16'12" W., to lat. 38°56'51" N., long. 76°12'20" W., to lat. 38°44'15" N., long. 76°16'05" W., to lat. 38°40'20" N., long. 76°28'37" W, to the point of beginning.

Issued in Washington, DC on January 18, 1991.

James B. Busey,

Administrator.

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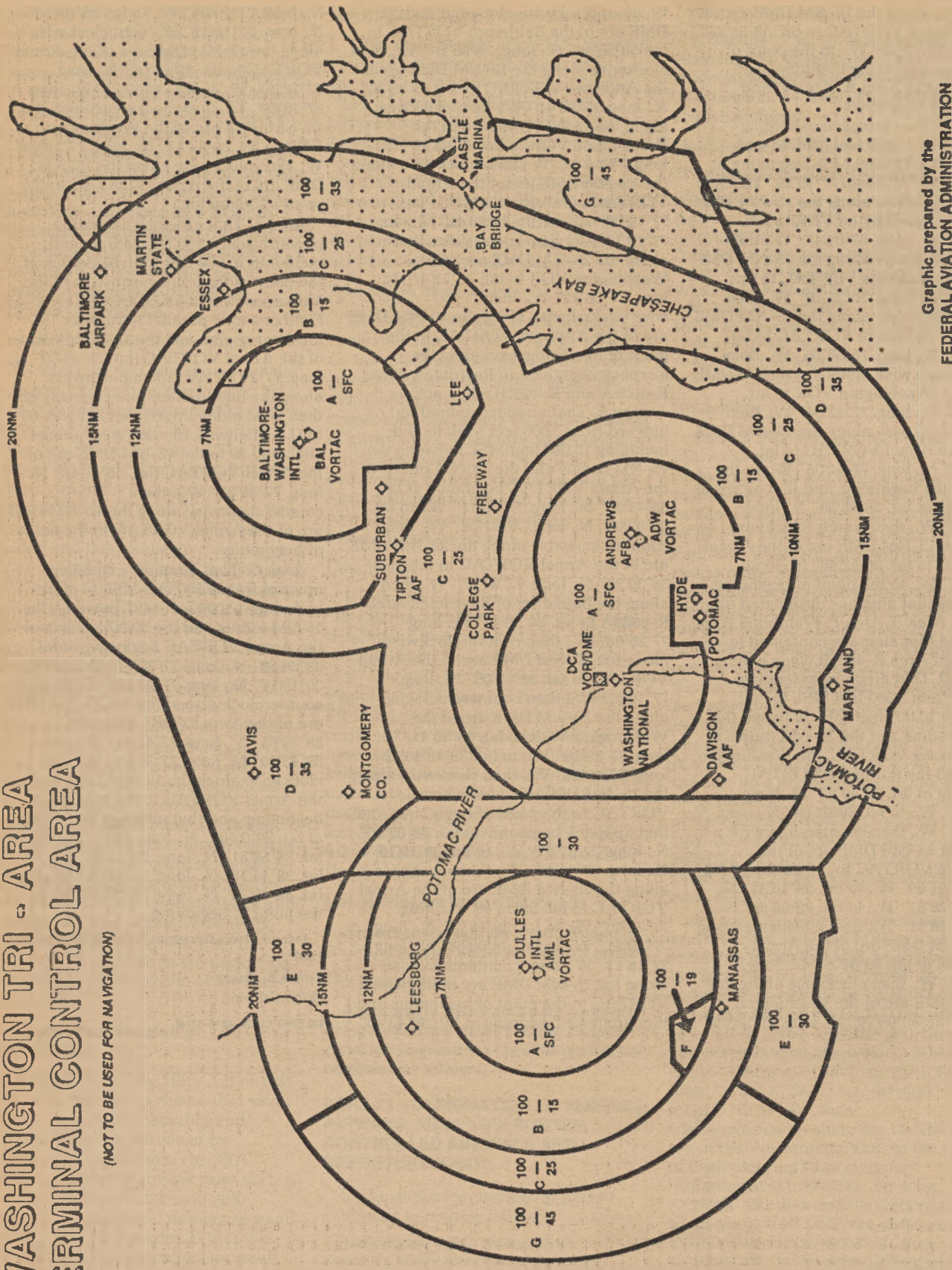

WASHINGTON TRI - AREA TERMINAL CONTROL AREA

(NOT TO BE USED FOR NAVIGATION)

Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP-220)

[FR Doc. 91-1723 Filed 1-28-91; 8:45 am]

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federal register

Tuesday
January 29, 1991

Part IV

Department of Transportation

Coast Guard Research and Special Programs Administration

46 CFR Part 146

Transportation of Military Explosives by Vessel; Revocation; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 146

Research and Special Programs Administration

[Docket No. HM-204A; Amdt. No. 146-1]

RIN 2137-AA10

Transportation of Military Explosives by Vessel; Revocation of 46 CFR Part 146

AGENCY: Coast Guard and Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA, in consultation with the United States Coast Guard (USCG), is revoking 46 CFR part 146 which contains requirements for the transportation and stowage of military explosives on board vessels. This action is being done in conjunction with the final rule RSPA published in the **Federal Register** under Docket No. HM-181 on December 21, 1990 (55 FR 52401). Revocation of 46 CFR part 146 eliminates outdated requirements and requirements which overlap or conflict with the amendments of Docket No. HM-181.

EFFECTIVE DATE: These amendments are effective October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, Office of Marine Safety, Security, and Environmental Protection, (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1577, or Mr. John A. Gale, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION:

I. Background Information

On May 21, 1990, RSPA published a notice of proposed rulemaking (NPRM) (Notice No. 90-7; 55 FR 20996) under Docket No. HM-204A which proposed to revoke 46 CFR part 146 which contains requirements for the transport of military explosives on board vessels. The interested reader is referred to the NPRM for further background information.

On December 21, 1990, RSPA published in the **Federal Register** (55 FR 52401) a final rule concerning performance-oriented packaging, which included the carriage of hazardous materials by vessel (Docket No. HM-181). Among other things, Docket No. HM-181 revises the requirements previously found in 46 CFR part 146 concerning the transportation of military explosives by vessel and relocates them in 49 CFR part 176. Therefore, the shipment of military explosives by vessel must comply with the requirements of 49 CFR part 176.

As stated in the "EFFECTIVE DATE" section of this amendment, the effective date of this final rule is October 1, 1991. However, in Docket No. HM-181, 49 CFR 171.14 has been added to the HMR to allow use of 46 CFR part 146 in effect on September 30, 1991 until October 1, 1993. Therefore, either the provisions of 46 CFR part 146 or the new 49 CFR part 176 may be used for the transportation and stowage of military explosives on board vessels until October 1, 1993. It will be in the interest of all persons involved in the transportation of military explosives by vessel to save the October 1, 1990, edition of 46 CFR part 146 until at least October 1, 1993, when compliance with 49 CFR part 176 becomes mandatory.

The first column of the following table lists the 46 CFR sections which are made obsolete by this final rule. The second column lists the corresponding provisions in 49 CFR and 33 CFR which are newly added or revised under Docket No. HM-181 or were in place prior to today's amendments.

46 CFR	*49 CFR/33 CFR*
Subpart 146.01	
§ 146.01-1	Existing § 176.1.
§ 146.01-3	Not replaced.
Subpart 146.02	
§ 146.02-1	Existing § 176.1.
§ 146.02-2	Existing § 176.5.
§ 146.02-5	Existing § 176.13.
§ 146.02-6	Existing § 176.15.
§ 146.02-6a	Existing § 176.18.
§ 146.02-12	Existing § 176.39.
§ 146.02-14	Existing § 176.50.
§ 146.02-15	Existing § 176.45.
§ 146.02-16	Existing § 176.52.
§ 146.02-20	Existing § 176.54.
§ 146.02-22	Existing § 176.36.
§ 146.02-25	Existing § 176.31, Existing § 176.65.
§ 146.02-35	Existing § 176.48.
Subpart 146.05	
§ 146.05-1	Existing § 171.2.
§ 146.05-3	Existing § 173.21.
§ 146.05-11	Existing § 176.27.
§ 146.05-12	Existing § 176.24.
§ 146.05-15	Existing § 171.2.
Subpart 146.09	
§ 146.09-7	Not replaced.
§ 146.09-8	Not replaced.
§ 146.09-11	New § 176.104.
§ 146.09-15	Revised § 176.78.
§ 146.09-16	Existing § 176.79.
Subpart 146.20	
§ 146.20-1	New § 173.50.
§ 146.20-3	New § 173.54; formerly existing § 173.51.
§ 146.20-5	New § 173.50 and new § 173.52.
§ 146.20-7	New § 173.50 and new § 173.52.
§ 146.20-9	New § 173.50 and new § 173.52.
§ 146.20-11	New § 173.50 and new § 173.52.
§ 146.20-13	New § 173.56; formerly existing § 173.86.
§ 146.20-53	New § 176.194; formerly existing § 173.177.
Subpart 146.29	
§ 146.29-1	Not replaced.
§ 146.29-3	Not replaced.
§ 146.29-7	Revised § 176.4, new § 176.162.
§ 146.29-9	Existing § 176.12, revised § 176.11.
§ 146.29-11	New § 173.59, new § 176.2, new § 176.172.
§ 146.29-13	Revised § 176.100.
§ 146.29-14	Existing § 176.30.
§ 146.29-15	Existing 33 CFR 126.16.
§ 146.29-17	Revised § 176.3, new § 176.166.
§ 146.29-19	New § 176.102.
§ 146.29-21	New § 176.162, existing 33 CFR part 125.
§ 146.29-23	New 176.108, new § 176.118.
§ 146.29-25	New § 176.150, new § 176.154, new § 176.164, new § 176.176, new § 176.178.
§ 146.29-27	New § 176.164.
§ 146.29-29	Existing § 176.60, new § 176.182(g).
§ 146.29-31	New § 176.182(f).
§ 146.29-33	New § 176.104, new § 176.192.
§ 146.29-35	New § 176.148.
§ 146.29-37	Not replaced.
§ 146.29-39	New § 176.104.
§ 146.29-41	Not replaced.
§ 146.29-42	Revised § 176.76, new § 176.170, new § 176.172.
§ 146.29-43	Not replaced.
§ 146.29-45	New § 176.104.
§ 146.29-47	Existing § 172.301, new § 173.60.
§ 146.29-49	Existing §§ 176.95 through 176.99, new § 176.104.
§ 146.29-51	Revised § 176.83, new § 176.112.
§ 146.29-53	New § 176.140, new § 176.194.
§ 146.29-55	New § 176.146.
§ 146.29-57	New § 176.138.
§ 146.29-59	Revised § 176.83, new § 176.140, new § 176.142.
§ 146.29-61	New § 176.146.
§ 146.29-63	Revised § 176.69, revised § 176.84(c), new § 176.124.
§ 146.29-65	New § 176.156.
§ 146.29-67	New § 176.156.
§ 146.29-69	New § 176.156.
§ 146.29-71	New § 176.128, new § 176.130, new § 176.132, new § 176.133.
§ 146.29-73	New § 176.116, new § 176.122.
§ 146.29-75	New § 176.122, new § 176.128.
§ 146.29-77	New § 176.112, new § 176.128.
§ 146.29-79	New § 176.128.
§ 146.29-81	New § 176.128, new § 176.130.
§ 146.29-83	New § 176.124, new § 176.128.
§ 146.29-85	New § 176.128, new § 176.136.
§ 146.29-87	New § 176.128, new § 176.136.
§ 146.29-89	New § 176.128, new § 176.136, new § 176.137, new § 176.138.
§ 146.29-90	New § 176.170.
§ 146.29-91	Revised § 176.84(c).
§ 146.29-93	Revised § 176.84(c), new § 176.144.
§ 146.29-95	New § 176.116.
§ 146.29-97	Revised § 176.53, new § 173.59, new § 176.116.
§ 146.29-99	New § 176.144.
§ 146.29-100	New § 173.51, revised § 176.83.

II. Discussion of Public Comments

Six commenters responded to the NPRM. These comments are discussed in the following paragraphs.

One commenter stated that the revocation of 46 CFR part 146 and adoption of new standards would be costly in terms of education and training, contract revisions, and container marking/re-marking. The commenter provided no data to support the claim of increased costs; however, RSPA agrees that there are costs associated with the amendments set forth in Docket No. HM–181. These amendments will necessitate revisions in instruction manuals and training courses, and retraining of personnel. If RSPA did not undertake the changes promulgated under Docket No. HM–181, it is probable that revisions to the training materials would still have to be made to accommodate international shipments. RSPA believes that having a single regulatory system for both domestic and international shipments will in fact lower the costs associated with the training of individuals involved in hazardous materials transportation. Marking or re-marking of packages and containers is not a significant economic factor in regard to this final rule.

The same commenter was concerned that, because of two distinct systems existing during the transitional period, there would be increased potential for shipper errors, thus creating dangerous shipping conditions. RSPA notes that the Class 1 provisions of the International Maritime Dangerous Goods Code (IMDG Code)—the regulations used for the basis of the amendments to part 176 in Docket No. HM–181—are in world-wide use for military-type as well as for non-military-type explosives and that many shippers and carriers are familiar with, and conform to, both systems of regulation. RSPA is not aware of any data indicating that the incidence of accidents under the IMDG Code has been any more frequent or serious than under 46 CFR part 146.

Other commenters suggested that the requirements of 46 CFR 146.29–15 and 33 CFR 126.16 be incorporated into 49 CFR part 176. These rules set forth the conditions under which the USCG designates waterfront facilities as suitable for the loading, unloading, and handling of Class A (Divisions 1.1 and 1.2) and military explosives. These are port safety requirements issued by the USCG under statutes other than the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 et seq.) and are beyond the scope of this rulemaking.

One commenter stated that 49 CFR 176.162 needs tightened language regarding personnel identification to reflect security details now included in 46 CFR 146.29–21. RSPA believes that 33 CFR part 125, specifically 33 CFR 125.15, covers most adequately the requirements concerning identification of personnel at waterfront facilities and on vessels.

Another commenter suggested that the fire-fighting directions found throughout 49 CFR part 176 should be consolidated into a single location. The commenter stated that this could facilitate reading and comprehension, and reduce the likelihood of operator error. Although this issue is beyond the scope of this rulemaking, RSPA will examine this issue for possible future rulemaking action.

One commenter was specifically concerned over the loss of the detailed instructions and procedures for the handling of military explosives previously found in 46 CFR part 146. The commenter stated that the HMR, as revised by Docket No. HM–181, should be more specific as to the kinds of power operated devices which can be used to load and unload Class 1 military munitions. The commenter also made the point that 49 CFR part 176, as revised by Docket No. HM–181, does not account for the stowage and dunnaging peculiar to the specific types of military explosives addressed in 46 CFR part 146. The commenter went on to state that the new regulations in 49 CFR part 176 do not provide the necessary guidance to ensure a safe system for ammunition stowage and handling aboard military and commercial cargo vessels. In developing the new 49 CFR part 176, RSPA—with guidance from the USCG—attempted to develop regulations that provided the highest level of safety while also allowing for flexibility and ingenuity. Therefore, many of the detailed instructions and procedures for the handling of military explosives previously found in 46 CFR part 146 were not adopted in 49 CFR part 176. It was never intended that the HMR should be a comprehensive manual or "how-to-do-it" handbook of cargo-handling operations and procedures. However, shippers and carriers may develop safety manuals or handbooks to enhance safety at waterfront facilities or on vessels.

One commenter stated that, because the proposed rules would not allow blasting caps, detonators, primer detonators, etc., to be stowed in the same compartment with, or an adjacent compartment to, other military explosives, the commenter's ability to execute its port operations effectively and efficiently could be reduced by limiting the available load plan options. The commenter recommended that Docket No. HM–181 incorporate the requirement previously found in 46 CFR 146.29–93. The proposal under Docket No. HM–204 (May 21, 1990; Notice No. 90–6; 55 FR 20962) to prohibit the stowing of incompatible explosives in adjacent compartments was in error. In the final rule consolidated under Docket No. HM–181, the appropriate section has been changed to allow the stowing of incompatible explosives in adjacent compartments. However, RSPA believes that allowing the stowage within the same compartment of blasting caps, detonators, and primer detonators with other military explosives would present an unacceptable safety risk. If blasting caps, detonators, and primer detonators were allowed to be stowed with other military explosives, RSPA would be allowing the stowage of explosives with their source of ignition. Such a situation could possibly lead to the ignition of the explosive substance or article. Therefore, RSPA has denied the commenter's suggestion in part because it does not believe it is safe to allow blasting caps, detonators, and primer detonators to be stowed within the same compartment with other military explosives.

Two commenters objected to the statement "[t]he only significant difference between 'military' and other explosives is in their end use * * *", which appeared in the preamble of the NPRM. The commenters felt that this statement was incorrect and misleading in that it failed to recognize that military explosives are usually shipped as fully assembled devices and have additional hazards associated with fragmentation. In the NPRM, the point that RSPA was trying to make was that neither the international regulations developed by the UN and IMO, nor the domestic highway and rail regulations in the existing HMR, treat military explosives as a distinct class to be governed by a totally different regulatory regime from other explosives. Under the new regulations set forth in Docket No. HM–181, there will be only one regulatory system common to all explosives. Where special packaging, handling, or stowage is required due to an explosive article's fragmentation hazard, this has been recognized and accounted for in the 49 CFR 172.101 Table or in the text of the regulations. Where a military-type explosive substance or article has hazards which are the same as those of other types of explosive, both are treated in the same manner. RSPA

believes that the adoption of a universally recognized regulatory system, covering all types of explosives and applicable in all ports, will enhance the U.S. shipping industry's already excellent record of explosives safety.

III. Administrative Notices

A. Paperwork Reduction Act

This final rule contains no information collection requirements.

B. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this final rule, I certify that this final rule does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Revoking 46 CFR Part 146 has little or no economic impact on shippers and transporters of military explosives, some of whom may be small businesses. Impacts attributable to the amendments made in the final rule issued under Docket No. HM–181 are addressed in that final rule.

C. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This final rule has no substantial direct impact on the States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this final rule contains no policies with federalism implications as defined in Executive Order 12612.

D. Executive Order 12291

RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) does not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). Since the only purpose of this final rule is to inform interested readers of the revocation of regulations in 46 CFR part 146 and their transfer to 49 CFR part 176, RSPA has determined that a regulatory evaluation is not necessary because the anticipated impact of this final rule is minimal.

List of Subjects in 46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Vessels.

In consideration of the foregoing, under the authority of 49 App. U.S.C. 1804, the Research and Special Programs Administration removes part 146 of title 46, Code of Federal Regulations, effective October 1, 1991.

Issued in Washington, DC on January, 18, 1991, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–1837 Filed 1–28–91; 8.45 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 316
Orphan Drug Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. 85N-0483]

RIN 0905-AB55

Orphan Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to implement section 2 of the Orphan Drug Act, which consists of four sections added to the Federal Food, Drug, and Cosmetic Act. The Orphan Drug Act directs the agency to provide written recommendations on studies required for approval of a marketing application for an orphan drug. It provides for the designation of drugs, including antibiotics and biological products, as orphan drugs when certain conditions are met, and it provides conditions under which a sponsor of an approved orphan drug enjoys exclusive approval for that drug for the orphan indication for 7 years following the date of the drug's approval for marketing. Finally, section 2 of the Orphan Drug Act encourages sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. These proposed regulations specify the procedures for sponsors of orphan drugs to use in availing themselves of the incentives provided for in the Orphan Drug Act and set forth the procedures FDA will use in administering it. These new provisions are intended to benefit consumers by encouraging manufacturers to develop and make available to patients drugs for diseases and conditions that are rare in the United States.

DATES: Comments by April 1, 1991.

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

FOR FURTHER INFORMATION CONTACT: Emery J. Sturniolo, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

SUPPLEMENTARY INFORMATION:

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I. Background

In enacting the Orphan Drug Act (Pub. L. 97-414), Congress sought to promote the development of drugs, including antibiotics and biological products, that are needed by, but not available to, people in the United States with "rare diseases or conditions." Congress recognized that the market for drugs intended to treat people with rare diseases or conditions is so limited that the cost of developing the drugs makes a profit by the developer unlikely. Congress concluded that changes in Federal laws were necessary to create incentives for the development of these drugs. Accordingly, Congress enacted the Orphan Drug Act, which included amendments to the Federal Food, Drug, and Cosmetic Act (the act), to create incentives for the development of these drugs by providing, among other incentives, protocol assistance to sponsors of drugs for rare diseases and a 7-year period of exclusive marketing to the holder of the first approval of a designated orphan drug for the orphan indication (21 U.S.C. 360aa-dd).

These proposed regulations, which codify existing administrative practices that implemented the Orphan Drug Act of 1983 and its subsequent amendments (see section II.B. of this preamble), would establish procedures to provide for protocol assistance and to govern exclusive marketing approval. The Orphan Drug Act provides these incentives to assure that drugs that would not otherwise be developed are in fact developed. Thus, these proposed regulations will, where possible, attempt to ensure that the act's incentives are granted only when they would further the purposes of the Orphan Drug Act.

The main purpose of the Orphan Drug Act is to stimulate innovation in developing treatments for patients with rare diseases and conditions and to foster the prompt availability of therapeutically superior drugs. These proposed regulations attempt to ensure that improved therapies will always be marketable, and that orphan drug exclusive approval does not preclude significant improvements in treating rare diseases.

II. Contents of the Program

A. Recommendations for Investigations of Drugs for Rare Diseases or Conditions

Proposed § 316.10 sets forth the procedure for a sponsor to take advantage of section 525 of the act (21 U.S.C. 360aa), which encourages a sponsor of a putative orphan drug to request FDA to provide written recommendations for the nonclinical and clinical investigations required to achieve marketing approval.

Section 525 of the act was intended to reduce the wasted expense and lost time that occur when sponsors carry out investigations under protocols that are unsatisfactory to FDA. This section states that a sponsor may be provided such written recommendations "* * * [if there is] reason to believe that a drug for which a request is made under this section is a drug for a disease or condition which is rare in the States." The provision does not require that a sponsor have actually obtained orphan-drug designation for the subject drug at the time of the request.

FDA has, therefore, determined that, although a review of the sponsor's submission as to whether there is "reason to believe" that the subject drug is an orphan drug would be required for requests for written recommendations, the information and documentation of orphan-drug status to be filed by sponsors with such requests can be less extensive than that required under proposed § 316.20 for designation of an orphan drug under section 526 of the act.

FDA understands that the Orphan Drug Act was enacted to provide incentives, including early agency advice, to sponsors of orphan drugs. The agency believes, however, that it remains the sponsor's responsibility to design and carry out the development of a drug. FDA is neither in a position to design the needed studies *de novo* nor to review the relevant literature or other information on the drug and the disease to be treated to facilitate planning of the development program. So that FDA can provide informed comments on the adequacy of any proposed nonclincial or clinical protocols, the sponsor must include a detailed outline of the proposed study as specified in proposed § 316.10(b) in any request for written recommendations.

FDA intends that any recommendation provided under section 525 of the act and proposed § 316.12 would be the equivalent of an advisory

opinion under § 10.85 (21 CFR 10.85) of FDA's administrative practices and procedures regulations. The agency would make every effort to adhere to the advice given with respect to the design of studies and the kinds and amounts of data needed for a sponsor's orphan drug to be approved (or licensed) for marketing. FDA may later modify a recommendation if new information becomes available that would place reliance on the recommendation in conflict with good science or the public health. With this exception, however, if a sponsor responsibly follows recommendations related to studies critical to approval, and if the results of the ensuing studies support the safety and effectiveness of the drug, such studies should result in the generation of adequate data to support a marketing application.

Proposed § 316.14 sets forth the reasons why FDA may refuse to provide written recommendations for the nonclinical or clinical investigations required for marketing approval of an orphan drug. The agency expects that most of these reasons will serve as a basis for an agency inquiry to the sponsor seeking more information rather than for an outright refusal to provide such recommendations. However, the sponsor's failure to supply information respecting the results of nonclinical laboratory studies or completed early clinical studies as required by proposed § 316.12(d) or to reply to correspondence respecting the sponsor's request within 90 days as required by proposed § 316.14(c) would lead to a refusal to provide recommendations.

B. Designation of Orphan Drugs

Orphan-drug designation must be obtained before a sponsor can obtain any direct financial benefits that are provided by the Orphan Drug Act. Eligibility for tax credits, for orphan-drug exclusive approval, and for grants and contracts depends upon the sponsor's drug having been designated under section 526 of the act (21 U.S.C. 360bb) as a drug for a specified disease or condition which is rare in the United States. FDA's experience with orphan—drug designations reveals that sponsors have requested designation at all stages in a drug's development, even after FDA's approval of a drug's marketing application. For an interim period after enactment of the Orphan Drug Act on January 4, 1983, FDA provided a grace period during which the agency accepted requests for designation of certain drugs and designated them as orphan drugs after FDA had approved the marketing applications for them. For reasons discussed in a notice published in the **Federal Register** of February 5, 1986 (51 FR 4505), this interim policy was terminated on May 6, 1986. In addition, in Pub. L. 100–290 (the Orphan Drug Amendments of 1988), Congress amended section 526 of the act to require that requests for designation must be made before the submission of a marketing application (see 53 FR 47577; November 23, 1988).

To be designated an orphan drug, a sponsor must show: (1) That the drug is being or will be investigated for a specified rare disease or condition; (2) that the drug would be subject to approval under section 505(b) or 507 of the act (21 U.S.C. 355(b) or 357) or to licensure under section 351 of the Public Health Service Act (42 U.S.C. 262); and (3) that the marketing approval would be for such use or condition.

The 1984 amendments to the Orphan Drug Act (The Health Promotion and Disease Prevention Amendments of 1984) (Pub. L. 98–551) introduced a prevalence figure of 200,000 affected persons as a ceiling for a "rare disease or condition." If a disease or condition affects more than this number, a showing (pursuant to proposed § 316.21) that there is no reasonable expectation that the cost of developing and making available the drug to treat the disease or condition will be recovered from sales in the United States must be made before a drug can be considered an orphan drug.

Congress provided that the 200,000 prevalence figure means 200,000 affected persons in the United States at the time that the orphan-drug designation request is made (not 200,000 new cases annually). Under this proposal, if a drug is designated as an orphan drug because it is intended for a disease or condition with a prevalence of under 200,000, the drug would remain an orphan drug even if the disease or condition ceases to be an orphan disease or condition because of increased prevalence. This approach would protect a sponsor's good-faith investment.

Proposed § 316.29 does provide for discretionary suspension or revocation of orphan-drug designation and, thus, exclusive marketing rights if it is later found that the application for orphan-drug designation: (a) Contained an untrue statement of material fact; or (b) omitted material required information. Also, FDA may suspend orphan-drug designation if it subsequently finds that, as of the date of the submission of the designation request, the drug had in fact not been eligible for designation.

An indication for treatment of a specific disease or condition could involve all patients with that disease or condition or a specified subpopulation of those with the disease or condition. If a drug is under development for only a subset of those persons with a particular disease or condition, orphan-drug designation for use in the limited subset may be granted. Exclusive approval for a disease subset would not bar approval of the same drug for the larger population or other subsets of population by different sponsors, however, if that were later deemed appropriate. In diseases or conditions which are common, subsets would qualify for designation only if the subset is medically plausible. For example, a drug might well be too toxic for use in treating a disease or condition except in patients refractory to or intolerant of other less toxic treatments; the refractory and intolernat patients might be a reaonable orphan subset. On the other hand, choosing an arbitrary subset (e.g., people with blood pressure over a certain level), simply to qualify a drug as an orphan-drug would be unacceptable.

FDA notes that proposed indications for use of orphan drugs are subject to review by the applicable FDA center (e.g., the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research). The centers routinely review indications for use during the approval process. Also, FDA's Office of Orphan Products Development may ask the centers for their advice about the medical plausibility of potential orphan-drug designations. These reviews by the centers include consideration of the appropriateness of the request for orphan-drug designation, and, in particular, consideration of whether the target populations have been artificially restricted.

For most orphan drugs, only one sponsor has requested orphan-drug designation, although in some instances two or more persons each has sought orphan-drug designation for the same drug for the same indication. FDA intends to ensure, however, that a pioneer sponsor's research is not used to give a second sponsor a "free ride." Accordingly, in § 316.20(a), FDA proposes to require that each sponsor's designation request contain all the information needed to allow a determination as to the appropriateness of designation of the product as an orphan-drug even when another sponsor has obtained such designation for the same drug for the same indication is no bar to designation (or, indeed, exclusive approval) of the same drug for a new orphan indication, and § 316.20(a) so provides.

FDA recognizes that a finding of eligibility for orphan-drug status under the prevalence criteria could apply to all sponsors of drugs for the disease or condition in question. However, FDA believes it unfair to allow a subsequent sponsor to use a pioneer sponsor's research data for the purpose of obtaining orphan-drug designation when such research data would by law not otherwise be available to the subsequent sponsor.

In all cases, the indication for which a drug is designated would have to be the same as, or equivalent to, the ultimately approved indication for exclusive approval to take effect.

FDA understands that the target population for use of a vaccine, diagnostic drug, or preventive drug may be an "at-risk" population that is larger than the population actually affected by the disease or condition. For this reason, proposed §§ 316.20(b)(8) and 316.21(b)(3) would require that sponsors include in any request for designation of such a drug an estimate of the number of people to whom the vaccine, diagnostic drug, or preventive drug will be administered annually in the United States. FDA believes that this provision is justified for such drugs because, even though certain vaccines (e.g., polio vaccine) and other diagnostic/preventive drugs are for rare disorders, they clearly are not orphan drugs because they may be administered to the at-risk target populations of millions of people and thus are not within the class of products contemplated to be covered by orphan-drug legislation.

Under proposed § 316.22, the agency would require foreign sponsors that seek orphan-drug designation to name a permanent-resident agent to whom communications may be made.

Under proposed § 316.26(a), FDA enumerates the reasons for which it would refuse to grant a sponsor's request for orphan-drug designation. In many respects, the reasons why FDA would under § 316.26 deny orphan-drug designation parallel the reasons why FDA may under § 316.14 refuse to provide written recommendations on investigations. As an exception to the general rule, however, proposed § 316.26(b) also provides that FDA may refuse to grant a request for orphan-drug designation if the request contains an untrue statement of material fact. FDA believes that refusal to grant a request in such a circumstance should be discretionary and not mandatory; for example, the untrue statement may be inadvertent.

On the whole, FDA would liberally grant orphan-drug designation when the threshold prevalence or profitability tests are met. FDA would grant orphan-drug designation even for a drug that is otherwise the same drug as one already given exclusive marketing approval under proposal subpart D of part 316 (and during the first drug's period of exclusive approval) when the second sponsor can make a plausible showing that it may be able to produce a clinically superior drug. Approval of such a subsequent drug during the first drug's period of exclusive approval for treatment of the same rare disease or condition would require evidence of the clinical superiority of the subsequent drug, however. The content of this evidence will depend on the nature of the superiority claimed. (See the discussion of the definition of "clinically superior" below.)

FDA considered proposing a rule under which it would designate drugs apparently the same as drugs that already have orphan-drug exclusive approval only where the agency believed that there was a high probability of eventual approval. Such a rule would exclude most drugs that are identical as to active moiety to already approved orphan drugs. FDA decided on a liberal designation policy, however, because the agency wants to encourage research whose aim is to produce safer and more effective drugs, even if FDA believes that the prospects are dim (because of the anticipated difficulty of demonstrating clinical superiority) for eventual marketing approval. FDA believes that a liberal designation policy is appropriate despite the possibility that it might lead to wider use of the tax credit provisions under section 4 of the Orphan Drug Act because the agency doubts that sponsors will deliberately conduct fruitless research just to obtain the tax credits.

Also, the agency is proposing to allow sponsors to apply for amendments to orphan-drug designation up to the time of approval of their marketing applications. The purpose of this proposal is to allow for situations in which testing data unexpectedly demonstrate the effectiveness of drugs in different populations or for different diseases or conditions from that which the drug was initially designated. FDA would grant such an amendment request only if it found that the initial designation request was made in good faith and that the amendment is sought only to render the orphan-drug designation consistent with unanticipated test results. If the prevalence of the disease or condition named in the amendment request exceeds 200,000 people in the United States as of the date of submission of the amendment request, of course, the amendment could not be granted and the drug, when ultimately approved for the new or expanded indication, might be ineligible for exclusive marketing status under the Orphan Drug Act.

FDA is aware that, under Public Law 100–290, no orphan-drug designation request can be granted after the submission of a marketing application. However, FDA does not believe that Congress thereby intended to preclude an amendment to an already existing application for purposes of conforming the designation to the test results.

FDA proposes that this regulation, when final, will apply only prospectively. Therefore, FDA does not plan to reconsider any prior actions under the Orphan Drug Act, or change any orphan-drug status, to conform to the final regulation.

C. Verification of Orphan-Drug Status

An important feature of the definition of an orphan drug is the prevalence figure of 200,000 affected people in the United States as a ceiling for a "rare disease or condition." In accordance with this principle, which was introduced into the Orphan Drug Act by Public Law 98–551 (see section II. B. of this preamble), proposed § 316.21 requires that sponsors of would-be orphan drugs that are designed to treat a condition or disease that affects 200,000 or more persons file detailed statements, including information about marketing costs and justification for revenue projections for the drug. Further, at FDA's request, a sponsor would be required to open its books, including financial records and sales data with respect to the drug proposed for orphan-drug designation, to FDA-appointed auditors. Failure to do so or failure adequately to justify its claims would result in denial of a sponsor's designation request.

FDA recognizes that these data and analysis requirements may be burdensome. FDA believes, however, that the data and information required by proposed § 316.21 to be made available to the agency are necessary to a demonstration of lack of profitability. Allocation of costs is sometimes debatable, and a full disclosure of all cost and profit information related to the drug in question both in the United States and abroad is necessary to satisfy the agency that the sponsor has fulfilled its burden of demonstrating a lack of profitability. However, FDA solicits comments on ways to minimize costs to sponsors while allowing the agency to ascertain a lack of profitability when that is claimed by the sponsor.

The requirement that sponsors open their books at reasonable times on demand for examination by FDA-appointed auditors is necessary to enable FDA to verify claims made in orphan-drug designation requests. However, FDA does not expect to exercise the authority to examine companies' books often.

D. Orphan-Drug Exclusive Approval

Section 527 of the act automatically vests a 7-year period of orphan-drug exclusive approval on the date that the agency issues a marketing approval for a designated orphan drug. For this reason, no further action by FDA to bring about exclusive approval is necessary. Under proposed § 316.34, however, the agency would send the sponsor of an approved, designated, orphan drug timely written notice recognizing exclusive approval.

FDA interprets the act to accord exclusive approval only to the first drug approved. This interpretation means that other applicants, who may have invested substantial money and effort in supporting their applications, are barred from marketing for the 7-year period of exclusivity even though they filed before or shortly after the applicant whose product was approved. Because of this, some have argued for "joint exclusivity" between or among "temporally close" competitors, that is, sponsors that submit marketing applications prior to the first approval of the drug.

FDA is required by law to reject the concept of joint or shared exclusivity (unless it is agreed to by all sponsors of a particular drug). The act provides that, after approval of an orphan drug, "* * * [FDA] may not approve another application * * * for such drug for such disease or condition for a person who is not the holder of such approved application * * * until the expiration of seven years from the date of approval of the approved application * * *" (21 U.S.C. 360cc(a)). The agency interprets this language to preclude the possibility of shared or joint exclusivity except where agreed to by the sponsor of the drug with the right to exclusive marketing.

E. Scope of Exclusive Approval

Exclusive marketing is the Orphan Drug Act's primary incentive for the development of orphan drugs. Thus, FDA has intensively considered how it would determine whether one drug is the same as another with respect to orphan-drug exclusive marketing. Historically, any difference in the chemical structure of a drug's active moiety (that part of the molecule other than the parts that make it a salt or ester), whether or not that difference caused a difference in the clinical effect, rendered the drug containing that active moiety a new molecular entity. This distinction antedated any considerations of exclusivity and was principally a classification matter. It reflected the view that the modified drug had a high probability of being different from the original in its actions or toxicity and would need to undergo full toxicologic and clinical testing because it was not possible to tell from examining the structure of the two molecules or performing simple in vitro or in vivo tests whether they would behave identically. FDA was, thus, not prepared to allow "shortcuts" to marketing approval for modified active moieties under any circumstances, no matter what the agency's view of the likely significance of the structural changes and no matter how small they were.

At the same time, it is often possible to modify a small molecule while retaining its desired effect. The ability to do this has been used by sponsors to develop their own versions of popular widely used drugs to avoid infringements of existing patents. Thus, sponsors have in recent years developed modified angiotensin converting enzyme inhibitors, calcium channel blockers, H2-antihistamines, beta-adrenergic blocking agents, steroids, and cephalosporin antimicrobials. While a major aim of the sponsors may have been development of a distinct molecule that would not be restricted by existing patents, sponsors have also been interested in distinguishing their drug therapeutically from a competitor's. The modified molecules were often pharmacologically distinct, sometimes in ways that were quite advantageous, such as by having greater specificity, by lacking a particular adverse effect, or by having different pharmacokinetics.

With respect to small molecules, it appears sound, for the purposes of consideration of exclusive marketing under the Orphan Drug Act, to adopt a policy that regards two drugs as different if they differ with respect to the chemical structure of their active moieties. First, such differences are highly likely to lead to pharmacologic differences. Second, the development of an agent with a novel active moiety is not a financially or intellectually trivial matter; it represents a considerable effort and a substantial risk, as the results of changes in small molecules are difficult to predict.

It would be possible to have the same policy for macromolecules, i.e., to regard any difference in structure, or even any uncertainty about actual structure (e.g., a preparation may contain an array or distribution of closely related molecules or be of such a complex nature that it cannot be precisely defined), as causing two drugs to be considered different. However, the differences in structure/function relationships between macromolecules and small molecules could suggest the need to articulate a different policy for macromolecules.

Some degree of heterogeneity is common in the case of macromolecules; if this were to lead to the conclusion that two products composed of macromolecules were almost always different, there would be little or no exclusive marketing associated with macromolecules, probably not the outcome sought by Congress in enacting the Orphan Drug Act. Also, unlike with small molecules, it is possible to make changes in macromolecules that are very likely to have no pharmacologic effect (e.g., a substitution of one amino acid for another similar one at an unimportant site in the molecule), but that could nonetheless defeat exclusive marketing if any structural difference were sufficient to make drugs different for purposes of orphan-drug exclusive marketing. Again, this is an outcome that might not be consistent with the intent of the Orphan Drug Act.

Because small differences may affect the function of macromolecules much less than that of small molecules, it may be appropriate that certain chemical differences or uncertainties about chemical structure of macromolecules should not cause two drugs to be considered different for purposes of the Orphan Drug Act, unless the chemical differences were associated with improvements in clinical effect. If this policy were implemented, it would be critical to define the kinds of differences in clinical effect that would be considered sufficient to support a conclusion that the drugs were different.

It would be easiest to show that a new drug was different from the innovator drug if any documented pharmacologic difference between the drug were considered a sufficient basis for determining that the drugs were different. Conversely, it would be relatively difficult for a new drug to be considered different if a clear clinical advantage had to be demonstrated.

One can describe several alternative scientifically reasonable sets of criteria for identifying drugs as different for purposes of determining orphan-drug exclusive marketing rights. The crucial differences among them are in how much structural distinction there must be between a drug and a potential competitor and whether the structural

distinction must be linked to functional differences for the competitor drug to be considered a "different" drug on chemical/structural grounds for purposes of the Orphan Drug Act. In each case, even a drug considered the "same" drug structurally could become a "different" drug for these purposes by showing clinical superiority. Four possible criteria for determining sameness/difference are discussed below:

1. Two drugs would be considered different if they had any defined structural difference (other than being different salts or esters of the same active moiety), such as a different amino acid sequence or glycosylation pattern, or if they had heterogenous structures (e.g., a polysaccharide with an array of molecules having different numbers of the same repeating saccharide unit and thus different chain lengths) or, for other reasons, had a structure that could not be precisely defined.

Comment: This criterion applies similar considerations to small and large molecules. Macromolecular drugs with similar structures and similar, even identical, pharmacologic activity would usually be treated as different drugs. Because it is often not possible completely to define all aspects of the structure of macromolecules, few closely related macromolecules would be considered the same drug, although there would be some cases, for example, two human growth hormones with identical amino acid sequence and no glycosylation, in which identity would be presumed. Using this criterion, orphan-drug exclusive marketing would rarely prevent the development of a competitor macromolecular drug so long as the competitor were willing to support development of a full new drug application (NDA) or product license application (PLA).

2. Two drugs would be considered different if they could be shown to have a defined structural difference, as above. However, they would not be considered different simply because of uncertainty about their precise structure or because the drugs are somewhat indeterminate mixtures. For example, two polypeptide or protein molecules that had the same primary, secondary, and tertiary structures, insofar as could be determined, or had uncertain or mixed chemical structures that could not be distinguished, would be considered the same drug, unless the subsequent drug could be shown to be clinically superior.

Comment: This definition would be very similar to criterion 1 in practice, although it would be slightly more likely that competing products would be considered the same drug. The definition itself would create a strong incentive for sponsors to identify and define structural differences in previously indeterminate macromolecules, either through additional testing or minor manipulations in structure.

3. Two drugs would be considered the same drug if the principal, but not necessarily all, structural features of the two drugs were the same, unless the subsequent drug were shown to be clinically superior. This criterion would apply as follows to different kinds of macromolecules:

a. Two protein drugs would be considered the same if the only differences in structure between them were due to: (1) Post-translational events; or (2) infidelity of transcription or translation; or (3) minor differences in amino acid sequence. Other potentially important differences, such as different glycosylation patterns or different tertiary structures, would not cause the drugs to be considered different unless the subsequent drug were shown to be clinically superior.

b. Two polysaccharide drugs would be considered the same if they had identical saccharide repeating units, even if the number of units were to vary and even if there were post-polymerization modifications, unless the subsequent drug could be shown to be clinically superior.

c. Two polynucleotide drugs consisting of two or more distinct nucleotides would be considered the same if they had an identical sequence of purine and pyrimidine bases (or their derivatives) bound to an identical sugar backbone (ribose, oxyribose, or modifications of these sugars) unless the subsequent drug were shown to be clinically superior.

d. Closely related complex partly definable drugs with similar therapeutic intent, such as two live viral vaccines for the same indication, or some other traditional biological, would be considered the same unless the subsequent drug were shown to be clinically superior or to depend on different mechanisms of action.

Comment: This criterion makes a presumption of sameness, even in the case of proteins, in the face of minor differences in structure other than differences in the primary amino acid sequence if those differences occur after the basic amino acid change is translated from the RNA. Sameness is also presumed even in the face of amino acid sequence differences if they are "minor".

Determining whether differences in amino acid sequences should be considered minor involves judgment and could lead to legal challenges of FDA decisions. An alternative approach would be to allow any difference in amino acid sequence to cause a molecule to be considered different. With that approach, however, a second sponsor could then introduce an inconsequential difference in amino acid sequence solely to defeat orphan-drug exclusion marketing. Overall, the approach embodied in criterion 3 would, compared to the first two approaches, tend to increase the likelihood that a potential competitor would be barred by the Orphan Drug Act from marketing a variant of an already marketed orphan drug.

4. Two similar macromolecules would be considered the same unless their structures differed in ways that could reasonably be expected to influence relevant pharmacologic activity. Other structural differences would not cause the second drug to be considered a different drug unless the subsequent drug were shown to be clinically superior.

Comment: Like criterion 3, this approach makes a relatively strong presumption of sameness for pharmacologically related drugs and would support orphan-drug exclusive marketing of the first approved drug in the face of considerable differences in structure. This approach depends even more than does criterion 3 on judgment in that the kinds of structural differences likely to be related to differences in pharmacological activity are not specified. However, in this case, the agency would have to determine that a particular structural change was likely to be associated with a clinical difference without necessarily requiring evidence from clinical studies that it actually did lead to such a difference. This would entail making a complex and potentially controversial judgment.

All of the above four criteria are scientifically reasonable, and selection of one involves policy considerations as much as scientific ones. Criteria 1 and 2 use the same criteria for determining differences between macromolecules that are used to determine whether small, well-defined drugs have the same active moieties. Criteria 3 and 4 are based on the premise that function of macromolecules is less directly related to minor structural differences than is the case for small molecules and incorporates an assessment of functional relevance into the comparisons.

The first two criteria give relatively little value to orphan-drug exclusive marketing for macromolecules, allowing any evidence of structural difference, or

uncertainty about structure, to cause two drugs to be considered different drugs. They are fairly easy to interpret. The subsequent drug sponsor would not get a free ride, as it would still have to carry out the studies necessary to support its own marketing application, a significant effort. However, that subsequent sponsor could proceed with a reasonably sure expectation of ultimately being able to market the drug.

The third criterion, which FDA is proposing to adopt, gives considerable protection to the first approved orphan product against a second sponsor's attempts to defeat exclusive marketing rights by introducing minor molecular changes. It would also be reasonably straightforward to implement; minor chemical differences simply would not cause a subsequent drug to be considered different unless the subsequent drug were shown to be clinically superior. FDA is proposing this option because it would seem to constitute the best available mechanism to protect the integrity of the chief incentive for orphan drug development that Congress created while allowing clinically superior drugs with similar chemical structure to be marketed. Criterion 4 leaves so much to discretion that day-to-day implementation could become a major problem. Choice of criterion 3 is consistent with discussions at the Institute of Medicine meeting held on November 19 and 20, 1990.

Under the test set forth under criterion 3, a drug would be considered different if it were shown to be clinically superior to an already approved orphan drug. FDA proposes that a drug be considered "clinically superior" to an already approved orphan drug when it provides a therapeutic advantage for at least one of the following three reasons:

(1) It has greater effectiveness than the approved orphan drug (as assessed by effect on a clinically meaningful endpoint in adequate and well controlled clinical trials). Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs. In most cases, direct comparative clinical trials would be necessary; or

(2) It has been shown to be safer in a substantial portion of the target population, for example, by the elimination of an ingredient or contaminant that is associated with relatively frequent adverse effects. Superior safety might also be proven where two drugs have approximately the same therapeutic effect but where the subsequent drug is shown to produce that effect at a lower dose and only where the first drug had significant side effects. In some cases, direct comparative clinical trials would be necessary; or

(3) In unusual cases, where the subsequent drug has not been shown to be safer or more effective, a subsequent drug could nevertheless qualify as being "clinically" or "therapeutically" superior through a demonstration that the product otherwise makes a major contribution to patient care.

This third basis for finding a subsequent drug to be clinically superior is intended to constitute a narrow category, and its proposed use is not intended to open the flood gates to FDA approval for every drug for which a minor convenience over and above that attributed to an already approved orphan drug can be demonstrated. The only situation that FDA has identified as potentially providing a "major contribution to patient care" without a clear showing of a gain in safety and/or effectiveness is the development of an oral dosage form where the first drug was available only in a parenteral dosage form. FDA solicits comments as to whether other kinds of differences, such as differences in method or vehicle of administration, might constitute "major contributions to patient care." Because FDA has not been charged with making decisions on the approval of drugs based on cost, the agency proposes to rule out cost considerations in determining whether a drug makes "a major contribution to patient care."

It has been suggested that, whenever FDA is asked to approve a subsequent drug because it is "clinically superior" to the first-approved drug, the agency should give the sponsor of the first drug an opportunity to conduct studies showing that its drug matches the superior qualities of the subsequent drug. FDA proposes to reject this suggestion on grounds that it is not fair to the sponsor of this similar but nevertheless innovative drug to refuse to allow this subsequent sponsor the fruits of its testing and research. Also, giving the first sponsor this opportunity might delay the approval of a clinically superior drug, especially where the first sponsor is significantly behind in testing the clinically superior drug.

In any situation where FDA confronts a question of whether or not a subsequent orphan drug is the same as or different from an already approved first orphan drug, FDA proposes to place the burden of proof (including the burden of production of evidence and the burden of persuasion of FDA) on the sponsor of the subsequent drug who is contending that its drug is different. It is usual for FDA to require a sponsor to prove all aspects of its entitlement to market a product. Applied here, such a rule would better protect the integrity of the chief incentive that Congress created for orphan-drug development than would the placing of the burden on the exclusive marketing holder.

F. Inadequate Supplies

Under section 527 of the act, whenever the agency (and by delegation under 21 CFR 5.58(b), the Director, Office of Orphan Products Development (OOPD)) has reason to believe that the holder of an approved marketing application cannot assure the availability of sufficient quantities of an orphan drug to meet the needs of people with the disease or condition for which it was designated an orphan drug, the act provides that the agency may approve another application for the same drug for the same indication.

Proposed § 316.36 provides a procedure whereby the Director, OOPD, would notify the holder of the possible insufficiency and would request, within a specified time, that the holder (1) provide in writing or orally or both, at the Director's discretion, views and data as to how the holder can assure the availability of sufficient quantitites of the drug; or (2) consent to the approval of other marketing applications.

Following his or her decision in the matter, the Director would issue an order with findings and conclusions, either reaffirming or withdrawing the drug product's exclusive approval. Any such order which the Director issues would constitute final agency action. In the event the Director's decision is to withdraw the drug product's exclusive approval, FDA may approve any number of marketing applications even if the additional applicants cannot themselves assure the availability of sufficient quantities of the orphan drug in question. Congress' clear intent was to foster the development and marketing of sufficient supplies of drugs for rare diseases (H. Rept. 97–840, 97th Cong. 2d., p. 7, 1982). Marketing approvals of other sponsors' drugs would encourage orphan drug development even if the new marketing approval holder could not itself immediately guarantee adequate supplies either by itself or with other manufacturers.

Once exclusive marketing is broken under section 527 of the act for failure to assure the availability of adequate supplies, it cannot be restored even if the first manufacturer is later able to assure the availability of adequate supplies. It would be unreasonable to expect a second manufacturer to make a large investment in drug development to fill a gap if it could be shut out of the

market at any time that the original manufacturer could assure adequate supplies.

G. Open Protocols

In subpart E of proposed part 316, FDA commits itself to encourage sponsors of designated orphan drugs to design and implement treatment protocols to permit treatment of any patient with the rare disease or condition during investigations of the drug upon request by the patient's physician. FDA notes that, in FDA's experience to date, the vast majority of orphan drugs under investigation are being tested for "serious" or "immediately life-threatening" diseases as they are defined in 21 CFR part 312, and proposed § 316.40 so provides.

H. Availability of Information

FDA recognizes that designation requests will contain confidential commercial information and, indeed, that the very existence of an orphan-drug designation request may itself be confidential commercial information. In addition, a request for orphan-drug designation is in most instances supported by information that will be incorporated in a sponsor's marketing application. Release of such information prior to marketing approval of the sponsor's drug product could have an adverse impact on the sponsor's obtaining first approval and, thus, exclusive approval pursuant to section 527 of the act.

For all these reasons, proposed § 316.52(a) provides that no information submitted by a sponsor as part of a request for orphan-drug designation would be released by FDA to the public prior to such time as FDA takes final action on the request. This means that unless previously disclosed or acknowledged, FDA would not make public the existence of any pending orphan-drug designation request. Under proposed § 316.52(c), however, upon granting orphan-drug designation, FDA would publish the following information: the trade and generic names of the designated product, the uses for which the drug is designated, the date of the granting of orphan-drug designation, and the name and address of the sponsor of the drug receiving designation.

Proposed § 316.52(b) provides that, irrespective of whether the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure prior to final FDA action on the request. Upon final FDA action on a request for designation, proposed § 316.52(c) provides that FDA will determine the public availability of data and information in the request in accordance with 21 CFR parts 20 and 21 CFR 314.430.

In accordance with proposed § 316.52(e), FDA will follow existing statutes and regulations in deciding whether to disclose publicly the existence of a pending marketing application for a designated orphan drug for the use for which the drug was designated. In general, FDA does not disclose the existence of the application unless it has been previously publicly disclosed or acknowledged or disclosure is otherwise required. Finally, proposed § 316.52(f) provides that FDA will determine the public availability of data and information contained in pending and approved marketing applications for a designated orphan drug for the use for which the drug was designated in accordance with part 20, § 314.430, and other applicable requirements.

I. Administrative Challenge Procedures

FDA does not propose to provide for a hearing on issues of the scope of exclusive approval or any other issues of approvability or orphan-drug designation under the Orphan Drug Act. Neither the Constitution, nor the Administrative Procedure Act, nor the Orphan Drug Act requires a hearing on any issue of this kind. Hearings are time-consuming and resource-intensive. FDA is not persuaded that a regulatory hearing before the agency under part 16 of FDA's administrative practices and procedures regulations (21 CFR part 16) is more likely to lead the agency to a correct result than is careful administrative review. Further, the agency notes that, if a challenging sponsor has sufficient information, it can, under current regulations, mount an effective challenge to an incipient drug approval by filing a citizen petition pursuant to 21 CFR 10.30.

FDA considered creating an administrative procedure, without a hearing, whereby the agency would give notice to the sponsor of an approved exclusively marketed orphan drug of the proposed approval of another sponsor's application for marketing a drug that, in FDA's view, is similar but not identical. Further, FDA considered the possibility of allowing the sponsor of the exclusively marketed drug an opportunity to challenge administratively the proposed approval of a subsequent drug.

FDA has decided not to propose a new administrative procedure for allowing challenges to incipient marketing application approvals or denials under section 527 of the act. Just as there is no requirement for a hearing, there is no requirement in the Constitution, the Administrative Procedure Act, or the Orphan Drug Act for such an administrative procedure. Also, postdecisional judicial review is preferable to an administrative challenge procedure because a predecisional challenge procedure would be time consuming and could be used for the sole purpose of delaying approval of competing drugs. Also, it would be difficult to determine who should have the right to challenge an incipient approval and who should be entitled to what notice of what anticipated agency action. Finally, a predecisional administrative challenge procedure would present difficulties due to the nondisclosability of relevant information under FDA's public information regulations (21 CFR part 20 and other regulations cited in that part).

For these reasons, FDA believes that the disadvantages of an administrative challenge procedure are too great to justify creating one.

J. Economic Impact

The agency has examined the economic impact of this proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) and concludes that this proposed rulemaking is not a major rule as defined by Executive Order 12291 and will not have a significant impact on a substantial number of small entities.

The proposed rule would codify existing administrative practices that implemented the Orphan Drug Act of 1983 and its amendments. Because the proposed rule introduces no new requirements, it imposes no incremental costs on industry or consumers.

It is clear that the Orphan Drug Act, as implemented by existing administrative practices, has significantly increased the rate at which new orphan drugs are marketed. While two or three drugs that might be eligible as orphan drugs were approved annually prior to the Orphan Drug Act, an average of eight designated orphan drugs have been approved per year and marketed since 1984. Moreover, orphan-drug designation has been granted to an average of 41 drugs per year since 1984. Thus, the Orphan Drug Act, as implemented since 1983, has provided an effective stimulus for the development and marketing of drugs for diseases or conditions that are rare in the United States.

K. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this proposed 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.

L. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Orphan Drug Regulations—NPRM.

Description: These proposed regulations specify the procedures for sponsors of orphan drugs to use in availing themselves of the incentives provided for in the Orphan Drug Act and set forth the procedures FDA would use in administering it.

Description of Respondents: Businesses or other for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
316.10	6	1	125	750
316.20 and 316.21	28	1.78	125	6,250
316.22	3	1	2	6
316.27	5	1	4	20
316.36	1	3	15	45
Total				7,071

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be submitted to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

M. Effective Date

FDA proposes that any final rule based on this proposal would become effective 30 days after the date of publication of the final rule.

N. Request for Comments

Interested persons may, on or before April 1, 1991, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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 office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 316

Orphan drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that 21 CFR part 316 be added as follows:

PART 316—ORPHAN DRUGS

Subpart A—General Provisions

Subpart B—Written Recommendations for Investigations of Orphan Drugs

Subpart C—Designation of an Orphan Drug

Subpart D—Orphan-drug Exclusive Approval

Subpart E—Open Protocols for Investigations

Subpart F—Availability of Information

Authority: Sections. 525, 526, 527, 528, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa, 360bb, 360cc, 360dd, 371).

Subpart A—General Provisions

§ 316.1 Scope of this part.

(a) This part implements sections 525, 526, 527, and 528 of the act and provides procedures to encourage and facilitate the development of drugs for rare diseases or conditions, including biological products and antibiotics. This part sets forth the procedures and requirements for:

(1) Submissions to FDA of:

(i) Requests for recommendations for investigations of drugs for rare diseases or conditions;

(ii) Requests for designation of a drug for a rare disease or condition; and

(iii) Requests for gaining exclusive approval for a drug product for a rare disease or condition.

(2) Allowing a sponsor to provide an investigational drug product under a treatment protocol to patients who need the drug for treatment of a rare disease or condition.

(b) This part does not apply to food, medical devices, or drugs for veterinary use.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 316.2 Purpose.

The purpose of this part is to establish standards and procedures for determining eligibility for the benefits provided for in section 2 of the Orphan Drug Act, including written recommendations for investigations of orphan drugs, a 7-year period of exclusive marketing, and treatment use of investigational orphan drugs. This part is also intended to satisfy Congress' requirements that FDA promulgate procedures for the implementation of sections 525(a) and 526(a) of the act.

§ 316.3 Definitions.

(a) The definitions and interpretations contained in section 201 of the act apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

(1) *Act* means the Federal Food, Drug, and Cosmetic Act as amended by section 2 of the Orphan Drug Act (sections 525–528 (21 U.S.C. 360aa–360dd)).

(2) *Active moiety* means the molecule or ion in a drug, excluding those appended portions of the molecule or drug that cause the drug to be an ester, salt, or other noncovalent derivative (such as a complex, chelate, or clathrate), that is responsible for the physiological or pharmacological action of the drug.

(3) *Clinically superior* means that a drug is shown to provide a significant therapeutic advantage over and above that provided by an approved orphan drug (that is otherwise the same drug) in one or more of the following ways:

(i) Greater effectiveness than an approved orphan drug (as assessed by effect on a clinically meaningful endpoint in adequate and well controlled clinical trials). Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs; in most cases, direct comparative clinical trials would be necessary; or

(ii) Greater safety in a substantial portion of the target populations, for example, by the elimination of an ingredient or contaminant that is associated with relatively frequent adverse effects. In some cases, direct comparative clinical trials will be necessary; or

(iii) In unusual cases, where neither greater safety nor greater effectiveness has been shown, a demonstration that the drug otherwise makes a major contribution to patient care.

(4) *Director* means the Director of FDA's Office of Orphan Products Development.

(5) *FDA* means the Food and Drug Administration.

(6) *Holder* means the sponsor in whose name an orphan drug is designated and approved.

(7) *IND* means an investigational new drug application under part 312 of this chapter.

(8) *Manufacturer* means any person or agency engaged in the manufacture of a drug that is subject to investigation and approval under the act or the Public Health Service Act (42 U.S.C. 201 *et seq.*).

(9) *Marketing application* means an application for approval of a new drug filed under section 505(b) of the act, a request for certification of an antibiotic under section 507 of the act, or an application for a biological product/establishment license submitted under section 351 of the Public Health Service Act (42 U.S.C. 262).

(10) *Orphan drug* means a drug intended for use in a rare disease or condition as defined in section 526 of the act.

(11) *Orphan-drug designation* means FDA's act of granting a request for designation under section 526 of the act.

(12) *Orphan-drug exclusive approval* or *exclusive approval* means that, effective on the date of FDA approval as stated in the approval letter of a marketing application for a sponsor of a designated orphan drug, no approval will be given to a subsequent sponsor of the same drug product for the same indication for 7 years, except as otherwise provided by law or in this part.

(13) *Same drug* means:

(i) If it is a drug composed of small molecules, a drug that contains the same active moiety as a previously approved drug and is intended for the same use as the previously approved drug, even if the particular ester or salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative such as a complex, chelate or clathrate has not been previously approved, except that if the subsequent drug can be shown to be clinically superior to the first drug, it will not be considered to be the same drug.

(ii) If it is a drug composed of large molecules (macromolecules), a drug that contains the same principal molecular structural features (but not necessarily all of the same structural features) as a previously approved drug, except that, if the subsequent drug can be shown to be clinically superior, it will not be considered to be the same drug. This criterion will be applied as follows to different kinds of macromolecules:

(A) Two protein drugs would be considered the same if the only differences in structure between them were due to post-translational events or infidelity of translation or transcription or were minor differences in amino acid sequence; other potentially important differences, such as different glycosylation patterns or different tertiary structures, would not cause the drugs to be considered different unless the differences where shown to be clinically superior.

(B) Two polysaccharide drugs would be considered the same if they had identical saccharide repeating units, even if the number of units were to vary and even if there were post-polymerization modifications, unless the subsequent drug could be shown to be clinically superior.

(C) Two polynucleotide drugs consisting of two or more distinct nucleotides would be considered the same if they had an identical sequence of purine and pyrimidine bases (or their derivatives) bound to an identical sugar backbone (ribose, oxyribose, or modifications of these sugars), unless the subsequent drug were shown to be clinically superior.

(D) Closely related, complex partly definable drugs with similar therapeutic intent, such as two live viral vaccines for the same indication, would be considered the same unless the subsequent drug was shown to be clinically superior.

(14) *Sponsor* means the entity that assumes responsibility for a clinical or nonclinical investigation of a drug, including the responsibility for compliance with applicable provisions of the act and regulations. A sponsor may be an individual, partnership, corporation, or Government agency and may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of drugs. For purposes of the Orphan Drug Act, FDA considers the real party or parties in interest to be a sponsor.

Subpart B—Written Recommendations for Investigations of Orphan Drugs

§ 316.10 Content and format of a request for written recommendations.

(a) A sponsor's request for written recommendations from FDA concerning the nonclinical and clinical investigations necessary for approval of a marketing application shall be submitted in the form and contain the

information required in this section. FDA may require the sponsor to submit information in addition to that specified in paragraph (b) of this section if FDA determines that the sponsor's initial request does not contain adequate information on which to base recommendations.

(b) A sponsor shall submit two copies of a completed, dated, and signed request for written recommendations that contains the following:

(1) The sponsor's name and address.

(2) A statement that the sponsor is requesting written recommendations on orphan-drug development under section 525 of the act.

(3) The name of the sponsor's primary contact person and/or resident agent, and the person's title, address, and telephone number.

(4) The generic name and trade name, if any, of the drug and a list of the drug product's components or description of the drug product's formulation.

(5) The proposed dosage form and route of administration.

(6) A description of the disease or condition for which the drug is proposed to be investigated and the proposed indication or indications for use for such disease or condition.

(7) Current regulatory and marketing status and history of the drug product, including:

(i) Whether the product is the subject of an IND or a marketing application (if the product is the subject of an IND or a marketing application, the IND or marketing application numbers should be stated and the investigational or approved indication or indications for use specified);

(ii) Known marketing experience or investigational status outside the United States;

(iii) So far as is known or can be determined, all indications previously or currently under investigation anywhere;

(iv) All adverse regulatory actions taken by the United States or foreign authorities.

(8) The basis for concluding that the drug is for a disease or condition that is rare in the United States, including the following:

(i) The size and other known demographic characteristics of the patient population affected and the source of this information.

(ii) For drugs intended for diseases or conditions affecting 200,000 or more people in the United States, or for a vaccine, diagnostic drug, or preventive drug that would be given to 200,000 or more persons per year, a summary of the sponsor's basis for believing that the disease or condition described in paragraph (b)(6) of this section occurs so infrequently that there is no reasonable expectation that the costs of drug development and marketing will be recovered in future sales of the drug in the United States. The estimated costs and sales data should be submitted as provided in § 316.21(c).

(9) A summary and analysis of available data on the pharmacologic effects of the drug.

(10) A summary and analysis of available nonclinical and clinical data pertinent to the drug and the disease to be studied including copies of pertinent published reports.

(11) An explanation of how the data summarized and analyzed under paragraphs (b)(9) and (b)(10) of this section support the rationale for use of the drug in the rare disease or condition.

(12) A definition of the population from which subjects will be identified for clinical trials, if known.

(13) A detailed outline of any protocols under which the drug has been or is being studied for the rare disease or condition and a summary and analysis of any available data from such studies.

(14) The sponsor's proposal as to the scope of nonclinical and clinical investigations needed to establish the safety and effectiveness of the drug.

(15) Detailed protocols for each proposed United States or foreign clinical investigation, if available.

(16) Specific questions to be addressed by FDA in its recommendations for nonclinical laboratory studies and clinical investigations.

§ 316.12 Providing written recommendations.

(a) FDA will provide the sponsor with written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application if none of the reasons described in § 316.14 for refusing to do so applies.

(b) When a sponsor seeks written recommendations at a stage of drug development at which advice on any clinical investigations, or on particular investigations would be premature, FDA's response may be limited to written recommendations concerning only nonclinical laboratory studies, or only certain of the clinical studies (e.g., Phase 1 studies as described in § 312.21 of this chapter). Prior to providing written recommendations for the clinical investigations required to achieve marketing approval, FDA may require that the results of the nonclinical laboratory studies or completed early clinical studies be submitted to FDA for agency review.

§ 316.14 Refusal to provide written recommendations.

(a) FDA may refuse to provide written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application for any of the following reasons:

(1) The information required to be submitted by § 316.10(b) has not been submitted, or the information submitted is incomplete.

(2) There is insufficient information about:

(i) The drug to identify the active moiety and its physical and chemical properties, if these characteristics can be determined; or

(ii) The disease or condition to determine that the disease or condition is rare in the United States; or

(iii) The reasons for believing that the drug may be useful for treating the rare disease or condition with that drug; or

(iv) The regulatory and marketing history of the drug to determine the scope and type of investigations that have already been conducted on the drug for the rare disease or condition; or

(v) The plan of study for establishing the safety and effectiveness of the drug for treatment of the rare disease or condition.

(3) The specific questions for which the sponsor seeks the advice of the agency are unclear or are not sufficiently specific.

(4) On the basis of the information submitted and on other information available to the agency, FDA determines that the disease or condition for which the drug is intended is not rare in the United States.

(5) On the basis of the information submitted and on other information available to the agency, FDA determines that there is an inadequate basis for permitting investigational use of the drug under part 312 of this chapter for the rare disease or condition.

(6) The request for information contains an untrue statement of material fact.

(b) A refusal to provide written recommendations will be in writing and will include a statement of the reason for FDA's refusal. Where practicable, FDA will describe the information or material it requires or the conditions the sponsor must meet for FDA to provide recommendations.

(c) Within 90 days after the date of a letter from FDA requesting additional information or material or setting forth the conditions that the sponsor is asked to meet, the sponsor shall either:

(1) Provide the information or material or amend the request for written

recommendations to meet the conditions sought by FDA; or

(2) Withdraw the request for written recommendations. FDA will consider a sponsor's failure to respond within 90 days to an FDA letter requesting information or material or setting forth conditions to be met to be a withdrawal of the request for written recommendations.

Subpart C—Designation of an Orphan Drug

§ 316.20 Content and format of a request for orphan-drug designation.

(a) A sponsor that submits a request for orphan-drug designation of a drug for a specified rare disease or condition shall submit each request in the form and containing the information required in paragraph (b) of this section. A sponsor may request orphan-drug designation of a previously unapproved drug, or of a new orphan indication for an already marketed drug. In addition, a sponsor of a drug that is otherwise the same drug as an already approved orphan-drug may seek and obtain orphan-drug designation for the subsequent drug for the same rare disease or condition if it can present a plausible hypothesis that its drug may be clinically superior to the first drug. More than one sponsor may receive orphan-drug designation of the same drug for the same rare disease or condition, but each sponsor seeking orphan-drug designation must file a complete request for designation as provided in paragraph (b) of this section.

(b) A sponsor shall submit two copies of a completed, dated, and signed request for designation that contains the following:

(1) A statement that the sponsor requests orphan-drug designation for a rare disease or condition, which shall be identified with specificity.

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or resident agent including title, address, and telephone number; the generic and trade name, if any, of the drug or drug product; and the name and address of the source of the drug if it is not manufactured by the sponsor.

(3) A description of the rare disease or condition for which the drug is being or will be investigated, the proposed indication or indications for use of the drug, and the reasons why such therapy is needed.

(4) A discussion of the scientific rationale for the use of the drug for the rare disease or condition, including all data from nonclinical laboratory studies, clinical investigations, and other relevant data that are available to the sponsor, whether positive, negative, or inconclusive. Copies of pertinent unpublished and published papers are also required.

(5) Where the sponsor of a drug that is otherwise the same drug as an already-approved orphan drug seeks orphan-drug designation for the subsequent drug for the same rare disease or condition, an explanation of why the proposed variation may be clinically superior to the first drug.

(6) Where a drug is under development for only a subset of persons with a particular disease or condition, a demonstration that the subset is medically plausible.

(7) A summary of the regulatory status and marketing history of the drug in the United States and in foreign countries, e.g., IND and marketing application status and dispositions, what uses are under investigation and in what countries; for what indication is the drug approved in foreign countries; what adverse regulatory actions have been taken against the drug in any country.

(8) Documentation, with appended authoritative references, to demonstrate that:

(i) The disease or condition for which the drug is intended affects fewer than 200,000 people in the United States or, if the drug is a vaccine, diagnostic drug, or preventive drug, the persons to whom the drug will be administered in the United States are fewer than 200,000 per year as specified in § 316.21(b), or

(ii) For a drug intended for diseases or conditions affecting 200,000 or more people, or for a vaccine, diagnostic drug, or preventive drug to be administered to 200,000 or more persons per year in the United States, there is no reasonable expectation that costs of research and development of the drug for the indication can be recovered by sales of the drug in the United States as specified in § 316.21(c).

(9) A statement as to whether the sponsor submitting the request is the real party in interest of the development and the intended or actual production and sales of the product.

(c) Any of the information previously provided by the sponsor to FDA under subpart B of this part may be referenced by specific page or location if it duplicates information required elsewhere in this section.

§ 316.21 Verification of orphan-drug status.

(a) So that FDA can determine whether a drug qualifies for orphan-drug designation under section 526(a) of the act, the sponsor shall include in its request to FDA for orphan-drug designation under § 316.20 either:

(1) Documentation as described in paragraph (b) of this section that the number of people affected by the disease or condition for which the drug product is indicated is fewer than 200,000 persons; or

(2) Documentation as described in paragraph (c) of this section that demonstrates that there is no reasonable expectation that the sales of the drug will be sufficient to offset the costs of developing the drug for the U.S. market and the costs of making the drug available in the United States.

(b) For the purpose of documenting that the number of people affected by the disease or condition for which the drug product is indicated is fewer than 200,000 persons, "prevalence" is defined as the number of persons in the United States who have the disease or condition at the time of the submission of the request for orphan-drug designation. To document the number of persons in the United States who have the disease or condition for which the drug is to be indicated, the sponsor shall submit to FDA evidence showing:

(1) The estimated prevalence of the disease or condition for which the drug is being developed, together with an explanation of the sources of the estimate;

(2) The estimated prevalence of any other disease or condition for which the drug has already been approved or for which the drug is currently being developed, together with an explanation of the bases of these estimates; and

(3) The estimated number of people to whom the drug will be administered annually if the drug is a vaccine or for diagnosis or prevention of a rare disease or condition, together with an explanation of the bases of these estimates.

(c) When submitting documentation that there is no reasonable expectation that costs of research and development of the drug for the disease or condition can be recovered by sales of the drug in the United States, the sponsor shall submit to FDA:

(1) Data on all costs that the sponsor has incurred in the course of developing the drug for the U.S. market. These costs shall include, but are not limited to, nonclinical laboratory studies, clinical studies, dosage form development, record and report maintenance, meetings with FDA, determination of patentability, preparation of designation request, IND/marketing application preparation, distribution of the drug under a "treatment" protocol, licensing costs, liability insurance, and overhead

and depreciation. Furthermore, the sponsor shall demonstrate the reasonableness of the cost data. For example, if the sponsor has incurred costs for clinical investigations, the sponsor shall provide information on the number of investigations, the years in which they took place, and on the scope, duration, and number of patients that were involved in each investigation.

(2) If the drug was developed wholly or in part outside the United States, in addition to the documentation listed in paragraph (c)(1) of this section:

(i) Data on and justification for all costs that the sponsor has incurred outside of the United States in the course of developing the drug for the U.S. market. The justification, in addition to demonstrating the reasonableness of the cost data, must also explain the method that was used to determine which portion of the foreign development costs should be applied to the U.S. market, and what percent these costs are of total worldwide development costs. Any data submitted to foreign government authorities to support drug pricing determinations must be included with this information.

(ii) Data that show which foreign development costs were recovered through cost recovery procedures that are allowed during drug development in some foreign countries. For example, if the sponsor charged patients for the drug clinical investigations, the revenues collected by the sponsor must be reported to FDA.

(3) In cases where the drug has already been approved for marketing for any indication or in cases where the drug is currently under investigation for one or more other indications (in addition to the indication for which orphan-drug designation is being sought), a clear explanation of and justification for the method that is used to apportion the development costs among the various indications.

(4) A statement of and justification for any development costs that the sponsor expects to incur after the submission of the designation request. In cases where the extent of these future development costs are not clear, the sponsor should request FDA's advice and assistance in estimating the scope of nonclinical laboratory studies and clinical investigations and other data that are needed to support marketing approval. Based on these recommendations, a cost estimate should be prepared.

(5) A statement of and justification for production and marketing costs that the sponsor has incurred in the past and expects to incur during the first 7 years that the drug is marketed.

(6) An estimate of and justification for the expected revenues from sales of the drug in the United States during its first 7 years of marketing. The justification should assume that the total market for the drug is equal to the prevalence of the disease or condition that the drug will be used to treat. The justification should include:

(i) An estimate of the expected market share of the drug in each of the first 7 years that it is marketed, together with an explanation of the basis for that estimate;

(ii) A projection of and justification for the price at which the drug will be sold; and

(iii) Comparisons with sales of similarly situated drugs, where available.

(7) The name of each country where the drug has already been approved for marketing for any indication, the dates of approval, the indication for which the drug is approved, and the annual sales and number of prescriptions in each country since the first approval date.

(8) Verification by an independent certified public accountant of the data, estimates, and justifications submitted pursuant to this section. The certified public accountant must verify that the data are accurate and valid, that the estimates and justifications are reasonable, and that both the data and estimates follow generally accepted accounting practices and procedures.

(d) A sponsor that is requesting orphan-drug designation for a drug designed to treat a disease or condition that affects 200,000 or more persons shall, at FDA's request, allow FDA or FDA-designated personnel to examine at reasonable times and in a reasonable manner all relevant financial records and sales data of the sponsor and manufacturer.

§ 316.22 Permanent-resident agent for foreign sponsor.

Every foreign sponsor that seeks orphan-drug designation shall name a permanent resident of the United States as the sponsor's agent upon whom service of all processes, notices, orders, decisions, requirements, and other communications may be made on behalf of the sponsor. The permanent-resident agent may be an individual, firm, or domestic corporation and may represent any number of sponsors. The name of the permanent-resident agent shall be provided to: Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 316.23 Timing of requests for orphan-drug designation; designation of already approved drugs.

(a) A sponsor may request orphan-drug designation at any time in the drug development process prior to the submission of a marketing application for the drug product for the orphan indication.

(b) A sponsor may request orphan-drug designation of an already approved drug product for an unapproved use without regard to whether the prior marketing approval was for an orphan-drug indication.

§ 316.24 Granting orphan-drug designation.

(a) FDA will grant the request for orphan-drug designation if none of the reasons described in § 316.26 for requiring or permitting refusal to grant such a request applies.

(b) When a request for orphan-drug designation is granted, FDA will notify the sponsor in writing and will publicize the orphan-drug designation in accordance with § 316.28.

§ 316.25 Refusal to grant orphan-drug designation.

(a) FDA will refuse to grant a request for orphan-drug designation if any of the following reasons applies:

(1) The drug is not intended for a rare disease or condition because:

(i) There is insufficient evidence to support the estimate that the drug is intended for treatment of a disease or condition in fewer than 200,000 people in the United States, or that the drug is intended for use in prevention or in diagnosis in fewer than 200,000 people annually in the United States; or

(ii) Where the drug is intended for prevention, diagnosis, or treatment of a disease or condition affecting 200,000 or more people in the United States, the sponsor has failed to demonstrate that there is no reasonable expectation that development and production costs will be recovered from sales of the drug for the orphan indication in the United States. A sponsor's failure to comply with § 316.21 shall constitute a failure to make the demonstration required in this paragraph.

(2) There is insufficient information about the drug, or the disease or condition for which it is intended, to establish a medically plausible basis for expecting the drug to be effective in the prevention, diagnosis, or treatment of that disease or condition.

(3) A drug that is otherwise the same drug as one that already has orphan-drug exclusive approval for the same rare disease or condition and the

sponsor has not submitted a medically plausible hypothesis for the possible clinical superiority of the subsequent drug.

(b) FDA may refuse to grant a request for orphan-drug designation if the request for designation contains an untrue statement of material fact or omits material information.

§ 316.26 Amendment to orphan-drug designation.

At any time prior to approval of a marketing application for a designated orphan drug, the sponsor may apply for an amendment to the indication stated in the orphan-drug designation for the drug. FDA will allow any such amendment if FDA finds that the initial designation request was made in good faith, if it finds that the amendment is intended solely to conform the orphan drug indication to the results of unanticipated test data, and if it finds that the amendment does not render the drug ineligible for orphan-drug designation because the prevalence of the condition or disease named in the amendment exceeds 200,000 people in the United States as of the date of submission of the amendment request.

§ 316.27 Change in ownership of orphan-drug designation.

(a) A sponsor may transfer ownership of or any beneficial interest in the orphan-drug designation of a drug to a new sponsor. At the time of the transfer, the new and former owners are required to submit the following information to FDA:

(1) The former owner or assignor of rights shall submit a letter or other document that states that all or some rights to the orphan-drug designation of the drug have been transferred to the new owner or assignee and that a complete copy of the request for orphan-drug designation, including any amendments to the request, supplements to the granted request, and correspondence relevant to the orphan-drug designation, has been provided to the new owner or assignee.

(2) The new owner or assignee of rights shall submit a statement accepting orphan-drug designation and a letter or other document containing the following:

(i) The date that the change in ownership or assignment of rights is effective;

(ii) A statement that the new owner has a complete copy of the request for orphan-drug designation including any amendments to the request, supplements to the granted request, and correspondence relevant to the orphan-drug designation; and

(iii) A list of the rights that have been assigned and those that have been reserved. This may be satisfied by the submission of copies of all relevant agreements.

(iv) The name and address of a new primary contact person or resident agent.

(b) No sponsor may relieve itself of responsibilities under the Orphan Drug Act or under this part by assigning rights to another person without:

(1) Assuring that the sponsor or the assignee will carry out such responsibilities; or

(2) Obtaining prior permission from FDA.

§ 316.28 Publication of orphan-drug designations.

FDA will publish the following information about designated orphan drugs through an annually updated list in the **Federal Register:**

(a) The name and address of the manufacturer and sponsor;

(b) The generic name and trade name, if any, of the drug and the date of the granting of orphan-drug designation;

(c) The rare disease or condition for which orphan-drug designation was granted; and

(d) The proposed indication for use of the drug.

§ 316.29 Suspension or revocation of orphan-drug designation.

(a) FDA may suspend or revoke orphan-drug designation for any drug if the agency finds that:

(1) The request for designation contained an untrue statement of material fact; or

(2) The request for designation omitted material information required by this part; or

(3) FDA subsequently finds that the drug in fact had not been eligible for orphan-drug designation at the time of submission of the request therefor.

(b) For an approved drug, suspension or revocation of orphan-drug designation also suspends or withdraws the sponsor's exclusive marketing rights for that drug but not the approval of the drug's marketing application.

(c) Where a drug has been designated as an orphan drug because the prevalence of a disease or condition (or, in the case of vaccines, diagnostic drugs, or preventive drugs, the target population) is under 200,000 in the United States at the time of designation, its designation will not be revoked on the ground that the prevalence of the disease or condition (or the target population) becomes more than 200,000 persons.

Subpart D—Orphan-drug Exclusive Approval

§ 316.30 Scope of orphan-drug exclusive approval.

(a) After approval of a sponsor's marketing application for a designated orphan-drug product for treatment of the rare disease or condition concerning which orphan-drug designation was granted, FDA will not approve another sponsor's marketing application for the same drug before the expiration of 7 years from the date of such approval as stated in the approval letter from FDA, except that such a marketing application can be approved sooner if, and such time as, any of the following occurs:

(1) Withdrawal of exclusive approval or revocation of orphan-drug designation by FDA under any provision of this part; or

(2) Withdrawal for any reason of the marketing application for the drug in question; or

(3) Consent by the holder of exclusive approval to permit another marketing application to gain approval; or

(4) Failure of the holder of exclusive approval to assure an adequate supply of the drug under section 527 of the act and § 316.36.

(b) If a sponsor's marketing application for a drug product is determined not to be approvable because approval is barred under section 527 of the act until the expiration of the period of exclusive marketing of another drug product, FDA will so notify the sponsor in writing.

§ 316.34 FDA recognition of exclusive approval.

(a) FDA will send the sponsor (or, the permanent-resident agent, if applicable) timely written notice recognizing exclusive approval once the marketing application for a designated orphan drug product has been approved. The written notice will inform the sponsor of the requirements for maintaining orphan-drug exclusive approval for the full 7-year term of exclusive approval.

(b) When a marketing application is approved for a designated orphan-drug that qualifies for exclusive approval, FDA will publish in its publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" information identifying the sponsor, the drug, and the date of termination of the orphan-drug exclusive approval. A subscription to this publication and its monthly cumulative supplements is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325.

§ 316.36 Inadequate supplies of orphan drugs.

(a) Under section 527 of the act, whenever the Director has reason to believe that the holder of exclusive approval cannot assure the availability of sufficient quantities of an orphan drug to meet the needs of patients with the disease or condition for which the drug was designated, the Director will so notify the holder of this possible insufficiency and will offer the holder one of the following options, which must be exercised by a time that the Director specifies:

(1) Provide the Directory in writing, or orally, or both, at the Director's discretion, views and data as to how the holder can assure the availability of sufficient quantities of the orphan drug within a reasonable time to meet the needs of patients with the disease or condition for which the drug was designated; or

(2) Provide the Director in writing the holder's consent for the approval of other marketing applications for the same drug before the expiration of the 7-year period of exclusive approval.

(b) If, within the time that the Director specifies, the holder fails to consent to the approval of other marketing applications and if the Director finds that the holder has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated, the Director will issue a written order withdrawing the drug product's exclusive approval. This order will embody the Director's findings and conclusions and will constitute final agency action. An order withdrawing the sponsor's exclusive marketing rights may issue irrespective of whether there are other sponsors that can assure the availability of alternative sources of supply. Once withdrawn pursuant to this section, exclusive approval may not be reinstated for that drug.

Subpart E—Open Protocols for Investigations

§ 316.40 Treatment use of a designated orphan drug.

Sponsors that have received orphan-drug designation may obtain treatment use for designated drugs as provided in § 312.34 of this chapter.

Subpart F—Availability of Information

§ 316.50 Guidelines.

FDA's Office of Orphan Products Development will maintain and make publicly available a list of guidelines that apply to the regulations in this part. The list states how a person can obtain a copy of each guideline. A request for a copy of the list or for any guideline should be directed to the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 316.52 Availability for public disclosure of data and information in requests and applications.

(a) FDA will not publicly disclose the existence of a requesat for orphan-drug designation under section 526 of the act prior to final FDA action on the request unless the existence of the request has been previously publicly disclosed or adknowledged.

(b) Irrespective of whether the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure prior to final FDA action on the request.

(c) Upon final FDA action on a request for designation, FDA will determine the public availability of data and information in the request in accordance with part 20 and § 314.430 of this chapter and other applicable statutes and regulations.

(d) In accordance with § 316.28, FDA will publish in the **Federal Register** a list of all orphan-drug designations. This list will be updated annually.

(e) FDA will not publicly disclose the existence of a pending marketing application for a designated orphan drug for the use for which the drug was designated unless the existence of the application has been previously publicly disclosed or acknowledged.

(f) FDA will determine the public availability of data and information contained in pending and approved marketing applications for a designated orphan drug for the use for which the drug was designated in accordance with part 20 and § 314.430 of this chapter.

Dated: January 14, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91–2052 Filed 1–28–91; 8:45 am]

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January 29, 1991

Part VI

Department of Agriculture

Forest Service

36 CFR Parts 223 and 261

Sale and Disposal of National Forest System Timber; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 223 and 261

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued to comply with the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Act). This proposed rule defines certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber and prohibits export of such unprocessed private timber by a third party or successive parties; prescribes procedures for reporting the acquisition and disposition of Federal and private timber; prescribes procedures for documenting transfers and identifying unprocessed Federal and private timber requiring domestic processing; establishes procedures for assessing the civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts issued under the Act; establishes procedures for cooperating with other agencies; and establishes procedures for determination of surplus species.

This proposed rule would supplement another proposed rule published in today's **Federal Register.** This proposed rule and the other proposed rule would establish procedures to fully implement the Act. These rulemakings could not be combined because of different statutory deadlines. For a comprehensive review of the rulemaking package to implement the Act, see also the accompanying proposed rule in today's **Federal Register,** and the interim rule, published November 20, 1990 (55 FR 48572).

DATES: Comments must be received in writing by March 15, 1991.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street, SW, Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead (477–6893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff, (202) 475–3755.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (hereafter referred to as the Act). The interim rule, published in the **Federal Register** on November 20, 1990 (55 FR 48572), is incorporated into this proposed rule to provide for public comment and to facilitate understanding of the scope of the entire rulemaking necessary to implement the Act. The interim rule continues to have the force and effect of law.

The interim rule recited portions of the Act to facilitate understanding of the interim rule. The statutory provision prohibiting the export of Federal logs was recited in the interim rule and is also recited in the proposed rule to assist the reader in understanding the proposed rule. The statutory provisions regarding the prohibition against substitution of unprocessed Federal logs for exported, unprocessed private logs were recited in the interim rule. The substitution provisions have some implementing regulations that are proposed in this rule. The definitions first published in the interim rule are republished in the proposed rule as proposed definitions to provide for comment on these ongoing provisions of the Act. The definitions published in the interim rule continue to have the force and effect of law. Many of the provisions of the interim rule are not ongoing programs, but have been repeated in this proposed rule to assist the reader in understanding the entire rulemaking associated with the Act. These provisions are the sourcing area application process and waiver and the certifications exempting persons with historic export quotas and non-manufacturers from the prohibition against purchasing Federal timber if they have exported private timber in the last 24 months. All of these provisions were required to be completed by December 20, 1990. The preamble notes in detail which portions of this proposed rule are repeated from the interim rule. Minor, technical changes have been made in some parts of the interim rule to conform these portions to the format of the proposed rule.

The accompanying proposed rule is being published separately from this proposed rule in order to implement certain provisions of the Act that must take effect before the statutory deadline of May 20, 1991 for promulgating regulations. The accompanying rule provides a shorter comment period than this rule in order to meet the statutory deadlines. The accompanying proposed rule amends subpart B by revising § 223.48, and amends subpart F by revising § 223.191, and adding § 223.203. Section 223.191 provides detailed sourcing area disapproval and review procedures. Section 223.203 implements the procedures for applying for the limited exemption from indirect substitution with regard to National Forest System timber in Washington State. Section 223.48 continues the reporting procedures for contracts issued before November 20, 1990.

The new provisions proposed in this rulemaking are as follows:

1. Definitions necessary to fully implement the Act.
2. Prohibitions against the transfer of unprocessed private timber for export by a person who also holds or acquires unprocessed Federal timber, and prohibitions against export of such unprocessed private timber by a third party or successive parties;
3. Procedures for reporting the acquisition and disposition of Federal timber and procedures for documenting transfers of unprocessed Federal and private timber requiring domestic processing;
4. Procedures for identifying unprocessed timber requiring domestic processing;
5. Civil and criminal penalties for violations of the Act or regulations issued under the Act and procedures for assessment of civil and criminal penalties for violations of the Act or the regulations issued under the Act;
6. Administrative remedies for violations of the Act or its implementing regulations, or contracts issued under the Act;
7. Procedures for cooperating with other agencies; and
8. Procedures for determining surplus species.

Current rules

The current restrictions on exporting unprocessed timber harvested from Federal lands have been renewed annually by the Appropriations Act for Interior and Related Agencies, by which Forest Service programs are funded. The current rules are found in 36 CFR 223.48, 223.87, and 223.160–223.164, and 36 CFR 261.6. These rules remain in effect on all contracts awarded prior to enactment of the Act. The Act also specifically provides that contracts for timber on Federal lands in the State of Washington administered by the Region

6 office of the Forest Service awarded prior to the issuance of a final rule shall be governed by the current regulations at 36 CFR 223.162. The current substitution rules shall remain in effect for all contracts awarded after the date of enactment until such time as final rules are issued to implement the Act.

Proposed Amendment to 36 CFR part 223 subpart C

Subpart C of the current rules governing debarments must be revised to reflect passage of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. *et seq.*) (Act). The current debarment and suspension rules governing purchasers of National Forest System timber at 36 CFR 223.130–223.145, essentially adopted the government-wide policies and procedures at 48 CFR 9.4 governing the suspension and debarment of procurement contractors. However, these Forest Service rules, established on November 12, 1987 (52 FR 43324) added additional implementing Forest Service procedures and notice of specific causes for debarment. These regulations apply to purchasers of National Forest System timber and do not have government-wide effect.

The Act provides specific statutory authority for debarment of persons who violate the Act or any implementing regulation or contract issued under the Act. Because the Act provides for a specific cause of debarment limited to persons violating the Act or regulations or contracts issued under the Act, provides a maximum period of debarment of five years, and specifies an effect of precluding receipt of any Federal timber from any source, the rule proposes amendments to existing Forest Service debarment regulations. It has been determined that the Act does not allow coverage under government-wide regulations.

Section-by-Section Analysis

Section 223.130 Scope. Section 223.130 of the current rules defines the scope of subpart C. This subpart currently prescribes the policies and procedures governing debarment and suspension of purchasers of National Forest System timber; provides for the listing of debarred and suspended purchasers; and sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended. Debarment pursuant to the Act encompasses any person who violates the Act or regulations or contracts issued under the Act, not just purchasers of National Forest System timber. This proposed rule amends § 223.130 to reflect the inclusion of persons violating the Act, its implementing regulations, or contracts issued under the Act.

Section 223.131 Applicability. Section 223.131 currently provides that the regulations apply to purchasers of National Forest System timber and do not apply to Forest Service procurement contracts. The proposed rule clarifies that any person who violates the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) is governed by the debarment and suspension regulations set forth in Subpart C as amended.

Section 223.133 Definitions. Section 223.133 of the current regulations provides definitions of terms necessary to understand the policies and procedures provided in the debarment and suspension regulations. This proposed rule will amend and clarify several of the definitions to reflect passage of the Act.

The proposed rule adds the definition of "person" to the current regulations since the Act speaks in terms of debarring persons who violate the Act, or contracts or regulations issued under the Act. The definition of person in the proposed rule is the same definition of person as is contained in the interim rule (55 FR 48572) implementing certain provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act). In addition, the proposed rule substitutes the word person where the word "individual" previously had been used in the definitions of affiliates and purchasers in the current regulations, in order to correlate with the Act.

Further, "debarment" in § 223.133 of the current regulations is defined as action taken by a debarring official to exclude a purchaser from Forest Service timber sale contracts. The proposed rule amends the current definition of debarment to include the meaning of debarment under the Act. The proposed rule provides that debarment pursuant to the Act constitutes a decision to (1) prohibit any person violating the Act or any regulation or contract issued under the Act from entering into any contract for the purchase of unprocessed timber originating from Federal lands and (2) preclude such debarred person from taking delivery of unprocessed Federal timber purchased by another party.

The proposed rule adds the definition of "Federal lands" to the current regulations since the Act provides for debarment of a person from entering into any contract for the purchase of unprocessed timber from Federal lands. The definition of Federal lands used in the proposed rule is the same definition found in section 493(i) of the Act (16 U.S.C. 620e).

The term "purchaser" contained in § 223.133 of the current regulations means any individual who submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded a Forest Service timber sale contract or any other person who conducts business with the Forest Service as an agent or representative of a purchaser. Section 492(d) of the Act (16 U.S.C. 620d) provides that debarment is extended to any person who violates the Act or contracts or regulations

issued under the Act, not just individuals who have been or may be submitting bids for and/or awarded timber sale contracts, or agents or representatives of those individuals. This proposed rule extends the definition of purchaser to include any person who reasonably may be expected to enter into a contract for the purchase of or take delivery of unprocessed Federal timber. For the purposes of the Act, any person who violates the Act or regulations or contracts issued under the Act, not just individuals having some sort of direct relationship with the Forest Service, shall be covered by the regulations. The definition of purchaser in the proposed rule will further the objectives of the Act by providing for debarment of persons who may not purchase Federal timber directly from the Government, but who purchase private timber from persons who, in addition to selling private timber, also purchase Federal timber.

Section 223.135 Effect of Listing. Section 223.135 of the current regulations describes the effect of being listed as suspended or debarred. Section 223.135 provides that debarred or suspended purchasers shall be excluded from bidding on or award of Forest Service timber sale contracts. The Forest Service further is precluded from considering such persons for award of timber sale contracts or approving third party agreements with or renewing or otherwise extending the duration of an existing timber sale contract.

The Act provides that a person debarred under the authority of the Act shall be precluded from entering into any contract for the purchase of unprocessed timber originating from Federal lands and shall be precluded from taking delivery of unprocessed Federal timber purchased by another party. The Act encompasses transactions for the purchase or acquisition of unprocessed Federal timber that do not directly involve a Federal agency that sells timber.

The proposed rule amends § 223.135 to add to the effect of listing preclusion from entering into any contract for the purchase of unprocessed timber originating from Federal lands and preclusion from taking delivery of unprocessed Federal timber purchased by another party when the cause of debarment is a violation under the Act.

Section 223.136 Debarment. Section 223.136(b) of the current regulations establishes the effect of a proposed debarment on purchasers of Forest Service timber sale contracts. The current regulations provide that upon issuance of a notice of proposed debarment, and until the final debarment decision is rendered, the debarred purchaser shall not be allowed to bid on or receive new or extended contracts.

The proposed rule sets forth the effect of proposed debarment on persons who violate the Act or any contract or regulation issued under the Act. Upon issuance of a notice of proposed debarment, such persons are precluded from entering into any contract for the purchase of unprocessed timber originating from Federal lands and are precluded from taking delivery of unprocessed Federal timber from another party who purchased such timber pending completion of the debarment proceedings.

Section 223.137 Causes for debarment. Section 223.137 of the current regulations outlines the causes for debarment for purchasers of National Forest System (NFS) timber. Section 223.137(e)(4) of the current regulations provides as a cause of debarment willful violation or repeated failure to perform NFS timber sale contract provisions relating to observance of restrictions on exportation of timber. However, this cause is not broad enough to encompass the causes for debarment under the Act. The Act provides that a cause for debarment exists where a person violates the Act or any regulation or contract issued under the Act, not just NFS timber sale contract provisions. Violation of any of the requirements or prohibitions in the Act or the implementing regulations or contract provisions would constitute cause for debarment. Therefore, the proposed rule will add a new cause for debarment under § 223.137 to govern persons violating the Act, its regulations or contracts. The proposed rule will add a new paragraph (g) to the existing regulations providing that a cause for debarment is violation of the Act or contracts or regulations issued under the Act.

Section 223.139 Period of debarment. Section 223.139 of the current regulations provides that the period of debarment shall be commensurate with the seriousness of the cause(s) and generally shall not exceed three years. This section further provides that the debarring official may extend the debarment for an additional period if the debarring official determines such an extension is necessary to protect the Government's interest.

The Act, which provides separate statutory authority for debarment, prescribes that debarment may be imposed for a period of not more than five years. The Act does not provide for an extension of the five year period.

The proposed rule continues to provide that the maximum period of debarment for persons debarred pursuant to the existing regulations under the causes listed at § 223.137 (a)–(f) generally will be three years, except as otherwise provided. The proposed rule also continues to provide that for the causes of debarment listed at § 223.137 (a)–(f), the debarring official may extend the period of debarment when it is determined necessary to protect the Government's interest and outlines the procedures for doing so. A maximum total debarment of five years is specified for the cause listed at 223.137(g).

Amendment of Part 223 Subpart D

Subpart D of part 223 governed timber export and substitution prior to enactment of the new Act. Because of the Act and the adoption of new interim regulations, it was necessary to add a new § 223.159 to existing subpart D in the interim rule to make clear that the provisions of subpart D remained in effect for contracts awarded prior to August 20, 1990. This proposed rule would remove § 223.161 and include these provisions in a new subpart F as § 223.201. This proposed rule also would remove § 223.163 and include the new procedures for surplus species determinations in subpart F at § 223.200. Consistent with the interim rule, § 223.159 would continue to provide that contracts awarded between August 20, 1990, and the date final rules are published would be governed by § 223.162. Section 223.159 further makes clear that the rules at subpart F of part 223 which implemented the following provisions of the Act, are applicable to all contracts awarded after August 20, 1990:

(a) Sourcing are applications and approval procedures;

(b) Certification procedures;

(c) Continuation of surplus species determinations;

(d) Sourcing area disapproval, review procedures; and

(e) Definitions of *Act*, *Acquire*, *Cants or Flitches*, *Export*, *Federal lands*, *Fiscal year*, *Non-manufacturer*, *Person*, *Private lands*, *Purchase*, *Substitution*, and *Unprocessed timber*.

The application of portions of the timber export and substitution regulations in effect prior to enactment to contracts awarded after August 20, 1990, is required by section 490(a)(2)(A) of the Act (16 U.S.C. 620b).

Revision of Part 223 Subpart F

Section 223.185 Scope and applicability. Section 223.185 of this

proposed rule clarifies that this subpart shall apply to all timber sale contracts awarded on or after August 20, 1990. The proposed rules of this subpart will implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that became effective upon enactment or as otherwise specified in the Act, and incorporates and supplements the interim rules of this subpart that were published in the Federal Register on November 20, 1990 (55 FR 48572).

Section 223.186 Definitions. The complexity of the Act requires definitions in order to explain and understand critical terms. Section 493 of the Act (16 U.S.C. 620e) defines several terms that require refinement. Other terms used in the Act must be defined in order to understand the provisions included in the interim and proposed rules. The following terms are republished from the interim rule with minor, technical changes as needed. These definitions as published in the interim rule remain in effect but are proposed for comment in this rule: *Act, Acquire, Cants or Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution,* and *Unprocessed timber.* Definitions of the following additional terms are proposed in this rule: *Area of operations, Disregard, Each violation, Finished products, Gross value, Hammer brand, Highway yellow paint, Logs, Processed, Same geographic and economic area, Should have known, Transfer, Willful disregard,* and *Willfully.*

The term *Act* refers to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. *et seq.*).

The term *Acquire* is defined to clarify that purchase and acquire have the same meaning and are used interchangeably. Both terms are used in the Act, however, the Act is not clear about the usage of the terms.

The term *Area of operations* is defined as the geographic area within which logs of any origin have not been exported, or transported to an area where exporting occurs. The specific area will be determined by the Regional Forester and will consist of one or several Forest Service administrative units. This definition is needed to establish criteria to be used to determine if a waiver of log identification requirements is warranted.

The terms *Cants* or *Flitches* were added to provide a clear meaning for these often confusing terms. The definition of these terms is based on custom and practice. The terms "cants" and "flitches" are synonymous for purposes of regulations or contracts issued under the Act. The definition in the interim rule is based on definitions in Recommended Lumber Terminology and Invoice Procedure, compiled and published by Western Wood Products Association, April, 1977 and Wood Handbook: Wood as an Engineering Material, U.S. Department of Agriculture, Forest Products Laboratory, Forest Service Handbook No. 72, August, 1974.

The term *Each violation* refers to any violation of the Act or regulations with regard to a single act, which includes but is not limited to a single marking (or lack thereof) on a log, the export of a single log, or a single entry on a document. The intent of this definition is to give full meaning to the strict enforcement of the Act intended by Congress. This intent is demonstrated by the substantial penalties in the Act, and the comprehensive monitoring of each transaction involving federal logs required in the Act and reiterated in the Conference Report.

The term *Export* is patterned after an existing definition at 36 CFR 223.160. It is defined to clarify at what point export occurs so that it can be clearly determined if a violation of the Act, regulations, or contracts issued under the Act has occurred.

The term *Federal lands* has been included to clearly define the lands that are subject to regulations or contracts issued under the Act. The term *Federal lands* refers to those Federal lands west of the 100th meridian in the contiguous 48 States.

The term *Finished products* is included to clearly define that, as used in the Act, regulations or contracts under the Act, a finished wood product is one that has been processed to standards and specifications sufficient to permit it to be used as produced without further additional processing and is intended for end product use. The term is used in the Act in reference to the acquisition of western red cedar which is domestically processed into finished products to be sold into domestic or international markets. Such acquisitions are exempt from the indirect substitution prohibition pursuant to section 490(b) of the Act.

A definition of the term Fiscal year is necessary to specify the time period applicable in the event of disapproval of a sourcing area application or for other reporting or recordkeeping requirements.

The term *Hammer brand* is defined to clarify that such a brand is applied to the end of a log with a hammer or similar striking instrument. The hammer brand will make a specific indentation in the wood that provides unique identification of such log.

The term *Highway yellow paint* is defined to distinguish a highly visible and long lasting shade of yellow and type of base paint to be used to mark logs requiring domestic processing from other less visible and less durable shades and types of yellow paint.

The term *Log* is a commonly used term meaning an unprocessed portion of a tree and for the purposes of this rule is synonymous with "timber."

The Act uses five terms in the assessment and determination of penalties. *Willful disregard* for the prohibition against the export of unprocessed Federal timber if the person exports, or causes to be exported, such timber results in a penalty of $500,000 per violation or three times the *gross value* of the timber involved in the violation, whichever is greater.

The following three standards may be applied notwithstanding that a violation may not have resulted in the export of unprocessed Federal timber in violation of the Act: (1) Committing a violation of the Act or regulations willfully results in a penalty of up to $500,000 per violation of the Act or regulations; (2) committing a violation of the Act or regulations with disregard results in a penalty of up to $75,000 per violation; and (3) committing a violation of the Act if the person should have known that the action constituted a violation results in a penalty of up to $50,000 per violation.

The Department has attempted to clarify the standards by which penalties are levied in the Act through definitions in the proposed rule. The Department has established definitions of the terms that reflect the relative severity of the penalties, and that reflect the use of the terms in Black's Law Dictionary, case law, and other regulations, where appropriate.

The proposed regulations define willful disregard and willfully as standards to apply when a person intentionally commits an act which is prohibited. The standards of willful disregard and willfully have different application. Willful disregard is applied only when a person exports or causes to be exported unprocessed Federal timber in violation of the Act. Willfully is applied to a violation of the Act or regulations issued under the Act, notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of the Act. Despite the different applications of the standards, Congress adopted the same monetary penalty for both terms, and both contain the

element of willfulness. Given these similarities, the Department is adopting one standard for both. *Willful disregard* and *willfully* imply intent to commit an act. They do not require the person to intend to violate the Act or its implementing regulations. They do not require evil motive.

The term *disregard* means to ignore, overlook, or fail to observe any provision of the Act or a regulation issued under the Act. This definition reflects a less strict standard for violation than that required under willfulness.

The standard requiring that a purchaser should have known an action violates the Act is less strict than disregard. In this standard, it must only be established that a reasonable person in the timber industry would have known that an action constituted a violation of the Act or regulations. It need not be established that the person in question knew that the action constituted a violation of the Act or a violation of a contract or a regulation issued under the Act.

The Act provides, pursuant to section 492(c), that for willful disregard of the provisions against the export of Federal timber, the Secretary may assess a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater. A definition of *gross value* is included to clarify what will constitute the value of unprocessed Federal timber involved in such violation of the Act in order to assess appropriate penalties. This rule defines the *gross value* as the total amount the person received from the export purchaser for the unprocessed Federal timber involved in the violation, before production, delivery, agent fees, overhead, or other costs are removed.

The term *Non-manufacturer* is included to clearly identify the segment of the timber industry that is included under the interim and proposed rule and that does not own or operate a manufacturing facility.

The term *Person* is included to provide consistency of meaning and understanding. The Act includes "business affiliate" as a person. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines on determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

The term *Private lands* has been included to provide a common understanding of the private lands included under the interim and the proposed rule. The term means lands located west of the 100th meridian in the contiguous 48 States, held or owned by a person. The term does not include Indian tribal lands, or certain lands in Alaska.

The term *Processed* has been included to clarify that as used in this rule it is synonymous with *not unprocessed* and means *timber processed* as this term is used in section 223.187 of this proposed rule.

The term *Purchase* has been included to clarify that *purchase* and *acquire* are synonymous.

A definition of the *Same geographic and economic area* has been included to clarify the different meanings of the term, depending upon the context in which it is used. The Act uses the term in the context of substitution and sourcing areas. The Act seems to use the phrase in a broad sense when referring to substitution generally, and in a more limited way when referring to sourcing areas.

The Act defines substitution as occurring "within the same geographic and economic area." (Section 493(8)) The Act states that a person is probibited from purchasing Federal timber if the unprocessed Federal timber will be used in "substitution for" exported, unprocessed timber originating from private lands (Private lands is defined as private lands west of the 100th meridian in the contiguous 48 states). This prohibition means that an exchange of Federal timber for exported private timber cannot occur within the same geographic and economic area. Yet the Act defines only certain circumstances (i.e., sourcing areas) where the *same geographic and economic area* means something less than west of the 100th meridian.

Sourcing areas must be "geographically and economically separate" from areas where the applicant harvests timber from private lands for export (section 490(c)(3)). The Conference Report states that to determine a sourcing area, the Secretary should consider other mills in the same local vicinity. To do this, the Secretary must review the purchasing patterns of other mills located in the same population center as the applicant, described as a radius of 25 to 30 miles. This language indicates that Congress did not intend "geographically and economically separate" to encompass an area as large as the area west of the 100th meridian for sourcing area determinations.

One cannot apply the same definition of the *same geographic and economic area* to the general prohibition against substitution and the prohibition as it relates to sourcing areas. Sourcing areas were clearly intended to be areas less than west of the 100th meridian, whereas the general prohibition against substitution is not so limited by the Act. If the definition that applies to sourcing areas were applied generally, everyone would, in fact, have a sourcing area. Therefore, the Department has defined *same geographic and economic area* in the context in which the term is used. That is, the term means west of the 100th meridian in the contiguous 48 states unless it is used in reference to a sourcing area, in which case the term means the boundary of the sourcing area.

The term *Substitution* has been included to provide a clear understanding of the word in relation to its usage in the interim and proposed rules and to provide a clear understanding of when conduct violates the regulations.

The term *Transfer* means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person. The definition has been included to establish a common understanding of the term as it is used in reference to the acquisition and disposition of unprocessed timber.

The term *Unprocessed timber* has been included to clarify the distinction between unprocessed timber and processed timber. The Act uses both "suitable for end product use" and "intended for remanufacture" as criteria. In order to enforce the Act more effectively, the interim and proposed rules use a defintion that aims at the more precise concept of "intent." Intent will be demonstrated, in part, by the manufacturer's certificate, which requires a statement of intent. Unprocessed timber is timber not processed to the extent necessary to meet standards and specifications for end product use and is intended for remanufacture.

Section 223.187 Determination of unprocessed timber. This section is repeated from the interim rule to provide readers with a comprehensive review of the Act's implementing regulations. Subtitles have been added to paragraphs (a) and (b) of this section to provide for rapid location of specific subjects in this proposed rule.

Nearly every section of the Act (16 U.S.C. 620 *et seq.*) refers to unprocessed timber. Section 493 of the Act (16 U.S.C. 620e) includes a definition of what is not included in the term "unprocessed timber." Section 223.187 is established to clearly set forth what the minimum standards of processing are for timber to be considered "not unprocessed." This section is needed to clearly understand the intent of the Act.

The definition in the Act includes references to standards and grades of lumber that must be met in order to comply with the law. In order to determine that these standards have been met, the Forest Service will require that the shipper of record have in its possession a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. This certificate must be prepared for each shipment and be available for inspection upon request of the Forest Service.

Western red cedar is excluded from sections 490(b) and 491 of the Act (16 U.S.C. 620b and 620c). The exclusions refer to acquisition of western red cedar which is domestically processed into finished products to be sold into domestic or international markets. Because of the complexity of processed and unprocessed western red cedar, § 223.187 includes the definition taken from the current timber export and substitution regulations.

Section 223.188 Prohibitions against exporting Federal timber. This section is repeated from the interim rule to provide readers with a comprehensive review of the Act's implementing regulations.

Section 489 of the Act (16 U.S.C. 620a) continues the prohibition against the export of timber from Federal lands west of the 100th meridian in the contiguous 48 States that has been renewed annually through the Appropriations Act for Interior and Related Agencies. The interim rule text remains as published.

Section 223.189 Prohibitions against substitution. This section is reprinted from the interim rule to provide readers with a comprehensive review of the Act's implementing regulations. The proposed rule adds paragraph (a)(3) to § 223.189.

Section 490 of the Act (16 U.S.C. 620b) places limitations on the direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Section 490(a) of the Act (16 U.S.C. 620b) entitled "*Direct Substitution*" states that no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) Such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) Such person has exported unprocessed timber originating from private lands during the preceding 24-month period.

The proposed rule adds paragraph (a)(3) to § 223.189. Paragraph (a)(3) states that no person may acquire unprocessed timber from Federal lands if the person transfers unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States to a third person, and that third party or successive parties exports that unprocessed private timber. The third party or successive parties who acquire such unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States may not export such timber.

The Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. *et seq.*) specifically prohibits a person from acquiring, either directly or indirectly, from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands.

The Act defines *substitution* as acquiring, either directly or indirectly, unprocessed timber from Federal lands and engaging in exporting, or selling for export unprocessed timber originating from private lands within the same geographic or economic area. Paragraph (a)(3) will reduce the potential for violations of the prohibition against substitution where there are multiple transactions involving unprocessed timber originating from private lands where any of the parties have acquired or desire to acquire timber originating from Federal lands. The person that acquires unprocessed Federal timber and transfers unprocessed private timber that is eventually exported rather than domestically manufactured has violated the prohibition against substitution based on the language of the Act. The language of the Act only permits a person acquiring unprocessed Federal timber to transfer unprocessed private timber if that timber is domestically manufactured.

The person acquiring the unprocessed private timber benefits because the person who transfers the unprocessed private timber acquires unprocessed Federal timber to supply his/her manufacturing facility. To the extent the person is able to acquire unprocessed Federal timber to supply his/her manufacturing facility, the person can transfer unprocessed private timber to another person. By virtue of this pass-through benefit, persons acquiring such unprocessed private timber are subject to the prohibitions against substitution contained in § 223.189.

Exemption from Prohibition Against the Purchase of Federal Timber

The following exemption is reprinted from the interim rule in order to assist the reader in understanding the comprehensive implementation of the Act. This proposed rule makes a technical correction in the language of the certification as printed in the interim rule. In the third sentence of the certification, the word "request" was omitted during printing. The corrected sentence reads in part as follows: "I hereby request waiver of the prohibition____."

Section 490 of the Act (16 U.S.C. 620b), also states that the prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands in the 24 months prior to the enactment of the Act does not apply to any person who has a historic export quota approved by the Secretary, if the person certifies to the Secretary that he/she will cease exporting unprocessed timber originating from private lands by February 20, 1991, and ceases exporting in accordance with such certification. The Act required such certifications be submitted no later than November 20, 1990.

In order to enforce the Act and the export program, applicants for the certification exempting a person from the prohibition against exporting during the preceding 24-month period were required to certify that they fully understand the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants concerning the person's intent to cease exporting within 6 months of the certification. Applicants who have been under a historic export quota also had to acknowledge in the certification an understanding that the information provided concerning the applicant's intent to cease exporting unprocessed timber originating from private lands within 6 months is related to the enforcement of the program. This certification will enable the agency to ensure that the purchaser is in complete

compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

As stated in the interim rule, section 490(b) of the Act (16 U.S.C. 620b) entitled *"Indirect Substitution"* states that no person may, beginning on September 10, 1990, purchase from any other person unprocessed timber originating from Federal lands, if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.

A limited amount of timber originating from Federal lands in the State of Washington administered by the Region 6 office of the Forest Service is also exempt from the prohibition against indirect substitution. The application procedures for receiving a share of this timber are being published in a separate proposed rule in today's **Federal Register**. A separate proposed rule with a shorter comment period is necessary to meet the statutory deadline to publish the apportioned shares "by rule" no later than nine months from the date of enactment (section 490(b)(1)).

Exemption from Direct and Indirect Substitution: Sourcing Areas

This portion reprints the language of the interim rule to assist the reader in understanding full implementation of the Act. A new title in the preamble has been added to emphasize that the sourcing area is an exemption from both direct and indirect substitution. This portion also clarifies that the provision regarding the waiver for a sourcing area is in § 223.189 of the interim rule, not in § 223.190, as stated in the preamble to the interim rule.

Section 490(c) of the Act (16 U.S.C. 620b) states that the prohibitions described for persons who exported unprocessed private timber in direct or indirect substitution of unprocessed Federal timber shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States and approved by the Secretary. A sourcing area is the area of land from which a person expects to purchase timber originating from Federal lands as a source of raw materials for its manufacturing facility. This exception shall apply to a person who has not exported unprocessed timber originating from private lands within the sourcing area in the previous 24 months and does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect.

Applications for sourcing areas were to have been submitted no later than December 20, 1990, one month after the application procedures were published in the interim rule (55 FR 46572).

Waiver of the prohibition against exporting in the preceding 24-month period. Under § 223.189 of the interim rule, the Secretary may waive the 24-month requirement for any person who certifies that the person will cease exporting unprocessed timber from private lands within the sourcing area by February 20, 1991, for a period of not less than 3 years. The certification had to be received by the Regional Forester of the Forest Service Region in which the manufacturing facility being sourced is located by November 20, 1990.

In order to enforce the Act and the export program, applicants for the waiver of the prohibition against exporting in the preceding 24-month period were required to certify that they fully understand the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants concerning the person's intent to cease exporting within 6 months of the certification and to cease exporting for a period of 3 years from the date of the certification. The applicant also had to acknowledge in the certification an understanding that the applicant's intent to cease exporting within 6 months relates to the enforcement of the Act. This certification will enable the agency to ensure that the purchaser is in complete compliance with the objectives of the Act.

The interim rule made clear that applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (18 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.190 Sourcing area application procedures. This section is repeated from the preamble in the interim rule to assist the reader in understanding the comprehensive implementation of the Act. Minor, technical changes have been made to the text to conform the language to the format of the proposed rule.

Subsection 490(c) of the Act (16 U.S.C. 620b) states that the Secretary of Agriculture is to prescribe procedures to be used by a person applying for approval of a sourcing area. The procedures shall require, at a minimum, that the applicant provide information regarding the location of private lands from which the person has, within the previous year, harvested or otherwise acquired unprocessed timber that has been exported from the United States; and information regarding the location of each timber manufacturing facility owned or operated by the applicant within the proposed sourcing area boundaries from which the applicant proposes to process timber originating from Federal lands.

The Act also provides that the direct substitution prohibitions shall not apply to a person before December 20, 1990, which is 1 month after the procedures referred to above are prescribed. "Person," in this case, refers to a person applying for a sourcing area since the exemption is listed under subsection 490(c)(2) of the Act (16 U.S.C. 620b). A person who has applied for a sourcing area by December 20, 1990, will also be exempt from the direct substitution prohibition until the Secretary approves or disapproves the application.

The Act further provides that the Secretary shall either approve or disapprove each application not later than four (4) months after receipt of the application. For the purposes of complying with the interim rule, applicants had to submit their applications to the Regional Forester of the Region in which the processing facility is located.

Under the Act, the Secretary shall provide the opportunity for a hearing and the approval or disapproval shall be on the record. Any sourcing area approval must be based on a determination by the Secretary that the area subject to the application includes the manufacturing facilities at which the applicant expects to process the Federal timber and that the area is geographically and economically separate from any area from which that person harvests for export any

unprocessed timber originating from private lands. The Secretary shall also consider equally the timber purchasing patterns of the applicant on private and Federal lands with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns. To clarify the intent of the Act's use of the phrase "same local vicinity," the interim rule establishes the "same local vicinity" as normally being the manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but "same local vicinity" may include more distant communities, if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns. This interpretation is supported by the Conference Report accompanying the Act. The relative similarity of purchasing patterns will be determined by examining the location and similarity of timber being purchased and the similarity of products being produced.

The sourcing area boundaries must follow major natural and cultural features, including but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines. This is necessary to provide sourcing area boundaries that are readily identifiable on the ground and can be clearly displayed on map scales in general use.

Section 223.191 Sourcing area disapproval and review procedures. The current § 223.191 is included in the interim rule, published November 20, 1990 (55 FR 48572) and has the force and effect of law. The accompanying proposed rule, published in today's **Federal Register**, proposes to revise § 223.191.

Section 223.192 Procedures for a non-manufacturer. This section is repeated from the preamble in the interim rule to assist the reader in understanding the comprehensive implementation of the Act. Minor, technical changes have been made to the text to conform the language to the format of the proposed rule.

This proposed rule also corrects the inadvertent omission of the words "shall not apply" in paragraph (b) of this section in the interim rule. The sentence was grammatically incomplete as published and would be corrected to read in part as follows:

> The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period *shall not apply* if the person certifies—.

Subsection 490(c)(2) of the Act (16 U.S.C. 620b) states that the procedures established by the Secretary shall, at a minimum, require that the applicant provide information regarding the location of private lands from which such person harvested or otherwise acquired unprocessed timber in the previous year which has been exported from the United States; and information regarding the location of each timber manufacturing facility-owned or operated by such person within the proposed sourcing area boundaries where the applicant proposes to process timber originating from Federal lands.

This subsection of the Act provides a process for the establishment of sourcing areas for a person who owns or operates a manufacturing facility. The subsection does not provide a means for a person who does not own or operate a manufacturing facility (a non-manufacturer) to obtain a sourcing area or to be exempt from the prohibition against purchasing Federal timber if the person has exported unprocessed timber originating from private lands within the previous 24-month period.

The stated purposes of the Act are to promote the conservation of forest resources, to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States, to ensure sufficient supplies of certain forest resources or products which are essential to the United States, and to continue to refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States.

The failure to provide a non-manufacturer an opportunity to be exempt from the 24-month restriction or to obtain a sourcing area would in effect bar that person from competing for Federal timber until the 24-month period has passed. Such inability to purchase Federal timber would create a financial hardship for this segment of the timber industry and might cause some to go out of business with the resulting loss of employment and economic disruption. Further, if a non-manufacturer is unable to submit bids or to purchase Federal timber, there will be a reduction in the competition in some markets that would result in a reduction in receipts to the United States and State and County treasuries.

In order to close this gap, persons who do not own or operate a manufacturing facility were able to certify to the Regional Forester of the Region(s) in which they purchase National Forest System timber that they will cease exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States by February 20, 1991, and, in fact, have ceased the export of unprocessed private timber from such lands. The applicable Regional Forester had to receive the certification by November 20, 1990. This will provide a non-manufacturer with the opportunity to make the same business decisions as those persons owning or operating a manufacturing facility, that is, whether or not to continue the export of unprocessed private timber or whether to continue purchasing Federal timber. Since the non-manufacturer does not have a manufacturing facility, the non-manufacturer will not be able to establish a sourcing area.

In order to enforce the Act and the export program, a non-manufacturer was required to certify that he or she fully understands the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a non-manufacturer from the 24-month requirement, the agency must rely on the information provided by applicants regarding intent to cease exporting within 6 months of the certification. The applicant also had to acknowledge in the certification an understanding that the information provided is related to the enforcement of the program. This certification will enable the agency to ensure that the non-manufacturer is in complete compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber—Annual reports. Section 492(a)(1) of the Act provides that each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as the Secretary may by rule prescribe; and that such person may not be held responsible for the reporting of the disposition of any such timber held by subsequent persons. In addition, the

Conference Report on this section states that the conferees intend that the Secretary of Agriculture have a complete accounting of transactions relating to the acquisition and disposition of unprocessed timber originating from Federal lands (Conf. Rpt. p. 259).

This proposed rule, § 223.193(a), requires an annual report on the acquisition and disposition of Federal timber to be submitted to the Forest Service. Any person acquiring and/or disposing of such timber must submit an annual report. Such report will provide, by fiscal year, an accounting of the unprocessed Federal timber acquired and processed, held in inventory or transferred to another person. The report requires statements regarding the volume of timber acquired, processed, held in inventory and/or transferred to another person, and the origin of such acquired and transferred timber. In addition, the report requires the date of acquisition or disposal, from whom acquired, the timber sale name, the contract number, log brands, bar coded tag number and other markings for timber acquired or disposed. The first such report will be due December 1, 1991 and subsequent reports will be due on December 1 of each year thereafter.

The form includes an agreement to retain records of all transactions involving unprocessed Federal timber and make them available upon request to an authorized official of the United States for three (3) years from the date of disposal by manufacture or transfer. The form also includes a certificate stating that the information supplied is a true, accurate, current, and complete statement of the receipt and disposition of unprocessed Federal timber to the best of the certifier's knowledge. The certifier also acknowledges that failure to completely and accurately report the acquisition and disposition of such timber will subject the certifier to the penalties and remedies provided under the Act and the penalties provided under the False Statements Act (18 U.S.C. 1001). The certifier also must acknowledge that he/she has read and understands the form. The certification states that the information provided is not confidential.

Transfer of unprocessed Federal timber. The Act, pursuant to section 492(a)(2), further provides each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states shall, prior to completing such transfer: (1) Provide to the person receiving the timber, a written notice which will identify the Federal origin of the timber, (2) receive from that person a written acknowledgement of the notice and an agreement that such other person will comply with the requirements of the Act, and (3) provide the appropriate Regional Forester copies of all such notices, acknowledgements and agreements.

Section 223.193(b) of the proposed rule requires each person who transfers unprocessed timber originating from Federal lands to provide such other person with the notice, acknowledgement, and agreement executed on a form provided by the Forest Service. The transferor includes anyone who sells, trades, or otherwise transfers unprocessed Federal timber. The transferor must provide copies of each form to the Regional Forester concerned within 10 days of such transfer. The transferor must state on the form the origin, species, volume, from whom acquired, timber sale name, contract number, log brand, bar coded tag number, and other markings of unprocessed Federal timber. The form contains a statement that the purchaser of Federal timber, whether directly or indirectly obtained from the Federal government, agrees to maintain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of the transfer and will make all records involving log transactions available to an authorized U.S. government official upon request. The form also includes a certificate stating that the information supplied is a true, accurate, current, and complete statement to the best of the certifier's knowledge, and agreeing to send the form to the appropriate Regional Forester, the Bureau of Land Management District, or other office as agreed, that administers the lands from which the timber originated within ten (10) days of the transfer. The certifier agrees to obtain a fully completed Notice of Origin form from the transferee. The certifier acknowledges that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act. The certifier must also acknowledge that he/she has read and understands the form. The certification also states that the information provided is not confidential.

The following statements are required from the transferee: (i) An agreement to retain for a period of three (3) years from date of transfer the records of all sales, exchanges, or other disposition of such timber, and make such records available for inspection upon the request of an authorized official of the United States; (ii) an agreement to maintain and/or replace all marks and tags identifying the Federal origin of each piece of unprocessed Federal timber as described in § 223.195; (iii) an agreement to complete a notice or origin form, receive acknowledgement of Federal origin, and receive an agreement to comply with the Act and regulations in such form if the person transfers any or all of the timber listed in the document; (iv) an acknowledgement of the prohibition against acquiring unprocessed Federal timber from a person who is prohibited by the Act from purchasing the timber directly from the United States; (v) an acknowledgement of the prohibitions against exporting unprocessed Federal timber and against acquiring such timber in substitution for unprocessed private timber west of the 100th meridian in the contiguous 48 States; (vi) a certification stating whether the certifier is classified as a small or large business and whether he/she is a manufacturer or non-manufacturer of forest products as these terms are defined by the Small Business Administration. This information is needed for monitoring and reporting purposes in compliance with the Small Business Administration Regulations at 13 CFR part 121; and (vii) a certificate stating that the person has received the notice of origin form, the information supplied is a true, accurate, current, and complete statement of the receipt and disposition of the unprocessed timber originating from Federal lands, to the best of the certifier's knowledge, and stating that the certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act. The certifier acknowledges that failure to report completely and accurately the transfer of unprocessed federal timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act (18 U.S.C. 1001). The certifier must also acknowledge that he/she has read and understands the form, and that the information provided is not confidential. This information is essential to monitor the transfer of the unprocessed Federal timber. A statement regarding Federal origin alone provides neither the transferee nor the government with sufficient information to track unprocessed logs through multiple transactions.

Section 223.194 Procedures for reporting acquisition and disposition of unprocessed private timber. Section 223.194 of these regulations reduces

potential violations of the prohibition against substitution in the circumstance where a person acquires unprocessed private timber from a person who acquires or possesses unprocessed Federal timber. Section 223.194 requires a person who acquires or desires to acquire unprocessed Federal timber to include a statement, on a form provided by the Forest Service, with the transaction documents when the person sells or otherwise transfers unprocessed private timber. Such form must accompany each transaction involving such unprocessed private timber. The statement shall provide: (1) Notice to the person receiving the unprocessed private timber that exporting that timber would violate the regulations prohibiting substitution; (2) Notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by a spot of highway yellow paint that must be retained on the timber; (3) For the acknowledgement of the notice by the receiving person; (4) For an agreement to include the statement in any subsequent transaction documents; (5) For a signed copy of the transaction statement to be sent to the applicable Regional Forester within ten days of the transaction; and (6) An agreement to retain records of all transactions involving acquisition and disposition on unprocessed timber from Federal or private lands for a period of three (3) years from the date of disposal by manufacturing or transfer. This procedure will provide protection to persons acquiring and disposing of unprocessed Federal and private timber from the actions of subsequent persons. The procedure will also provide for the complete implementation of the prohibitions against direct and indirect substitution in the Act.

Section 223.195 Procedures for identifying and marking unprocessed logs. Section 223.195 of the proposed rule requires marking of unprocessed logs originating from Federal lands. Each unprocessed log originating from National Forest System lands west of the 100th meridian in the contiguous 48 states shall be marked on each end with a spot of highway yellow paint and with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the unprocessed log originates.

If the unprocessed log is sold to a third party, it must be tagged on one end with a bar coded tag. The tag shall identify the origin of the unprocessed log by timber sale contract number, region, national forest, ranger district, and log number.

Regional Foresters of Regions 1, 2, 3, and 4 may waive the requirements to paint, hammer brand, and tag on an individual sale basis if there is no history of logs from any origin being exported from the area of the purchaser's operations, the purchaser complies with these regulations, including the provision relating to transfer documents, and the purchaser certifies that he/she has not exported logs from that area in the last 24 months.

The procedures reserve highway yellow paint as identification of logs originating from west of the 100th meridian in the contiguous 48 states that require domestic manufacturing.

The section on marking also requires that any type of identification required by this rule must be retained on the log until the log is domestically processed. Identifying marks or tags must be replaced if they are lost, removed, become unreadable, and, if the log is cut into two or more pieces, each piece shall be identified in the same manner as the original piece.

The prohibitions against export and direct and indirect substitution in sections 489 and 490 of the Act can only be fully implemented through marking of individual logs. Marking allows tracking of individual logs, so that the prohibitions against export and substitution in the Act can be enforced.

Provisions in the Act and the legislative history of the Act indicate Congress intended to ensure strong enforcement of the prohibitions against export and substitution. Section 492(a) of the Act requires reporting of each transaction regarding unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states; section 492(c) has substantial penalties (up to $500,000) for each violation of the Act or the implementing regulations, and states that other penalties are not prohibited; and section 492(d) authorizes debarment for a period (five years) which is significantly longer than the general three-year period.

The legislative history states that, "the conferees intend that the Secretaries of Agriculture and Interior have a complete accounting of transactions relating to the acquisition and disposition of unprocessed timber originating from federal lands." (emphasis added) (Conf. Rpt. at 259)

To prosecute a person civilly for violation of the prohibition against export of Federal logs, or violation of the prohibition against substitution when forms are inaccurate or incomplete, the logs must be shown to be Federal in origin by the preponderance of the evidence. Criminal violations must be shown beyond a reasonable doubt. Identification of the sale will help demonstrate by the preponderance of the evidence that the log in question originated from Federal lands west of the 100th meridian in the contiguous 48 states. Clear identification also assists purchasers and the government alike in knowing which logs are subject to the prohibitions in the Act or implementing regulations.

The Department has designed a systematic approach to log identification in order to comply with the legislation that prohibits export and substitution and to comply with the intent of the legislation that there be significant enforcement of these prohibitions. The identification procedure will provide the Department with the means to monitor the flow of unprocessed logs from site to site, and to determine if any violations of the Act or its implementing regulations occur. The more risk there is of export, and/or substitution violations, the more specific the methods are for identifying logs.

Painting all Federal logs originating west of the 100th meridian in the contiguous 48 states assists in quick identification of logs in the geographic area which is emphasized in the Act. Paint assists persons in identifying unprocessed Federal logs and helps investigators identify possible export violations quickly. Branding these logs identifies each log more specifically. The brand will identify the specific timber sale from which the log originated.

Requiring that the brand not be reused until released in writing by the Forest Supervisor provides better assurance that the identity of the brand can be traced to one particular sale. To provide additional assurance of this, there can be no lending or trading of brands between persons.

This regulation will make branding and painting requirements uniform in all areas with a history of export. Branding and painting are required on the landings, where the logs are first gathered before being removed from the sale area. Often, there have been problems with misidentification of logs between the sale site and the scaling yards. Identification at the landing will avoid these problems. Branding and painting will be required on both ends of each log so these identifying marks will be visible to persons looking at a pile or deck of logs. Sometimes only one end of a log is visible. If only one end of the log were marked, it might be necessary to look at both ends of each log to determine possible Federal origin. This would be impracticable in normal log

storage situations where logs are sometimes stacked in decks 20 feet high and 600 feet long. It is difficult to locate the opposite end of a single log in such a deck.

Currently, the requirements for identifying and marking Federal logs are found in Special Provisions C6.82—Presentation for scaling (6/81), of the timber sale contract. The provision provides that unless the Forest Service determines that circumstances warrant a written waiver or adjustment, (1) all products from Sale Area shall be hammer branded on both ends with an assigned brand, (2) each product exempt from domestic processing shall also be hammer branded on both ends with an exempt brand registered for use on exempt products from the National Forest timber sales, and (3) all domestic processing products shall be painted on one end with highway yellow paint. This provision is to be included in all timber sale contracts west of the 100th meridian outside of Alaska. Continuing use of the timber sale contract to require log identification and marking binds the timber sale purchaser to the requirements. The Act in section 492(a)(1) states that a person shall not be held responsible for the reporting of the disposition of any such timber held by a subsequent person. Section 223.195 of this rule will bind subsequent persons to the identification and marking requirements for unprocessed Federal logs.

The bar coded tag provides even more specific information about the logs that represent higher risk in terms of export. That is, logs that are sold to third parties have a better chance of losing their identity through multiple transactions, and could be exported more easily without specific identification. Unlike a hammer brand, a bar coded tag is unique to one log. The bar coded tag provides the government and the purchaser with positive identification of each piece and will permit any person to track a specific log to the originating timber sale.

It is common practice in the timber industry to tag unprocessed logs with a bar coded tag to identify and track a log through the inventory control and manufacturing processes. This tag commonly contains volume information and is read by an electronic scanner. It is also common practice in the timber industry to sell or otherwise transfer logs between persons.

The combination of the paint, the brand, and the tag helps to ensure complete identity of the log and to ensure that this identity is maintained through multiple transactions. The marks are identifiable and not easily removed.

The regulations provide for waivers of the marking requirements, on an individual timber sale basis, in those areas where there has been no evidence of export. The limited waiver provision follows the scheme of requiring marking to the extent necessary to curb export. This waiver would recognize the impracticability of exporting unprocessed logs from some inland parts of the west and that some species and sizes of logs have very limited export markets. The waivers are granted for specific sales to provide maximum ability to adapt to possible changes in export patterns. Further, the purchaser must certify that he or she has not exported unprocessed private timber within 24 months of the sale. This certification mirrors certifications provided in areas of export and provides a check to assure that there has been no export in the area of the purchaser's operations. The area of operations is defined as the geographic area where there is no history of unprocessed logs being exported, and/or an area from which unprocessed logs of any origin are not transported into areas where exporting does occur.

The reservation of a distinct color aides enforcement of the Act. A distinct color of paint on logs that must be domestically processed makes logs easily identifiable to those checking for export violations. Paint also is not removed easily. This requirement also helps persons acquiring unprocessed logs avoid violations of the Act.

The requirement to mark private logs with highway yellow paint, which if exported would constitute substitution, is necessary for consistency in identifying logs requiring domestic processing to avoid any inadvertent mixing of such logs with other private logs that may be exported.

The requirement to replace identifying marks also aides enforcement of the Act. This provision will assure that unprocessed Federal logs retain their identity through the normal log marketing practices. Without this requirement, the Act could be circumvented easily through the altering of the log. Requiring that the log marks be readable is another way to ensure that the log be identifiable. These requirements will also help persons acquiring these unprocessed logs avoid violation of the Act.

Section 223.196 Civil penalties for violation. The Act, pursuant to section 492(c), establishes civil penalties for violation of the Act of not more than $500,000 for each violation or three times the gross value of the unprocessed timber involved for a violator who exported or caused to be exported unprocessed Federal timber; not more than $500,000 for a violator who willfully violates any provision of the Act or any regulation issued under the Act; nor more than $75,000 for each violator who commits a violation in disregard of such provisions and/or regulations; and not more than $50,000 for each violation by a violator who should have known that the action constituted a violation of such provisions and regulations. The last three penalties may be assessed whether or not such violation caused the actual export of unprocessed Federal timber. The Act also provides that a penalty assessed under the Act shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court. Section 223.196 merely repeats the language of the Act.

Section 223.197 Civil penalty assessment procedures. The Act provides that if the Secretary of Agriculture finds, on the record and after an opportunity for a hearing, that a person has violated the Act or the regulations issued under the Act, he/she may impose certain civil penalties for such violation(s). For purposes of assessing penalties under section 492 of the Act, the Department will add the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) to the list of statutes governed by the adjudicatory procedures at 7 CFR 1.130 *et seq.* in a separate, final rulemaking document. Comment on adoption of these procedures is not required under the Administrative Procedure Act (5 U.S.C. 551, *et seq.)*

Section 223.198 Administrative remedies for violation. The Act, pursuant to § 492(d)(2) provides that in addition to the provision for debarment in subpart C of this part, the head of the appropriate Federal department or agency may also cancel any contract entered into with a person found to have violated the Act or regulations or contracts issued under the Act. This proposed rule clarifies that such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) regarding cancellations of contracts.

Section 223.199 Procedures for cooperation with other agencies. Section 495 of the Act (16 U.S.C. 620f) states that the Secretaries of Agriculture and Interior shall, in consultation, each prescribe new coordinated and consistent regulations to implement this title on lands which they administer. Subsection 491(d)(2) of the Act (16

U.S.C. 620c) authorizes the States to cooperate with Federal and State Agencies with appropriate jurisdiction to further the intent of this title. The Act also places responsibility on the Secretary of Commerce to issue orders and promulgate such rules and guidelines as may be necessay to carry out this title. It is clear that government agencies at State and Federal levels have individual responsibilities under the Act. Cooperation between these agencies in monitoring and enforcing these regulations would provide for the most efficient use of scarce personnel and financial resources. Cooperative Agreements and/or Memorandums of Understanding between governmental agencies are common in situations like this where there is a commonality of responsibility and interest. The cooperative effort may include exchanging information on sourcing area applications, sourcing area approvals or disapprovals, log brands being used, logging activity, and proposed timber sales. Agencies may cooperate on monitoring export facilities or log storage areas so that each agency would not be required to make separate visits. This cooperative effort would also reduce the impact on the operators of the export facilities and storage areas.

Section 223.200 Determination of surplus species. The rule would require, as does section 489(b) of the Act (16 U.S.C. 620a), that determinations that specific quantities of grades and species are surplus to domestic manufacturing needs be made in accordance with title 5, United States Code, section 553, the rule making section of the Administrative Procedure Act. The rule would also require that withdrawals of such determinations be done in accordance with the same procedure. Section 491(h) of the Act (16 U.S.C. 620c) requires withdrawals of such determinations to be done "by rule."

This proposed rule, in accordance with section 489(b) of the Act, requires that review of a determination that a quantity of grade or species is surplus must be reviewed at least once every three (3) years. Notice of the review will be published in the Federal Register. The public will have no less than 30 days to comment on the review.

The Department is soliciting comments in this proposed rule for nominations of determinations that specific quantities of grades and species are surplus to domestic manufacturing needs. The Department believes that comments regarding potential surplus grades or species, including comments on currently designated surplus species, from persons familiar with domestic markets involving the grades or species at issue will be beneficial in developing a proposed rule. After the close of the comment period, the Secretary shall publish a rule proposing a determination as to whether any grade or species should be deemed surplus. After a comment period to be specified in the proposed rule, a final rule shall be issued.

Comments are specifically requested in this proposed rule on the current determinations that Alaska Yellow cedar and Port Orford cedar are surplus to domestic manufacturing needs. The interim rule continued the current designations of surplus species until hearings could be held in order to avoid the disruption that could be caused by suddenly discontinuing the current determinations. Current designations of surplus species must be determined to be surplus in accordance with the Act, so consideration of these determinations will follow the procedures of other determinations of surplus grades or species. The current designations of surplus species will remain in effect until the effective date of the final rule determinations surplus species.

The Conference Report states that the Secretary is expected to "hold hearings" to determine whether there are no domestic markets for currently designated surplus species (Alaska Yellow cedar and Port Orford cedar). The hearing, as described above, will be in written form, pursuant to the rule making procedures (5 U.S.C. 553) of the Administrative Procedure Act. The Department believes that the rule making process provides ample opportunity to comment on the current status of the species currently designated as surplus. The public will have an additional opportunity to be heard through the comment period provided in this proposed rule.

Section 223.201 Limitations on timber harvested in Alaska. Section 223.161 of the current regulations is being repeated in this subpart to consolidate all export and substitution restriction rules applicable to all States located west of the 100th meridian. The repetition is needed to make clear that the provision regarding Alaska applies to contracts entered into before, during, and after the date of enactment of the Act.

Section 223.202 Information requirements. This proposed rule will impose additional information collection requirements in the form of applications, certifications, reports and recordkeeping requiring clearance from the Office of Management and Budget for compliance with the Paperwork Reduction Act. This section provides the estimated burden hours involved in these collections and addresses where comments concerning these estimates may be sent.

Amendment to 36 CFR Part 261—Prohibitions

Part 261—Prohibitions would be amended to include 16 U.S.C. 602(f) as part of the authority citation.

Section 261.6 Timber and other forest products. This section would add a new paragraph (i) making a violation of the Act, or its implementing regulations, subject to penalties under part 261. Subsections 492(c) (1) and (2) and subsection 492(d) of the Act specifically provide for civil penalties and administrative remedies for violations of the Act that are included in another section of this proposed rule. Subsection 492(c)(3) of the Act states that the penalties provided under section 492(c) are not exclusive of any other penalty provided by law. Section 261.6(i) is such a penalty. Inclusion of violations under §§ 223.185 through 223.202 in § 261.6(i) is essential for consistent and complete implementation of the Act. The prohibition at § 261.6(g) regarding the current export regulations existing at subpart D would be retained to continue enforcement of these regulations.

Eastern Hardwood Study

Section 498 of the Act requires the Secretary of Agriculture to ensure that all hardwood saw timber harvested from Federal lands east of the 100th meridian is marked in such a manner as to make it readily indentifiable at all times before its manufacture. The section also requires the Secretary to take steps to ensure that such markings are not altered or destroyed. Section 322 of Title IV of the Appropriations Act for the Department of the Interior and Related Agencies for fiscal year 1991, (Pub. L. No. 101–512) enacted November 5, 1990, states that no appropriations may be used to ensure that hardwood saw timber harvested from Federal lands east of the 100th meridian is marked in such a way as to make it readily identifiable at all times before its manufacture.

Ensuring that timber is marked requires funds to pay personnel to investigate, to review documents, and to prosecute violators. The Department believes it would be contrary to the intent of the Appropriations Act to require marking for eastern hardwood saw timber when no funds have been appropriated to ensure marking. Therefore, no marking for eastern hardwood saw timber is required in this rule.

Environmental Impact

This proposed rule proposes only to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It will not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale be analyzed in compliance with the National Environmental Policy Act and its implementing regulations. As such, this rule will have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

The application and reporting procedures in §§ 223.193 and 223.194 of this proposed rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. These additional burdens have been submitted to The Office of Management and Budget (OMB) for review. These burdens will not be implemented until approved. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2400), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090 and to the Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The recordkeeping and reporting procedures in §§ 223.187, 223.189, 223.190 and 223.192, published in the interim rule, were approved by OMB and assigned control number 0596–0114. This approval has expired and has been resubmitted to OMB for review. We invite public comment on these burdens as well.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The proposed rule will not have an annual effect of $100 million or more on the economy, or substantially increase prices or costs for consumers, individual industries, Federal, State or local governments or geographic regions. Furthermore, the proposed rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes no additional requirements on small business timber sale purchasers or other small entities.

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

List of Subjects

36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, Timber sales.

36 CFR Part 261

Crime, Law enforcement and National Forests.

Therefore, for the reasons set forth in the preamble, part 223 and part 261 of title 36 of the Code Federal Regulations are proposed to be amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart C—Suspension and Debarment of Timber Purchasers

2. Revise paragraph (a) of § 223.130 to read as follows:

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber, in addition to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

* * * * *

3. Revise § 223.131 to read as follows:

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber in addition to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*). These regulations do not apply to Forest Service procurement contracts (*See* 41 CFR 4–1.6).

4. Amend § 223.133 by revising the definitions of *Affiliates, Debarment* and *Purchaser* and add definitions of *Federal lands* and *Person* to read as follows:

§ 223.133 Definitions.

Affiliates Business concerns or persons are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other; or (b) a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, common facilities, and contractual relationships.

* * * * *

Debarment means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time; a purchaser so excluded is "debarred." Debarment pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) means action taken by a debarring official under §§ 223.136–223.140 to exclude persons from entering into any contract for the purchase of unprocessed timber originating from Federal lands and from taking delivery of unprocessed Federal timber purchased by another party for the period of debarment.

* * * * *

Federal lands means, for purposes of the Forest Resouces Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*), lands that are owned by the United States, but does not include any lands the title to which is (a) held in trust by the United States for the benefit of any Indian tribe or individual, (b) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or (c) held by any Native Corporation as defined in

section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates.

* * * * *

Purchaser means any person, that (a) submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded, a Forest Service timber sale contract, (b) conducts business with the Forest Service as an agent or representative of another timber sale purchaser, (c) may reasonably be expected to enter into a contract for the purchase of or take delivery of unprocessed Federal timber, or (d) for the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act), any person who violates the Act or any regulation or contract issued under the Act.

* * * * *

5. Revise § 223.135 to read as follows:

§ 223.135 Effect of listing.

(a) Except as otherwise provided in paragraph (b) of this section, purchasers debarred or suspended in accordance with this subpart shall be excluded from bidding on or award of Forest Service timber sale contracts, and the Forest Service shall not knowingly solicit or consider bids from, award contracts to, approve a third party agreement with, or renew or otherwise extend, except pursuant to the terms of a contract term adjustment, the duration of an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

(b) In addition to the provisions of paragraph (a) of this section, persons debarred pursuant to § 223.137(g) shall be prohibited from entering into any contract for the purchase of unprocessed timber from Federal lands and shall also be precluded from taking delivery of Federal timber purchased by another person for the period of debarment.

6. Amend § 223.136 by revising paragraph (b) to read as follows:

§ 223.136 Debarment.

* * * * *

(b) *Effect of proposed debarment.* (1) Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a contract term adjustment, any contract with that purchaser. The Chief of the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons justifying business dealings with that purchaser pending completion of debarment proceedings.

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under § 223.137(g) shall act to preclude such person from entering into any contract for the purchase of unprocessed timber originating from Federal lands and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

7. Amend § 223.137 by adding paragraph (g) to read as follows:

§ 223.137 Causes of debarment.

* * * * *

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) or any regulation or contract issued under the Act.

8. Revise paragraphs (a) and (b) of § 223.139 to read as follows:

§ 223.139 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s):

(1) The debarring official shall consider any suspension period or period since issuance of the notice of proposed debarment in determining the debarment period.

(2) Generally, a debarment for those causes listed at § 223.137(a)–(f) of this subpart should not exceed 3 years, except as otherwise provided by law.

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137(a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

* * * * *

Subpart D—Timber Export and Substitution Restrictions

9. Revise § 223.159 to read as follows:

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded prior to August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*). The rules at § 223.162 shall remain in effect for all contracts awarded after the date of enactment and until such time as final rules are issued to implement this Act. The provisions of subpart F of this part implement the following and apply to all new contracts awarded after August 20, 1990:

(a) Sourcing area application and approval procedures;

(b) Certification procedures;

(c) Continuation of surplus species determinations;

(d) Sourcing area disapproval, review procedures; and

(e) Definitions of Act, Acquire, Cants or Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution, and Unprocessed timber.

§ 223.161 [Removed and reserved]; § 223.163 [Removed]

10. Remove text of § 223.161 and reserve § 223.161. Remove § 223.163.

11. Subpart F, except for § 223.191, is revised to read as follows:

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program

Sec.

§ 223.185 Scope and applicability.

This subpart applies to all timber sale contracts awarded on or after August 20, 1990, and will implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that became effective upon enactment or as otherwise specified in the Act. This subpart, published in the interim rule of November 20, 1990 (55 FR 48572), applies to all timber sale contracts awarded on or after August 20, 1990, and implements provisions of the Act that became effective upon enactment or as otherwise specified in the Act.

§ 223.186 Definitions.

The following definitions apply to the provisions of this subpart:

Act means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. 101–382, 104 Stat. 714–726; 16 U.S.C. 620 *et seq.*).

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term *acquisition* means the act of acquiring. The terms *acquire* and *purchase* are synonymous and are used interchangeably.

Area of operations refers to the geographic area within which logs from any origin have not been exported or transported to an area where export occurs. The area of operations will be determined for Forest Service Administrative Units or groups of Administrative Units by the Regional Foresters of Regions 1, 2, 3, and 4 on an as-needed basis, and used as part of the criteria for evaluating a request for waiver of the identifying and marking requirements for unprocessed Federal logs.

Cants or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Disregard means to ignore, overlook, or fail to observe any provision of the Act or a regulation issued under this Act, notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Each violation refers to any violation under the Act or its implementing regulations with regard to a single act, which includes but is not limited to a single marking (or lack thereof) on a single log, the export of a single log, or a single entry on a document.

Export means transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, exchange, or otherwise convey such timber to a person for delivery to a foreign country. If that date cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting, bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

Federal lands means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but which does not include any land the title to which is:

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Finished products means products from trees, portions of trees or other roundwood products processed to standards and specifications intended for end product use.

Fiscal year means the Federal fiscal year beginning on October 1st and ending on the following September 30th.

Gross value means the total amount a person received from the export purchaser for the unprocessed Federal timber involved in the violation, before production, delivery, agent fees, overhead or other costs are removed.

Hammer brand refers to an identifying mark or brand composed of numbers, letters, characters, or a combination of numbers, letters, or characters permanently attached to a hammer, or other similar striking tool. The hammer brand must be capable of making a legible imprint of the brand in the end of a log when struck.

Highway yellow paint refers to an oil base or equivalent yellow paint of lasting quality comparable to the yellow paint used to mark highways.

Log refers to an unprocessed portion of a tree that is transported to a manufacturing facility or other location for processing, transferring to another person, or exporting. *Logs* is synonymous with *timber*.

Non-manufacturer means a person who does not own or operate a manufacturing facility.

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines to be used in determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

Private lands means lands, located west of the 100th meridian in the contiguous 48 States, held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 USC 1602).

Processed is synonymous with *not unprocessed* and means *timber processed*, as that term is used in § 223.187(a) of these regulations.

Purchase means the same as acquire. The terms are used interchangeably.

Same geographic and economic area means west of the 100th meridian in the contiguous 48 states, except when used in reference to a sourcing area, in which case the phrase means the boundaries of the sourcing area.

Should have known means committing an act that a reasonable person in the timber industry would have known violates a provision of the Act or regulations issued under the Act, notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Substitution means acquiring, either directly or indirectly, unprocessed timber from Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic or economic area.

Transfer means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture.

Willful disregard means intentionally committing an act which is prohibited. This standard applies only to the prohibition against exporting unprocessed Federal timber (including causing unprocessed timber to be exported).

Willfully means intentionally committing an act which is prohibited by the Act or regulations issued under the Act, notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

§ 223.187 Determinations of unprocessed timber.

(a) *All species except western red cedar.* Unprocessed timber, as defined in § 223.186 of this subpart, is intended for remanufacture and does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service:

(i) A legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard, and

(ii) An original certificate by the manufacturer that the material in the shipment has been manufactured for a specific order for end product use, not intended for remanufacture, with a copy of such order and specifications attached.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(9) Pulp logs or cull logs to be processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the log into chips.

(b) *Western red cedar.* Unprocessed western red cedar timber does not include manufactured lumber authorized to be exported under license by the Department of Commerce and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better and/or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better. To determine whether such lumber meets these established standards and grades, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar products are in section 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)) and implementing regulations at 15 CFR 777.7;

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, piling cut or treated with preservatives for use as such and not intended to be further processed; or

(5) Shakes and shingles.

§ 223.188 Prohibitions against exporting Federal timber.

No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber as the Secretary of Agriculture may determine to be surplus to domestic manufacturing needs.

§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase unprocessed timber originating from Federal lands directly from a department or agency of the United States if such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands;

(2) No person may purchase unprocessed timber originating from Federal lands if such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands; or

(3) No person may purchase unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States to a third party, if that third party or successive parties exports that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states may not export such timber.

(b) *Exemptions.* (1) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), all persons who apply for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, are exempt from the prohibition against substitution, in accordance with § 223.189(a) of this subpart, until such time that the approving official approves or disapproves the application.

(2) Pursuant to section 490(a) of the Act (16 U.S.C. 620b), an exemption to the prohibition in § 223.189(a)(2) of this subpart is provided to:

(i) A person with a historic export quota who submits a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submits a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), the prohibition against direct substitution does not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a

waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR part 223, subpart D, in effect before August 20, 1990, if:

(1) That person certifies in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting does cease in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in preceding paragraph (c) of this section, a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must be notarized. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. Sec. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. Sec. 620d) and the False Statements Act (18 U.S.C. Sec. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) The certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a department or agency of the United States. The prohibition in this paragraph does not apply to the following:

(1) To the acquisition of unprocessed western red cedar, which is domestically processed into finished products.

(2) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(f) *Waiver within a sourcing area.* The prohibitions against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if a person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States, and has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months and during the period the sourcing area is in effect, does not export such private timber from within the approved sourcing area. The applicable Regional Forester may waive, in writing, the prohibition against export within the preceding 24-month period for any person who certifies in writing, on or before November 20, 1990, that on or before February 20, 1991, that person will cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must submit a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must be received by the Regional Forester on or before November 20, 1990, and which must be signed by the person making such request or, in the case of a corporation, by its chief executive officer. The request for waiver must be notarized. The request shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby request waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

§ 223.190 Sourcing area procedures.

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, any person who owns or operates a manufacturing facility, may apply for a sourcing area exception to the substitution prohibitions in accordance with the procedures of this section. The direct substitution prohibitions shall not apply to a person applying for a sourcing area before December 20, 1990, and until such sourcing area application is approved or disapproved by the Secretary.

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must apply for the desired sourcing area on or before December 20, 1990.

(c) *Applications.* Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities;

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 12 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the information provided concerning my timber purchasing and export patterns fully and accurately reflects to the best of my knowledge the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and fully understand that, if this application is approved, exporting unprocesssed private timber originating from within the approved sourcing area, or if this application is denied, failure to stop purchasing Federal timber, from within the proposed sourcing area, except as provided under the Act, within the time period and amounts provided by the Act, will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(d) *Confidential information.* Applications are not confidential information. However, if a person does submit confidential information, it should be marked as confidential and will be afforded the rights and protection provided under the Freedom of Information Act.

(e) *Where to make application.* Application for a sourcing area shall be made to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of the Federal timber. The lead agency shall make the decision on consultation with, and upon co-signature of, the other agencies. Two complete copies of the application must be sent to each agency concerned.

(f) *Signatory procedures.* Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its chief executive officer, and must be notarized. The application shall be on company letterhead, and in the case of a corporation, with its corporate seal affixed.

(g) *Approval authority and hearings.* For each person submitting an application, the Regional Forester or other such approving official to whom such authority has been delegated, shall on the record and after an opportunity for a hearing, approve or disapprove the proposed sourcing area.

(h) *Application review and hearing procedures.* The application review and hearing process is as follows:

(1) Upon receipt of application, the approving official shall notify other parties of the application, and invite written comments, to be received no later than 30 days from date of notice. Notification will consist of publication of a notice in newspapers of general circulation in the area included in the sourcing area application. Additional notification will be made through agency mailing lists.

(2) After the comment period, the applicant and other parties who submitted written comments will be allowed ten (10) working days to review the written comments and request a hearing before the approving official.

(3) The approving official shall schedule a hearing, if one is requested, within 30 days after the period for reviewing written comments lapses, and shall notify all parties who submitted written comments of the date, place and time.

(4) The applicant will be notified of the approving official's decision on the application within four (4) months of receipt of the application.

(5) The following tests must be met for sourcing area approval:

(i) The approving official must find that the proposed sourcing area is geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such finding, the approving official shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(ii) The same local vicinity for consideration will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns.

(iii) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired and the similarity of products being produced by those facilities.

(iv) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

§ 223.191 * * *

§ 223.192 Procedures for a non-manufacturer.

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period shall not apply, if the person certified in writing to the Regional Forester of the region(s) in which the person purchases National Forest System timber by November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of 3 years and the exporting does cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

> I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) The certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer. The certificate must be notarized.

§ 223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.

(a) *Annual reports.* Each person who acquires unprocessed timber originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States shall submit an annual report on a form provided by the Forest Service on the acquisition and disposition of such timber. Such report shall be on a fiscal year basis and shall be sent to the appropriate Regional Forester not later than December 1 of each year, beginning December 1, 1991. The form shall include:

(1) A statement of the volume of unprocessed Federal timber in inventory at the beginning of the fiscal year;

(2) A statement of the volume, from whom acquired, origin, date of acquisition, sale name, U.S. contract number, log brand, bar coded tag number, and other markings of unprocessed Federal timber that the person acquired;

(3) A statement of the volume of unprocessed Federal timber that was processed in an owned or operated manufacturing facility;

(4) A statement of the volume, to whom transferred, origin, date of disposal, sale name, U.S. contract number, log brand, bar coded tag number, and other markings of unprocessed Federal timber sold, exchanged, or otherwise conveyed to another person;

(5) A statement of volume of unprocessed Federal timber held in inventory at the end of the fiscal year;

(6) An agreement to retain records of all such transactions involving unprocessed Federal timber, and to make such records available for inspection upon request of an authorized official of the United States for three (3) years from date of disposal by manufacturing or transfer; and

(7) A certificate stating that the information supplied is a true, accurate, current, and complete statement of the receipt and disposition of unprocessed timber originating from Federal lands to the best of the certifier's knowledge. The certificate acknowledges that failure to report completely and accurately the receipt and disposition of timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act (18 U.S.C. 1001). The certifier must acknowledge that he/she has read and understands the form. The certification states that the information provided is not confidential.

(b) *Transfer of unprocessed Federal timber.* Each person who transfers to another person unprocessed timber originating from Federal lands shall, before completing such transfer:

(1) Provide to such other person a written notice of origin, species, volume, from whom acquired, sale name, U.S. contract number, log brand, bar coded tag number, and other markings of unprocessed Federal timber on a form provided by the Forest Service;

(2) Certify that the information supplied is a true, accurate, current, and complete statement to the best of the certifier's knowledge, and agreeing to send the form to the National Forest, the Bureau of Land Management District, or other office as agreed, that administers the lands from which the timber originated within 10 days of the transfer and retain a copy for the certifier's records. The certifier agrees to obtain a fully completed notice of origin form from the transferee. The certifier acknowledges that failure to report completely and accurately the receipt and disposition and/or transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620 *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001). The certifier also must acknowledge that he/she has read and understands the form. The certificate also states that the information provided is not confidential.

(3) Agree to retain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of transfer and to make all records involving log transactions available to an appropriate U.S. government official upon request.

(4) Send a copy, within 10 days of such transfer, of all notices, acknowledgements, and agreements, required by this section to the appropriate Regional Forester, or other official to whom such authority is delegated.

(5) Obtain from the person acquiring such timber on the same form provided by the Forest Service:

(i) An agreement to retain for a period of three (3) years from date of transfer the records of all sales, exchanges, or other disposition of such timber, and make such records available for

inspection upon the request of an authorized official of the United States;

(ii) An agreement to maintain and/or replace all marks and tags identifying the Federal origin of each piece of unprocessed Federal timber as described in § 223.195;

(iii) An agreement to complete a notice or origin form and receive acknowledgement of Federal origin and receive an agreement to comply with the Act and regulations in such form if the person transfers any or all of the timber listed in the document;

(iv) An acknowledgement of the prohibition against acquiring unprocessed Federal timber from a person who is prohibited by the Act from purchasing the timber directly from the United States;

(v) An acknowledgement of the prohibitions against exporting unprocessed Federal timber and against acquiring such timber in substitution for unprocessed private timber west of the 100th meridian in the continguous 48 States;

(vi) A certification stating its business size and manufacturing classification, in compliance with the Small Business Administration Regulations at 13 CFR part 121; and

(vii) A certificate stating that the person has received the notice of origin form, that the information supplied is a true, accurate, current, and complete statement of the receipt and disposition of the unprocessed timber originating from Federal lands to the best of the certifier's knowledge, and stating that the certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act. The certifier acknowledges that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620 *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001). The certifier also must acknowledge that he/she has read and understands the form. The certification states that the information provided is not confidential.

§ 223.194 Procedure for reporting the acquisition and disposition of unprocessed private timber.

(a) *Notice of domestic processing requirement.* Each person who acquires unprocessed timber originating from Federal lands located west of the 100th meridian in the 48 contiguous States, and who also possesses or acquires unprocessed private timber from private lands located west of the 100th meridian in the 48 contiguous States, or from private lands located within an approved sourcing area, and in turn sells, trades or otherwise conveys such unprocessed private timber to another person, must include a statement notifying such person acquiring the unprocessed private timber that such private timber must be domestically processed. Such statement on a form provided by the Forest Service must accompany each transaction involving such unprocessed private timber, and shall provide:

(1) Notice to the person receiving the unprocessed private timber that exporting that timber would violate the regulations at 36 CFR part 223 prohibiting substitution;

(2) Notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by a spot of highway yellow paint that must be retained on the timber;

(3) For the acknowledgement of the notice by the receiving person;

(4) For an agreement to include the statement in any subsequent transaction documents;

(5) A signed copy of the transaction statement to be mailed to the Regional Forester within 10 days of the transaction; and

(6) An agreement to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal or private lands for a period of three (3) years from the date of disposal by manufacturing or transfer.

(b) *Statement of notice and acknowledgement.* The notice and acknowledgement statement for transfer of private timber required to be domestically processed shall read as follows: "I (name of person transferring timber) hereby notify (name of person receiving timber) that the unprocessed timber involved in this transaction must be domestically manufactured into lumber or other products in accordance with the Forest Resources Conservation and Shortage Relief Act of 1990 (Act) (16 U.S.C. 620 *et seq.*) and its implementing regulations. All unprocessed logs requiring domestic manufacturing are identified by yellow paint markings and may not be exported. A copy of this statement will be mailed by me to the Forest Service Regional Forester in whose Region this transaction has occurred within 10 days of this transfer. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from all sources for a period of three (3) years from the date of disposal by manufacture or transfer. I acknowledge that failure to comply with the domestic manufacturing requirements of this unprocessed timber or failure to notify subsequent persons of such requirement, will subject me to the civil penalties and administrative remedies provided in the Act and regulations issued under the Act. I understand that failure to completely and accurately report and identify such unprocessed timber would be a violation of the Act and regulations issued under the Act and the False Statements Act (18 U.S.C. 1001).

(Signature of transferor and date)

I (Name of person receiving timber) hereby acknowledge receiving notice that in accordance with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) and its implementing regulations, the unprocessed timber involved in this transaction requires domestic manufacturing, and may not be exported. I certify that I will notify, in like manner, any subsequent person to whom I may transfer any of this unprocessed timber of the domestic manufacturing requirement and prohibition against exporting. I further agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from all sources for a period of three (3) years from the date of disposal by manufacture or transfer. I acknowledge that failure to comply with the domestic manufacturing requirements of this unprocessed timber or failure to notify subsequent persons of such requirement, will subject me to the civil penalties and administrative remedies provided in the Act and regulations issued under the Act. I understand that failure to completely and accurately report and identify such unprocessed timber would be a violation of the Act, and regulations issued under the Act and the False Statements Act (18 U.S.C. 1001).

(Signature of transferee and date)

§ 223.195 Procedures for identifying and marking unprocessed logs.

(a) *Highway yellow paint.* The use of highway yellow paint on unprocessed logs west of the 100th meridian in the contiguous 48 States shall be reserved for identifying logs requiring domestic manufacturing.

(b) *Preserving identification.* All identifying marks or tags placed on an unprocessed log, to identify the National Forest System origin of that log and/or to identify the log as requiring domestic processing, shall be retained on the log until the log is domestically processed. If the identifying marks or tags are lost, removed, or become unreadable they shall be replaced. If the log is cut into two or more pieces, each piece shall be

identified in the same manner as the original piece.

(c) *National Forest System logs.* All unprocessed logs originating from National Forest System timber sales west of the 100th meridian in the 48 contiguous States shall be marked on each end as follows:

(1) Painted with a spot of highway yellow paint not less than three square inches in size;

(2) Branded with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the logs originate. The brand pattern may not be used to mark logs from any other source until such brand pattern is released in writing by the Forest Supervisor.

(3) Unprocessed logs sold to a third party shall be tagged on one end with a bar coded tag. The tag shall identify the origin of the log by timber sale contract number, region, national forest, ranger district, and log number; and

(4) Regional Foresters of Regions 1, 2, 3, and 4 may waive these requirements on an individual timber sale basis using the following criteria:

(i) There is no history of logs from any origin being exported from the area of the purchaser's operations;

(ii) The purchaser certifies that he/she has not exported or sold for export unprocessed timber from private lands west of the 100th meridian in the contiguous 48 States in the previous 24 months. The certification states:

> I certify that I have not exported or sold for export unprocessed timber from private lands west of the 100th meridian in the contiguous 48 States in the previous 24 months. I desire a waiver of the requirements to brand, paint and tag individual logs originating from the _____ timber sale, U.S. contract number pursuant to 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990; 16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations at 36 CFR part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.

; and

(iii) The purchaser otherwise complies with the regulations relating to transfers of logs between persons.

(d) *Private logs.* All unprocessed logs originating from private lands west of the 100th meridian in the contiguous 48 States that require domestic manufacturing pursuant to § 223.194 of this subpart, shall be painted on each end with a spot of highway yellow paint not less than three (3) square inches in size.

§ 223.196 Civil penalties for violation.

(a) *Exporting Federal timber.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person, with willful disregard for the prohibition in the Act against exporting unprocessed Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of the Act, the Secretary may assess against such person a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(b) *Other violations.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person has violated any provision of the Act, or any regulation issued under the Act relating to National Forest System lands, notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of such Act, the Secretary may:

(1) Assess against such person a civil penalty of not more than $500,000, if the Secretary determines that the person committed such violation willfully;

(2) Assess against such person a civil penalty of not more than $75,000 for each violation, if the Secretary determines that the person committed such violation in disregard of such provision or regulation; or

(3) Assess against such person a civil penalty of not more than $50,000 for each violation, if the Secretary determines that the person should have known that the action constituted a violation.

(c) *Penalties not exclusive and judicial review.* A penalty assessed under paragraph (a) or (b) of this section shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

§ 223.197 Civil penalty assessment procedures.

Adjudicatory procedures for hearing alleged violations of this Act and its implementing regulations and assessing penalties shall be conducted under the rules of practice governing formal adjudicatory proceedings instituted by the Secretary. Such procedures are found at 7 CFR 1.130 *et seq.*

§ 223.198 Administrative remedies.

In addition to possible debarment action provided under subpart C of this part, the Chief of the Forest Service, or other official to whom such authority is delegated, may cancel any timber sale contract entered into with a person found to have violated the Act or regulations issued under the Act. Such a finding, shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) of this part.

§ 223.199 Procedures for cooperation with other agencies.

The Regional Foresters may enter into agreements to cooperate with other Federal, State, and local agencies for monitoring, surveillance, and enforcement of this Act.

§ 223.200 Determinations of surplus species.

(a) Determinations that specific quantities of grades and species are surplus to domestic manufacturing needs and withdrawals of such determinations shall be made in accordance with title 5, United States Code, 553.

(b) Review of a determination shall be made at least once in every 3-year period. Notice of such review shall be published in the **Federal Register**. The public shall have no less than 30 days to submit comments on the review.

(c) Alaska yellow cedar and Port Orford cedar, those species found by the Secretary of Agriculture to be surplus to domestic processing needs pursuant to 36 CFR 223.163, the rules in effect prior to August 20, 1990, shall continue in that status, until such time as new determinations are published.

§ 223.201 Limitations on timber harvested in Alaska.

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in that State for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will (a) permit more complete utilization on areas being logged primarily for local manufacture, (b) prevent loss or serious deterioration of logs unsaleable locally because of an unforeseen loss of market, (c) permit the salvage of timber damaged by wind, insects, fire or other catastrophe, (d) bring into use a minor species of little importance to local industrial

development, or (e) provide material required to meet urgent and unusual needs of the Nation. (Sec. 14, Pub. L. 96–588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96–126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94–373; sec. 1, 30 Stat. 35, as amended (16 U.S.C 551))

§ 223.202 Information requirements.

(a) The application procedures in §§ 223.193 and 223.194 of this subpart constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–XXXX.

(b) The recordkeeping and reporting procedures in §§ 223.187, 223.190, 223.192, and some of the procedures in § 223.189 received an OMB number, published in the interim rule of November 20, 1990 (55 FR 48752). The number is 0956–0114.

PART 261—PROHIBITIONS

12. The authority citation for part 261 is revised to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)–(d)(1); 16 U.S.C. 620(f).

Subpart A—General Prohibitions

13. Amend 261.6 by adding paragraph (i) to read as follows:

§ 261.6 Timber and other forest products.

* * * * *

(i) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or its implementing regulations at 36 CFR 223.185–223.202.

Dated: December 24, 1990.

George M. Leonard,

Associate Chief.

[FR Doc. 91–2002 Filed 1–28–91; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restriction Exceptions.

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would incorporate certain requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) into existing regulations on timber sale contracts, establish new regulations for sourcing area disapproval and review procedures and establish application procedures for persons applying for a share of a limited amount of unprocessed timber originating from National Forest System lands in the State of Washington who, otherwise, would be prohibited from acquiring unprocessed Federal timber.

This proposed rule supplements another proposed rule which is also published in today's **Federal Register**. This rulemaking could not be incorporated in the other proposed rule because of different statutory deadlines.

DATES: Comments must be received in writing by February 28, 1991.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead (477–6893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff, (202) 475–3755.

SUPPLEMENTARY INFORMATION: This proposed rule implements the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (hereafter referred to as the Act). This proposed rule accompanies the proposed rule published in today's **Federal Register** in this part VI. The provisions to be implemented by this rule are as follows:

1. To continue the timber export and substitution reporting procedures required under contracts awarded prior to August 20, 1990;

2. To establish revised procedures for the disapproval of sourcing area applications and the review of approved sourcing areas; and

3. To establish procedures for a person who exports private timber to acquire a limited amount of unprocessed timber originating from National Forest System lands within the State of Washington.

This proposed rule is published separately from a comprehensive log export proposed rule appearing elsewhere in this issue of the **Federal Register** in order to implement provisions that must take effect before the statutory deadline of May 20, 1991 for promulgating regulations. This rule provides a shorter comment period than the more comprehensive proposed rule in order to meet the statutory deadlines.

The following sections of the Act must be implemented before the May 20, 1991, deadline: Subsection 490(b)(2) of the Act requires the establishment of the amount of the apportioned shares of unprocessed timber originating from National Forest System lands located in the State of Washington to be published by rule not later than May 20, 1991. Therefore, the application procedures for determining proportionate shares must be in place before then. This proposed rule adds § 223.203 to subpart F to provide the application procedures for determining the proportionate shares. The statutory deadline for approval or disapproval of a sourcing area is April 20, 1991, at which time applicants whose sourcing areas are disapproved have 90 days to complete a certificate to cease exporting private timber in order to avoid the required phase-out of Federal timber purchases. Therefore, the format of the certificate must be finalized no later than April 20, 1991, one month before the May 20, 1991, deadline in the Act for promulgating regulations. This rule proposes to amend § 223.191 of subpart F, published in the interim rule on November 20, 1990 (55 FR 48572), to provide a detailed process for submission of the certificate. Section 223.191, as published in the interim rule, continues to have the force and effect of law. Approved sourcing area applicants will be notified of the sourcing area review procedures in the notice of approval.

Section 223.48 of the regulations continues the reporting procedures required in contracts awarded prior to August 20, 1990. This section is included in this proposed rule to clarify that those contracts are subject to the reporting requirements in § 223.48.

Amendment to Part 223 Subpart B

Section 223.48 of subpart B of the current rules governing timber sale contracts must be revised to reflect passage of the Act. Accordingly, this proposed rule amends paragraph (a) to make clear that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the timber export and substitution rules at subpart D of part 223. The timber export and substitution reporting procedures required under these contracts under paragraphs (a)–(c) of the current rule will remain the same but are redesignated in this proposed rule. A new paragraph (b) would be added to direct that all contracts awarded after August 20, 1990, shall include a

provision making such contracts subject to the new Act.

Amendment to Part 223 Subpart F

This proposed rule revises § 223.191 of the interim rule, published November 20, 1990 (55 FR 48572), and adds § 223.203 to subpart F. In order for the public to understand the structural relationship of this limited proposed rule to the more comprehensive proposed rule on log exports (which is published in this same issue of the **Federal Register**) this rule proposes only those sections that are not addressed in the more comprehensive proposed rule. Upon adoption of the comprehensive log export rules, the provisions of this rule will be incorporated into the comprehensive rule and coding may change at that time. The comprehensive rule, proposed in this volume of the **Federal Register**, also includes the provisions of the interim rule implements §§ 223.159 and 223.185–194, and continues to have the force and effect of law.

Section 223.191 Sourcing area disapproval and review procedures. Section 490(c) of the Act provides a limited exemption from the prohibitions against substitution for owners of operators of manufacturing facilities. If a person has a sourcing area approved by the Secretary, it is possible to purchase Federal timber from within the sourcing area and export private timber originating outside of the sourcing area without violating the prohibitions against substitution. The procedures for submitting sourcing area applications are outlined in § 223.190 of the interim rule, published November 20, 1990 (55 FR 48572). The disapproval and review procedures were also published in the interim rule. Section 223.191 of this proposed rule amends § 223.191 of the interim rule to provide more detail of the disapproval and review process for sourcing areas. For a complete discussion of the sourcing area provisions and the implementing regulations, *see also* the interim rule and the proposed comprehensive rule published in today's **Federal Register**.

Subsection 490(c)(4) of the Act permits a person whose sourcing area application has been disapproved, the phase-out purchases of unprocessed Federal timber and provides procedures for avoiding such purchasing phase-out if such persons certifies that he/she will cease exporting. Subsection 490(c)(5) of the Act states that sourcing area determinations shall be reviewed, in accordance with the procedures in the Act, not less often than every five years. Section 223.191 of this proposed rule implements subsections 490 (c)(4) and (c)(5) of the Act.

Section 223.191(a) of this proposed rule recites the limited amount of unprocessed Federal timber that a disapproved sourcing area applicant may purchase during the 15-month period after disapproval. The applicant may purchase up to 75 percent of his/her annual average of scuh purchases from within the sourcing area for which the applicant applied during the nine-month period following disapproval. The annual average will be based on the applicant's purchases in the five full fiscal years prior to submission of the sourcing area application. In the subsequent six-month period, the amount of unprocessed Federal timber that the purchaser may purchase is limited to 25 percent of such annual average.

Section 223.191(b) mirrors the language of the Act and establishes procedurs for the disapproved applicant to purchase additional Federal timber within the disapproved sourcing area without being subject to the phase-out Federal timber purchasing procedures if: Such person certifies, within 90 days after receiving disapproval of such application, that the person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Regional Forester for which the application would have been approved; provides to the appropriate Regional Forester the annual volume of timber exported during the five (5) full fiscal years immediately preceding submission of the application, and originating from private lands within the area that would have been approved as a sourcing area; and agrees to retain and make available for inspection records of all transactions involving the acquisition and disposition of unprocessed Federal and private timber for a period of three (3) years.

In order to enforce the Act and the export program a person whose application for a sourcing area has been disapproved is required to certify that he or she fully understands the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. The agency must rely on the information provided by the applicants regarding intent to cease exporting within the 15-month period, and regarding the volume of unprocessed private timber from within the sourcing area for which the application would have been approved, that has been exported during the 5 full fiscal years immediately prior to submission of the application. The applicant also must acknowledge in the certification an understanding that the information provided is related to the enforcement of the program. This certification will enable the agency to ensure that the applicant is in complete compliance with the Act.

Applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedites provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts and/or debarment. Incomplete or inaccurate information also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.191(c) of this proposed rule sets forth the conditions by which an applicant in paragraph (b) may purchase unprocessed Federal timber and export private timber during the 15-month phase-out period.

Purchases of unprocessed Federal timber from within the disapproved sourcing area during the 15-month period following disapproval may not exceed 125 percent of the annual average of such person's purchase of unprocessed timber originating from Federal lands in the disapproved sourcing area during the five full fiscal years immediately prior to submission of the application which was denied. Further, persons purchasing unprocessed Federal timber from within the disapproved sourcing area may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area for which the application would have been approved in amounts that exceed 125 percent of the annual average of such person's exports of unprocessed timber from such private lands during the five full fiscal years immediately prior to submission of the application.

The Regional Forester will provide the applicant with a map of sufficient scale showing the boundary of a sourcing area which would have been approved as a part of the disapproval notification.

The annual average of purchases of unprocessed timber originating from Federal lands within the disapproved sourcing area will be determined by the Regional Forester using existing Forest Service records. This information will be provided to the applicant in the disapproval notice. This information will provide the applicant with the information needed to develop timber

purchasing plans to source owned or operated manufacturing facilities.

The annual average of private timber exports from the area that would have been approved will be provided by the applicant at the time the certification to cease such exports is submitted. This information is necessary for monitoring compliance, and enforcement of the Act.

Subsection 490(c)(5) of the Act requires that review of approved sourcing areas will occur not less often than every five (5) years. Section 223.191(d) of this proposed rule would establish the procedures for review of approved sourcing areas. These proposed procedures for review provide that a tentative date for review will be included in the approval notice. The Regional Forester will notify the person of the opportunity for review of the sourcing area not later than 60 days prior to the tentative review date. The person must request the review in writing to the Regional Forester not less than 30 days prior to the tentative date. If the person fails to submit such a request as prescribed, the sourcing area shall terminate on the established tentative review date. Reviews shall follow the same public notice procedures established for initial approval published in the interim rule (55 FR 48572) and reprinted in the accompanying proposed rule in this volume. The Department reserves the right to schedule a review at any time during the five year period, with 60 days notice. The ability to schedule a review at any time maintains the Department's flexibility to ensure proper sourcing areas.

Section 223.203 Indirect substitution exception for National Forest System timber from the State of Washington. Section 223.203 of this proposed rule implements portions of section 490 of the Act (16 U.S.C. 620b). Section 490 places limitations on the direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. For a complete discussion of the substitution provisions and the implementing regulations, *see also* the interim rule (55 FR 48572) and the accompanying proposed rule in today's **Federal Register**.

This proposed rule implements subsection 490(b)(2) of the Act (16 U.S.C. 620b), which provides a limited exception to the prohibition against indirect substitution of unprocessed timber originating from Federal lands in the State of Washington. This timber may be purchased only by a person otherwise covered by the prohibition in section 490(b)(1) of the Act, the prohibition against indirect substitution.

Subsection 490(b)(2) provides that such limit shall equal:

(i) The amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share of 50 million board feet.

Section 223.203(b) of this proposed rule would establish the procedures for implementing subsection 490(b)(2). It would also establish procedures for applying for a proportionate share of the 50 million board feet purchase limit and establish that any person who exceeds his/her share of these purchase rights, in any fiscal year, will be in violation of the substitution prohibitions of the Act.

A person wishing to apply for a proportionate share of the 50 million board feet purchase limit must submit, in writing, in his/her application, substantial evidence that the prohibition against indirect substitution applies to the applicant. This would require an analysis of the Act's provisions against substitution, including review of any exceptions that may apply to the applicant. This requirement is necessary to implement the Act's specific statement in section 490(b)(2) regarding eligibility for this exception. Further, if a person were not subject to the prohibition against indirect substitution in section 490(b), there would be no reason to provide the applicant with a limited exemption from the prohibition. A person wishing to apply for a proportionate share also must have acquired unprocessed timber from National Forest System (NFS) lands within the State of Washington during fiscal year 1988, 1989, or 1990.

The application must include:

(1) The amount of volume limit being requested;

(2) A summary, by fiscal year, of the applicant's acquisitions of unprocessed timber from NFS lands in the State of Washington for 1988, 1989 and 1990, listing:

(i) Date of acquisition;

(ii) Net merchantable volume in thousand board feet (MBF);

(iii) From whom acquired;

(iv) National forest of origin; and

(v) Volume totals by fiscal year.

(3) A certificate attesting to the truthfulness, currency, completeness and accuracy of the information included in the application; an acknowledgement that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition against indirect substitution, contained in section 490 of the Act applies to the certifier; an understanding of the substitution prohibitions of the Act; and an understanding that inaccurate or incomplete information would be a violation of the Act, its implementing regulations and contracts issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(4) An agreement to retain timber acquisition and disposition records for a period of three (3) years after disposition of the logs and to make these records available upon request of the Regional Forester or other official to whom such authority has been delegated.

This information is needed to evaluate the application, establish the eligibility of the applicant, and equitably apportion the shares of the 50 million board feet purchase limit.

In order to enfore the Act and the export program, applicants for a share of this 50 million board feet purchase limit are required to certify that they fully understand the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to apportion a share of the purchase limit, the agency must rely on the information provided by the applicants concerning the person's acquisition of unprocessed timber from NFS lands within the State of Washington. This certification will enable the agency to ensure that all applicants are apportioned an appropriate share and are in full compliance with the Act.

An applicant must be fully aware of and understand that providing incorrect or incomplete information in the application will subject the applicant to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. An incomplete or inaccurate application also will subject an applicant to the penalties found in the False Statements Act (18 U.S.C. 1001).

The application must be signed by the person applying for the share, or, in the case of a corporation, by its chief executive officer. The application must be on company letterhead and must be notarized.

Since these limited purchase rights are based on average yearly purchases, these rights are considered to be an annual limit. This proposed rule uses the fiscal year as the annual basis to be consistent with the historic purchasing patterns to be used to calculate a person's share.

The proportioned shares will be determined by the Regional Forester of Region 6, located in Portland, Oregon. The application must be mailed to the Regional Forester, Attn. Timber Management, P.O. Box 3623, Portland, Oregon 97208–3623. Region 6 oversees the NFS lands located in the State of Washington.

Because the Act requires the Secretary to establish the amounts of timber that may be purchased by a person under this exception "by rule," not later than May 20, 1991, a person must submit an application for a share of these rights not later than 20 days after procedures are finalized by publication of a final rule.

Environmental Impact

This proposed rule proposes only to establish certain procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It will not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale be analyzed in complaince with the National Environmental Policy Act and its implementing regulations. As such, this rule will have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of anlaysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

The application and reporting procedures in §§ 223.48, 223.191, and 223.203 of this proposed rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. These additional burdens have been submitted to The Office of Management and Budget (OMB) for review. These burdens will not be implemented until approved. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 and to the Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The proposed rule will not have an annual effect of $100 million or more on the economy, or substantially increase prices or costs for consumers, individual industries, Federal, State or local governments or geographic regions. Furthermore, the proposed rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes no additional requirements on small business timber sale purchasers or other small entities.

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting requirements, and Timber sales.

Therefore, for the reasons set forth in the preamble, part 223 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that date. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber, and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–XXXX.

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program

3. Subpart F is amended by revising § 223.191 and adding § 223.203 to read as follows:

§ 223.191 Sourcing area disapproval and review procedures.

(a) *Phase-out of Federal timber purchasing.* Notwithstanding any other provision of law, in the event the sourcing area application is disapproved, the applicant may purchase in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the area designated as a sourcing area in the applicant's application, in an amount not to exceed

75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the five (5) full fiscal years immediately prior to the date of the submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, described in § 223.189 of this subpart, shall apply.

(b) *Purchase phase-out exception.* A person whose application is disapproved may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if that person:

(1) Certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, that the applicant shall, within 15 months of such disapproval decision, cease the export of unprocessed timber originating from private lands from the geographic area for which the application would have been approved. Such signed certification shall read as follows:

> I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area for which the sourcing area approving official would have approved a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [insert date 15 months from date of receipt of the disapproval decision]. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that failure to cease such exporting as certified will be a violation of the Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001), and shall subject me to the penalties and remedies provided for such violation.

(2) This certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer, must be on company letterhead, and must be notarized.

(3) Provides to the Regional Forester his/her annual volume of timber exported during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved;

(4) Agrees to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(c) *Limits on purchases and exports.* During the 15-month period described in paragraph (b) of this section, such person may not:

(1) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(2) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(d) *Review procedures.* Sourcing area determinations will be reviewed not less often that every five (5) years. A tentative date for a review will be included in the approving official's decision notice. At least 30 days prior to the tentative review date, the person must submit a written request to the Regional Forester for review of the sourcing area. The Regional Forester will follow the procedures described in this section in making the review. At least 60 days prior to the tentative review date, the Regional Forester will notify the person of the pending review. If the person does not submit a request for review in accordance with the procedures described in this section, the sourcing area shall terminate on the review date. The Department reserves the right to schedule a review at any time during the five year period, with 60 days notice.

(e) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirement have been approved by the Office of Management and Budget and assigned clearance number 0596–XXXX.

§ 223.203 Indirect substitution exception for National Forest System timber from the State of Washington.

(a) *Indirect substitution restrictions.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States, pursuant to section 490(a) of the Act.

(b) *Indirect substitution exception for NFS timber from the State of Washington.* A limited amount of unprocessed NFS timber originating from within the State of Washington may be acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to section 490(b) of the Act.

(1) The amount of such timber shall be limited to whichever is less:

(i) The higher of the applicant's actual Federal timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet;

(3) The purchase limit right may be sold, traded, or otherwise exchanged with any other person, except that such rights may not be sold, traded or otherwise exchanged to persons already in possession of such rights obtained under this rule;

(4) A person wishing to apply for this exception must submit, in writing, in his/her application, substantial evidence that the prohibition against indirect substitution contained in section 490(b) of the Act applies to such applicant. An applicant also must have made purchases of National Forest System timber located in the State of Washington during fiscal years 1988, 1989 or 1990; and

(5) To obtain a share of the 50 million board feet excepted from the prohibition against indirect substitution, a person must submit an application. Applications are not confidential information and shall include:

(i) Amount of volume, in Thousand Board Feet (MBF), being requested;

(ii) A summary by fiscal year for 1988, 1989, and 1990, of the applicant's actual acquisitions of timber originating from NFS lands in the State of Washington, listing:

(A) Date of acquisition;

(B) Net merchantable volume in MBF;

(C) From whom acquired;

(D) National forest of origin; and

(E) Volume totals by fiscal year.

(iii) A signed certification which reads as follows:

I certify that under the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d) and the penalties provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is a true, accurate, current, and complete statement of my National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 or 1990. I acknowledge that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition against indirect substitution contained in section 490 of the Act applies to me. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620 *et seq.*), and may be subject to the penalties and remedies provided for such violation.

(iv) An agreement to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of three (3) years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated; and

(v) This application must be signed by the person making such application or, in the case of a corporation, by its chief executive officer. The application must be on a company letterhead and must be notarized.

(6) The application must be mailed to the Regional Forester in Portland, Oregon, 20 days after the procedures are finalized. The applicant will be notified of the approving official's decision by letter. If approved, the amount of the exception will become effective upon publication in the **Federal Register.**

(c) The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–XXXX.

Dated: December 24, 1990.

George M. Leonard,

Associate Chief.

[FR Doc. 91–2003 Filed 1–28–91; 8:45 am]

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federal register

Tuesday
January 29, 1991

Part VII

Department of Education

34 CFR Part 361

State Vocational Rehabilitation Services Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820-AA88

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the State Vocational Rehabilitation (VR) Services Program authorized under title I of the Rehabilitation Act of 1973, as amended, in order to implement a technical amendment made to the maintenance of effort (MOE) provision of the Act by Public Law 100–630, the Handicapped Programs Technical Amendments Act of 1988, and to provide an additional circumstance in which a State could qualify for a waiver of the MOE requirement.

DATES: Comments must be received on or before February 28, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Nell C. Carney, Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, Room 3325, 330 C Street SW., Washington, DC 20202–2735.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mark E. Shoob, Associate Commissioner, Office of Program Operations, Rehabilitation Services Administration, Room 3036, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–2574. Telephone (202) 732–1406 or TDD (202) 732–2848.

SUPPLEMENTARY INFORMATION: The NPRM would update and revise the maintenance of effort (MOE) provisions in program regulations in 34 CFR 361.86 by implementing a technical amendment made to the MOE provision of the Rehabilitation Act by Public Law 100–630 (the Handicapped Programs Technical Amendments Act of 1988), and by providing an additional circumstance in which a State could qualify for a waiver of the MOE requirement.

The 1988 technical amendment changes the timing of the statutory remedy for MOE noncompliance, reduction of a State's allotment, from the fiscal year in which the violation occurred to the following fiscal year. When the allotment reduction remedy was enacted in 1986, it provided for a reduction to take place in the same fiscal year as the violation. Because the Department does not receive information from States about the amount of their non-Federal program expenditures until 90 days after the end of the fiscal year, the Department was unable to apply this remedy. The Department requested, and the Congress enacted, a technical amendment in 1988 that now provides for allotment reductions to be made in the fiscal year following the fiscal year in which a violation occurs. A State's current year allotment is reduced by the amount of State funds it underspent in the prior fiscal year. This statutory change allows the Department sufficient time to determine whether States met MOE in the preceding year, to review any waiver requests submitted by non-complying States, and, if necessary, to withhold a portion of any State's current year allotment. Although the Department has been applying this remedy since enactment of the technical amendment, program regulations have not been changed. The NPRM would conform the regulations to current statute and practice.

The NPRM would also authorize the granting of a waiver in two instances: when exceptional or uncontrollable circumstances result in a general reduction of programs within the State, as currently permitted, or result in the vocational rehabilitation program incurring substantial expenditures for long-term purposes due to the one-time costs associated with construction or establishment of rehabilitation facilities, or the acquisition of equipment.

Presently, States must report to the Department all non-Federal expenditures under the State plan, including expenditures for construction and establishment projects. These expenditures are used to compute a State's required MOE level. Substantial expenditures for construction and establishment result in an increase in the State's MOE level that will continue for several years, because of the three-year averaging provision for MOE computation. The MOE provision can act as a disincentive to States that construct and establish rehabilitation facilities needed for the conduct of the State rehabilitation program. Construction and establishment funds are included in the computation of a State's MOE level even if they are additional to or are raised outside the normal sources of funding used to support the State program of services. For example, a State that constructs a large rehabilitation facility funded through a special bond issue must report these expenditures. The existing MOE provision also tends to have a negative effect upon States that conduct the VR program using higher proportions of State-owned and -operated rehabilitation facilities, because fluctuations in expenditures for construction and establishment are more likely to produce variations in MOE levels. Further, when construction and establishment expenditures cease and State overall expenditures fall below the required MOE level, Federal funds are required to be reduced. This reduction in funds has a negative impact on the client service delivery system.

The expanded waiver authority provided for in this NPRM will enable the Secretary, beginning in fiscal year 1991, to grant a waiver to any State that has failed to meet the MOE requirement in the prior fiscal year if that failure was caused by substantial capital expenditures made for the construction or establishment of rehabilitation facilities. The waiver provision applies to all construction and establishment costs that are allowable under title I of the Rehabilitation Act and that therefore would be included in the calculation of maintenance of effort.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State VR agencies, the regulations would not have an impact on small entities. States and State VR agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 361.86 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office

Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3323, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 361

Administrative practice and procedure, Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: January 23, 1991.

Ted Sanders,

Acting Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126, State Vocational Rehabilitation Services Program)

The Secretary proposes to amend part 361 of title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. Section 361.86 is revised to read as follows:

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(d), the Secretary pays to each State an amount computed in accordance with the requirements of section 111 of the Act. For fiscal years 1987 and 1988, the Federal share for each State is 80 percent, except for the cost of construction of rehabilitation facilities. Beginning in fiscal year 1989, the Federal share for each State decreases by one percent per year for five years for funds received in excess of the amount received in fiscal year 1988. The Federal share of these excess payments is 79 percent in fiscal year 1989; 78 percent in fiscal year 1990; 77 percent in fiscal year 1991; 76 percent in fiscal year 1992; and 75 percent in fiscal year 1993, except for the cost of construction of rehabilitation facilities.

(b) In fiscal year 1990 and each subsequent fiscal year, the Secretary reduces amounts otherwise payable to a State under this section for that fiscal year if the State's expenditures from non-Federal sources, as specified in § 361.76, under the State's approved plan for vocational rehabilitation services for the prior fiscal year, are less than the average of the State's total expenditures from non-Federal sources for the three fiscal years preceding that prior fiscal year.

(c) Any reduction in a State's allotment is equal to the amount by which the expenditures specified in paragraph (b)(1) of this section are less than the average expenditures specified in paragraph (b)(2) of this section.

(d) Expenditures from non-Federal sources referred to in paragraph (b) of this section do not include expenditures from non-Federal sources required to receive payments under subpart D of this part.

(e)(1) The Secretary may waive or modify any requirement or limitation in Section 111(a)(2) (A) and (B) of the Act, if the Secretary determines that a waiver or modification of the State maintenance of effort requirement is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue; and

(ii)(A) Result in a general reduction of programs within the State; or

(B) Result in the State making substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with construction or establishment of rehabilitation facilities, or the acquisition of equipment.

(2) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(f) If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for blind individuals and the rest of the plan, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan for the average of the total of those expenditures for the three preceding fiscal years.

(Authority: 29 U.S.C. 706(7), 711(c), and 731)

[FR Doc. 91–2058 Filed 1–28–91; 8:45 am]

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federal register

Tuesday
January 29, 1991

Part VIII

Department of Education

Training Programs for Educators—Innovative Alcohol Abuse Education Programs; Notice

DEPARTMENT OF EDUCATION

Training Programs for Educators—Innovative Alcohol Abuse Education Programs

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 1991.

SUMMARY: The Secretary of Education proposes to establish an absolute priority for a grant competition to be held in FY 1991 under section 4607(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3156–1(b)). Under this program, financial assistance is provided to public or private organizations, institutions, or agencies to train educators in strategies designed to mitigate problems associated with alcoholism in the family. The absolute priority would require that each application be for a project that: (1) Provides for region-wide services in one of five regions, and (2) trains educators who serve children in grades 5–8.

DATES: Comments must be received on or before February 28, 1991.

ADDRESSES: Comments should be addressed to Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue, SW., room 2135, Washington, DC. 20202–6439. Telephone: (202) 401–3500. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Projects supported under section 4607(b) of the Elementary and Secondary Education Act of 1965 (ESEA) must provide training in all of the following statutorily mandated areas:

Increase educators' awareness of children's problems that may be caused by an alcoholic parent;

Enhance educators' ability to identify children at risk for alcohol abuse;

Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and

Train educators to inform the public about the special problems of children who have an alcoholic parent.

With 1990 funds appropriated under section 4607(a) of the ESEA, the Department is currently developing the following: A handbook on alcohol abuse prevention for educators; a module on high-risk youth that will be added to *Learning to Live Drug Free* (the Department's recently issued drug prevention curriculum model); instructional materials on alcohol abuse education designed to assist educators of children of special populations (Hispanics, Blacks, Native Americans, and the economically disadvantaged); and materials for use by educators in classrooms where children of several cultures are represented.

These materials will be available by October 1991 and will be provided to grantees for use in training programs funded under this proposed priority.

By establishing an absolute priority mandating the provision of region-wide services, the Department hopes that training about alcohol abuse education will be available to educators in every State, providing maximum coverage of students; the funding available for this important program will be maximized through coordination and integration with other alcohol abuse prevention training efforts across the region; this competition will integrate prevention training efforts at SEAs and LEAs; and, duplication of existing training efforts will be avoided.

The Department has drawn regional boundaries for the provision of training and other prevention services in its regulations for Regional Centers for Drug-Free Schools and Communities. The boundaries in the proposed absolute priority will coincide with the regional center boundaries. We have encouraged States to work toward coordinated, regional responses to the provision of prevention services, and believe that this program provides another opportunity for States to share information and approaches—preferably among already developed networks about alcohol abuse prevention.

Proposed Absolute Priority

In addition to providing training in all of the statutorily-mandated areas, the Secretary proposes to give absolute preference under 34 CFR 75.105(c)(3) to applications for projects that

(1) Provide training to educators who serve children in grades 5–8; and

(2) Provide for region-wide training in one of the following geographic areas:

(a) Northeast

Connecticut
Delaware
Maine
Maryland
Massachusetts
New Hamphshire
New Jersey
New York
Ohio
Pennsyulvania
Rhode Island
Vermont

(b) Southeast

Alabama
District of Columbia
Florida
Georgia
Kentucky
North Carolina
Puerto Rico
South Carolina
Tennessee
Virginia
Virgin Island
West Virginia

(c) Midwest

Indiana
Illinois
Iowa
Michigan
Minnesota
Missouri
Nebraska
North Dakota
South Dakota
Wisconsin

(d) Southwest

Arizona
Arkansas
Colorado
Kansas
Louisiana
Mississippi
New Mexico
Oklahoma
Texas
Utah

(e) West

Alaska
American Samoa
California
Guam
Hawaii
Idaho
Montana
Nevada
Northern Mariana Islands
Oregon
Republic of Palau
Washington
Wyoming

Under 34 CFR 75.105(c)(3) the Secretary proposes to fund under this competition only applications that meet the absolute priority.

Proposed Competitive Preference:

The Secretary also proposes to give competitive preference to applications that:

(a) Demonstrate a comprehensive understanding of alcohol abuse at it relates to children of alcoholics and their families;

(b) Demonstrate the capability to establish relationships with local educational agencies, State educational agencies, and institutions of higher education that are sufficiently sound to faciliate the replication of the training to be provided under this grant; and

(c) Demonstrate the capability to contribute to increased public awareness of issues related to children

of alcoholics and their families through a dissemination network.

Under 34 CFR 75.105(c)(2)(i) the Secretary proposes to award up to 15 points to an application that meets this competitive preference. These points are in addition to any points the application earns under the selection criteria in 34 CFR 75.210.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a stregthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

The Secretary invites public comment on the proposed priority and competitive preference. This notice of proposed priority does not solicit applications, and Departments of Education staff will not review concept papers or preapplications. The publication of the proposed priorities does not bind the Federal government to fund projects in these areas, except as otherwise directed by statute. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of applications.

All comments submitted in response to this proposed priority and competitive preference will be available for public inspection during and after the comment period in room 2135, FOB No. #6, 400 Maryland Avenue S.W., Washington, DC between the hours of 9 a.m. and 4.30 p.m. Monday through Friday of each week except Federal holidays.

Authority: 20 USC 3156–1(b).

Dated: January 23, 1991.

Ted Sanders,

Acting Secretary of Education

(Catalog of Federal Domestic Assistance Number 84.238—Programs for Educators—Innovative Alcohol Abuse Education Programs)

[FR Doc. 91–2059 Filed 1–28–91; 8:45 am]

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federal register

Tuesday
January 29, 1991

Part IX

The President

Executive Order 12747—National Nutrition Monitoring Advisory Council

Federal Register

Federal Register
Vol. 56, No. 19
Tuesday, January 29, 1991

Presidential Documents

Title 3—

The President

Executive Order 12747 of January 25, 1991

National Nutrition Monitoring Advisory Council

By the authority vested in me as President by the Constitution and the laws of the United States, including the National Nutrition Monitoring and Related Research Act of 1990 ("Act") (Public Law 101–445, October 22, 1990) and the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Nutrition Monitoring Advisory Council ("Council"). The Council shall assist in carrying out the purposes of the Act, provide scientific and technical advice on the development and implementation of the coordinated program and comprehensive plan required by section 103 of the Act, and serve in an advisory capacity to the Secretary of Agriculture and the Secretary of Health and Human Services ("Secretaries") with respect to their responsibilities and functions under the Act.

Sec. 2. *Membership.* (A) *Composition.* The Council shall consist of nine voting members. Five of the members shall be appointed by the President upon the recommendation of the Secretaries. Four of the members shall be appointed by the Congress, of whom one shall be appointed by the Speaker of the House of Representatives, one shall be appointed by the minority leader of the House of Representatives, one shall be appointed by the President pro tempore of the Senate, and one shall be appointed by the minority leader of the Senate. The Council shall also include the joint chairpersons of the Interagency Board for Nutrition Monitoring and Related Research as ex officio nonvoting members.

(B) *Selection Criteria.* Each person appointed to the Council shall be selected solely on the basis of an established record of distinguished service and shall be eminent in one of the following fields:

(1) public health, including clinical dietetics, public health nutrition, epidemiology, clinical medicine, health education, or nutrition education;

(2) nutrition monitoring research, including nutrition monitoring and surveillance, food consumption patterns, nutritional anthropology, community nutrition research, nutritional biochemistry, food composition analysis, survey statistics, dietary-intake methodology, or nutrition status methodology; or

(3) food production and distribution, including agriculture, biotechnology, food engineering, economics, consumer psychology or sociology, food-system management, or food assistance.

(C) *Particular Representation Requirements.* The Council membership, at all times, shall include at least two representatives from each of the three areas of specialization listed in subsection (B), and shall have representatives from various geographic areas, the private sector, academia, scientific and professional societies, agriculture, minority organizations, and public interest organizations, and shall include a State or local government employee with a specialized interest in nutrition monitoring.

(D) *Chairperson.* The Chairperson of the Council shall be elected from and by the Council membership. The term of office shall not exceed 5 years. If a vacancy occurs in the Chairpersonship, the Council shall elect a member to fill such vacancy.

(E) *Term of Office.* The term of office of each of the voting members of the Council shall be 5 years, except that of the five members first appointed by the President, two members shall be appointed for a term of 2 years, two members for a term of 3 years, and one for a term of 4 years, as designated by the President at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of the term. No voting member shall be eligible to serve continuously for more than two consecutive terms.

(F) *Executive Secretary.* The Administrator of Nutrition Monitoring and Related Research (if appointed under section 101(d) of the Act) shall serve as the Executive Secretary of the Council.

Sec. 3. *Functions of the Council.* The Council shall:

(a) provide scientific and technical advice on the development and implementation of all components of the coordinated program and the comprehensive plan;

(b) evaluate the scientific and technical quality of the comprehensive plan and the effectiveness of the coordinated program;

(c) recommend to the Secretaries, on an annual basis, means of enhancing the comprehensive plan and the coordinated programs; and

(d) submit to the Secretaries annual reports that shall: (1) contain the components specified in paragraphs (b) and (c); and (2) be included in full in the biennial reports of the Secretaries to the President for transmittal to the Congress under section 102(b) of the Act.

Sec. 4. *Meetings.* The Council shall meet on a regular basis at the call of the Chairperson, or on the written request of one-third of the members. A majority of the appointed members of the Council shall constitute a quorum.

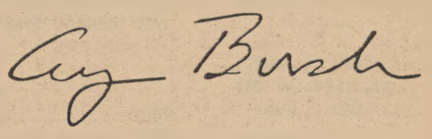
Sec. 5. *Administration.* (a) The heads of executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Council, upon request, with such information as it may require for the purposes of carrying out its functions.

(b) Members of the Council shall serve without compensation for their work on the Council. While engaged in the work of the Council, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Appointed members of the Council may not be employed by the Federal Government.

(c) To the extent provided by law and subject to the availability of appropriations, the Department of Agriculture shall provide the Council with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 6. *General provision.* Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the Council shall be performed by the Secretary of Agriculture, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 7. The Council shall terminate 10 years after the final comprehensive plan is prepared under section 103 of the Act.



THE WHITE HOUSE,
January 25, 1991.

[FR Doc. 91-2269
Filed 1-28-91; 11:27 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 23, 1991

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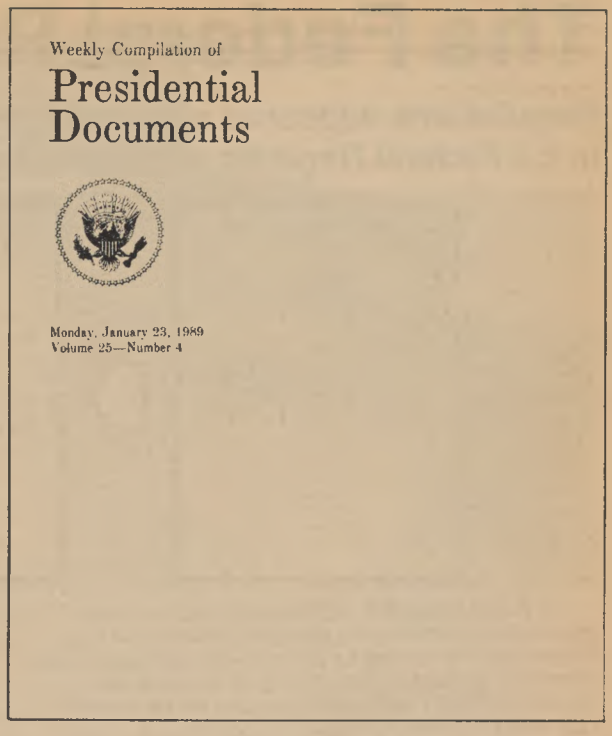

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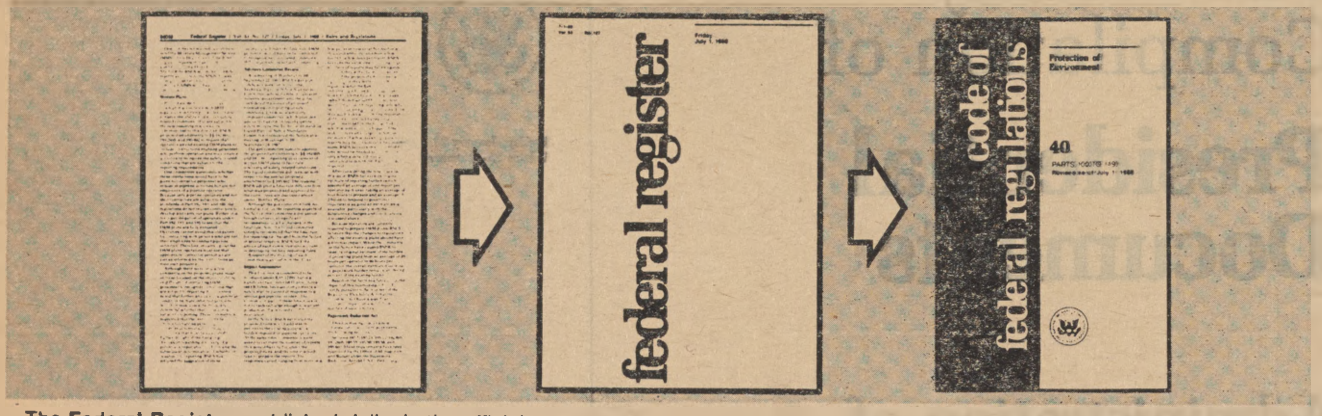

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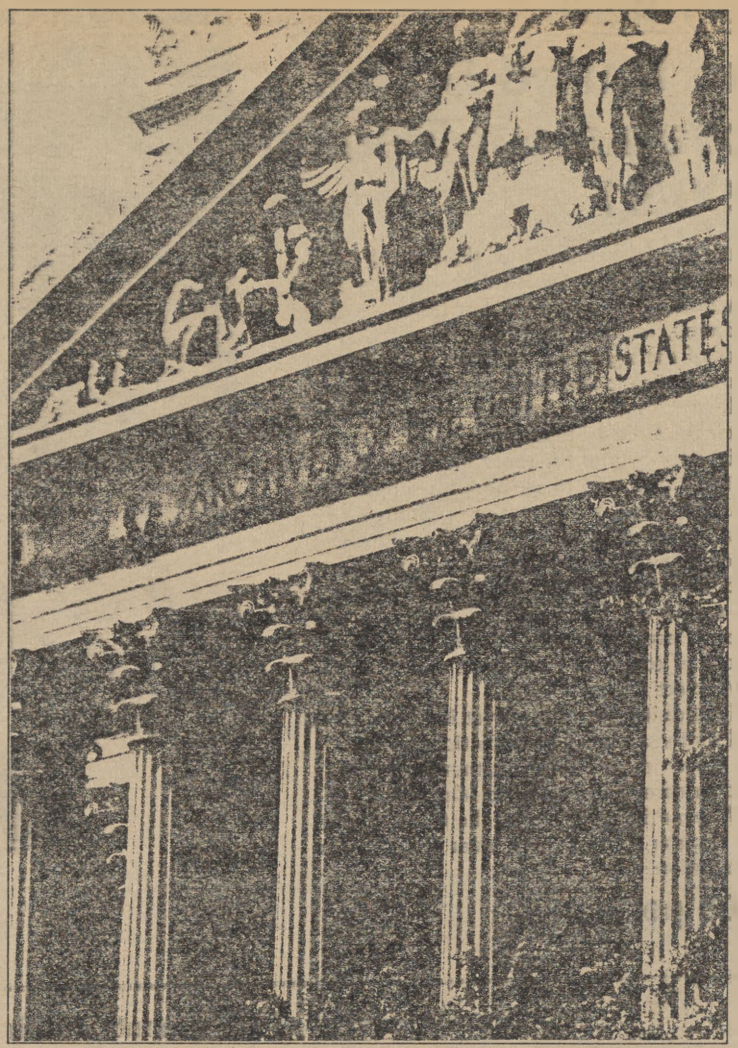

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