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Monday  
March 25, 1991

# Foreign Register

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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** March 28, at 9:00 a.m.
- WHERE:** Office of the Federal Register,  
First Floor Conference Room,  
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

### MIAMI, FL

- WHEN:** April 18:  
1st Session 9:00 am to 12 noon.  
2nd Session 1:30 pm to 4:30 pm
- WHERE:** 51 Southwest First Avenue  
Room 914  
Miami, FL
- RESERVATIONS:** 1-800-347-1997

### CHICAGO, IL

- WHEN:** April 25, at 9:00 am
- WHERE:** 219 S. Dearborn Street  
Conference Room 1220  
Chicago, IL
- RESERVATIONS:** 1-800-366-2998

### WASHINGTON, DC

- WHEN:** May 23, at 9:00 am
- WHERE:** Office of the Federal Register  
First Floor Conference Room  
1100 L Street, NW, Washington, DC
- RESERVATIONS:** 202-523-5240 (voice); 202-523-5229 (TDD)

**NOTE:** There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.



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The President

Proclamation 6263 of March 21, 1991

National Medal of Honor Day, 1991

By the President of the United States of America

## A Proclamation

While all of America's combat veterans have earned our abiding respect and gratitude, we honor in a special way those who have demonstrated exceptional heroism on the field of battle. The Medal of Honor, our country's highest military decoration, has been awarded to 3,440 Americans since the Civil War. During times of armed conflict, these individuals distinguished themselves through brave and selfless actions that were far above and beyond the call of duty.

The Medal of Honor is a poignant reminder of the tremendous price that some Americans have been willing to pay to protect the lives and liberty of others. Indeed, the courageous and loving sacrifices of our Medal of Honor recipients tell us a great deal about the value of freedom and the principles on which this Nation is founded.

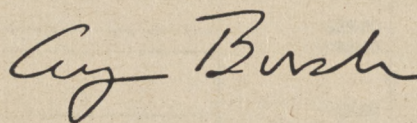
A number of those principles were recently at stake in the Persian Gulf region. We Americans are very proud of the U.S. service men and women who have taken part in the successful international effort to liberate Kuwait and to deter unprovoked aggression. They bravely answered the call to duty, knowing full well the costs it might entail, and each of them embodies the determined spirit of our Nation's combat veterans.

In his stirring poem, "A Psalm of Life," Henry Wadsworth Longfellow wrote: "Lives of great men all remind us/we can make our lives sublime/and, departing, leave behind us/footprints on the sands of time." The U.S. troops who recently served along the sands and off the shores of Saudi Arabia follow a long line of Americans who have boldly stepped forward to defend the universal cause of freedom. Today, as we offer a special tribute to our most distinguished combat veterans, the Medal of Honor recipients, we can be thankful for the extraordinary example they set.

The Congress, by Public Law 101-564, has designated March 25, 1991, as "National Medal of Honor Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 25, 1991, as National Medal of Honor Day, a day dedicated to all Medal of Honor recipients. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.





# Presidential Documents

Federal Register

Vol. 50, No. 27

Monday, March 23, 1981

Proclamation 5283 of March 23, 1981

Title 3—

## National Medal of Honor Day 1981

The President

By the President of the United States of America

### A Proclamation

While all of America's combat veterans have earned our highest respect and gratitude, we honor in a special way those who have demonstrated exceptional heroism on the field of battle. The Medal of Honor, our country's highest military decoration, has been awarded to 3,440 Americans since the Civil War. During times of armed conflict, these individuals distinguished themselves through brave and selfless actions that were far above and beyond the call of duty.

The Medal of Honor is a poignant reminder of the tremendous price that some Americans have been willing to pay to protect the lives and liberty of others. Indeed, the courageous and loving sacrifices of our Medal of Honor recipients tell us a great deal about the value of freedom and the principles on which this Nation is founded.

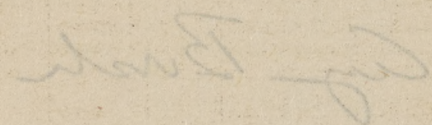
A number of those principles were recently at stake in the Persian Gulf region. We Americans are very proud of the U.S. service men and women who have taken part in the successful international effort to insure Kuwait and to deter unprovoked aggression. They bravely answered the call to duty, knowing full well the costs it might entail, and each of them embodied the determination of our Nation's combat veterans.

In his stirring poem "A Psalm of Life," Henry Wadsworth Longfellow wrote: "Lives of great men all remind us we can make our lives substantial, / Departing, leave behind us footprints on the sands of time." The U.S. troops who recently served along the sands and off the shores of Saudi Arabia follow a long line of Americans who have boldly stepped forward to defend the universal cause of freedom. Today, as we offer a special tribute to our most distinguished combat veterans, the Medal of Honor recipients, we can be thankful for the extraordinary example they set.

The Congress, by Public Law 101-504, has designated March 23, 1981, as "National Medal of Honor Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 23, 1981, as National Medal of Honor Day, a day dedicated to all Medal of Honor recipients, and activities, and observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the United States of America, this 22nd day of March, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.



For the President  
Vice President  
and  
Secretary of State



# Rules and Regulations

Federal Register

Vol. 56, No. 57

Monday, March 25, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

#### 7 CFR Part 800

RIN 0580-AA17

#### Fees for Railroad Track Scale Test Services

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is revising the existing fee schedule and establishing a separate hourly rate for providing railroad track scale test services to applicants for the service under the United States Grain Standards Act, as amended (USGSA). This fee is intended to recover the projected operating costs which include related supervisory and administrative costs, and provide for reasonable operating reserves.

**EFFECTIVE DATE:** April 24, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Allen Atwood, Resources Management Division, USDA, FGIS, Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This final rule is issued in conformance with Executive Order

12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

#### Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most requestors of railroad track scale test services under the USGSA do not meet the requirements for small entities.

#### Comments

In the June 28, 1990, *Federal Register* (55 FR 26598) FGIS proposed to revise the existing fee schedule and establish a separate hourly rate for providing railroad track scale test services to applicants for the service under the USGSA, as amended. The proposal requested interested persons to submit written comments to be considered in this action by July 30, 1990. No comments were received during that time. However, two comments were received after the comment period closed.

#### Background

Section 7B (a) of the USGSA, as amended (7 U.S.C. 79b(a)), authorizes the Administrator to provide for the testing of all equipment used in the official weighing program, including railroad track scales that are used for the official weighing of grain. In addition, that section of the Act authorizes the promulgation of regulations for the charging and collection of reasonable fees to cover the estimated incidental costs of FGIS for the performance of such testing.

Currently, applicants that request and are provided official railroad track scale

test services are assessed the noncontract hourly rate of \$38.80, for regular workday (Monday and Saturday) and \$52.80 for nonregular workday (Sunday and Holiday) as described in 7 CFR § 800.71 Schedule A (Original Inspection and Official Weighing).

#### Final Action

FGIS is establishing a separate hourly rate for providing track scale test services to applicants for the service under the USGSA. This hourly rate is intended to cover the projected operating costs, which include related supervisory and administrative costs. FGIS' operating costs include personnel compensation, personnel benefits, rent, communications, utilities, supplies, equipment, and travel.

Further analysis by FGIS of the actual FY 90 program costs and revenues indicates that the proposed hourly rates for official railroad track scale test services of regular workdays (Monday-Saturday) of \$56.60 per hour and nonregular workdays (Sunday and Holidays) of \$73.60 per hour can be reduced to \$44.00 and \$59.90 per hour respectively. Accordingly, this final rule provides for these hourly rates.

List of Subjects in 7 CFR part 800: Administrative practice and procedure, Grain.

## PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 is revised as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.71(a) is amended by revising schedule A to read as follows:

#### § 800.71 Fees assessed by the Service.

\* \* \* \* \*

### SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES <sup>1</sup>

Inspection & weighing service (bulked or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative).....	\$29.20	\$39.80
(ii) Noncontract (per hour per service representative) .....	38.80	52.80
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: <sup>2,3</sup>		
(i) Grading service:		
(A) Grade and factors (per sample).....	56.60	73.60
(B) Protein test (per sample).....	14.15	18.40
(C) Factor determination (per factor).....	28.30	36.80



**SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES<sup>1</sup>—Continued**

Inspection & weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(ii) Sampling services (per hour per service representative) .....	56.60	73.60
(iii) Review of weighing service (per hour per service representative) .....	56.60	73.60
(3) Extra copies of certificates (per copy) .....	3.00	3.00
(4) Official track scale testing service per hour .....	44.00	59.90

<sup>1</sup> Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

<sup>2</sup> Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

<sup>3</sup> If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

\* \* \* \* \*

Dated: February 5, 1991.

John C. Foltz,  
Administrator.

[FR Doc. 91-6954 Filed 3-22-91; 8:45 am]  
BILLING CODE 3410-EN-F

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 91-031]

#### Animal Welfare Standards; Public Meetings

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of public meetings.

**SUMMARY:** The United States Department of Agriculture and the United States Department of Health and Human Services will present three colloquiums concerning the Animal Welfare Regulations published in the *Federal Register* on February 15, 1991.

**DATES:** The three colloquiums concerning the final rule will be held on April 10, 1991, in San Francisco, California; on May 1, 1991, in St. Louis, Missouri; and on June 6, 1991, in Washington, DC. Registration for each colloquium will begin at 7:30 a.m., and adjournment will occur at 5:30 p.m.

**ADDRESSES:** The colloquiums will be held at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California, on April 10, 1991; at the Hyatt Regency Hotel at Union Station, St. Louis, Missouri, on May 1, 1991; and at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, DC, on June 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dr. Timothy Mandrell, Veterinary Medical Officer, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505

Belcrest Road, Hyattsville, MD 20782, 301-436-7833.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 15, 1991, the Animal and Plant Health Inspection Service published in the *Federal Register* a final rule amending the regulations for the humane handling, care, treatment, and transportation of dogs and cats, and nonhuman primates (56 FR 6426-6505, Docket Number 90-218). This final rule revises the regulations contained in 9 CFR part 3, subparts A and D. It is the result of an intensive effort that began in 1985 when Congress amended the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) in Public Law 99-198, "The Food Security Act of 1985," and directed the Secretary of Agriculture to promulgate certain new regulations governing the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors, including requirements for exercise of dogs and for a physical environment adequate to promote the psychological well-being of nonhuman primates.

Three colloquiums will be held to provide information to the public concerning the final rule. The colloquiums, entitled "USDA Regulations: Interpretation and Integration with Public Health Service Policy," will be sponsored jointly by Regulatory Enforcement and Animal Care, Animal and Plant Health Inspection Service, United States Department of Agriculture, and by the Division of Animal Welfare, Office for Protection from Research Risks, The National Institutes of Health, United States Department of Health and Human Services.

Animal welfare experts from both Departments will give presentations on the following subjects:

Regulatory Interpretation: Institutional Animal Care and Use Committee Issues

Exercise for Dogs

Environment Enhancement for Nonhuman Primates

Integration with Public Health Service Policy

**Authority:** 7 U.S.C. 2131-2156; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 20th day of March 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-6993 Filed 3-22-91; 8:45 am]

BILLING CODE 3410-34-M

### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Part 1

#### Large Order Execution Procedures and the Crossing of Orders

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission believes that the development and institution of large order execution ("LOX") procedures are likely to provide net economic benefits to the futures market and, therefore, is amending Regulation 1.39, as described below, to facilitate the approval of contract market LOX rules.

On June 28, 1990, the Commission published a petition to amend Commission Regulation 1.39 and its alternative proposed amendments for comment in the *Federal Register*.<sup>1</sup> The Chicago Mercantile Exchange ("CME" or "Exchange") had submitted the petition for purposes of eliminating potential regulatory impediments to its proposed LOX rules.

The Commission is hereby amending Regulation 1.39 by adopting a modified form of its alternative proposal. These amendments permit an exemption from

<sup>1</sup> 55 FR 26548 (June 28, 1990).



the requirements of Regulation 1.39(a) for certain LOX procedures which are determined otherwise to be consistent with the Commodity Exchange Act ("Act") and Commission regulations. Paragraph (a) of Regulation 1.39 requires, among other things, that when trading is conducted in a pit, a contract market member may execute buying and selling orders from different principals for the same commodity directly between such principals provided that the member first offers both orders to the pit. Under the amendments, a member of a contract market may follow alternative procedures for the crossing of orders, if these procedures comply with contract market LOX rules that have been approved by the Commission. The amendments provide that a contract market would be required to submit a petition for Commission consideration along with proposed contract market rules, in cases where the proposed rules were not consistent with Regulation 1.39(a). The Commission would consider a contract market's petition concurrently with its consideration of the contract market's proposed rules. The Commission could, in its discretion, grant such petition for exemption upon such terms and conditions as it deemed appropriate, if it found that the exemption was not contrary to the public interest and the purposes of the provision from which exemption was sought.

**EFFECTIVE DATE:** April 24, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Shauna L. Turnbull, Special Counsel, and Brian Regan, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

**SUPPLEMENTARY INFORMATION:**

**I. Paperwork Reduction Act Notice**

Although this regulation does not require an information collection, it is part of a group of regulations which has a public reporting burden that is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data and completing and reviewing the collection of information. Send comments regarding this estimate of no burden to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project 3038-0022, Washington, DC 20503.

**II. Introduction**

By letter dated March 30, 1990, the CME submitted a petition, pursuant to Commission Regulation 13.2, requesting amendments to Commission Regulation 1.39. The requested amendments would have changed two requirements in Regulation 1.39 that were perceived to conflict with proposed CME LOX rules. These LOX rules were submitted separately to the Commission on September 25, 1989.<sup>2</sup>

Specifically, Regulation 1.39(a)(1)(i) requires that a member of a contract market executing buying and selling orders from different principals for the same commodity in a trading pit or ring may execute such orders directly between such principals if both orders are first offered to the pit and neither such bid nor offer is accepted. In addition, Regulation 1.39(a)(4) provides that neither the futures commission merchant receiving nor the member executing such orders may have an interest in the order, directly or indirectly, except as a fiduciary.

The CME proposed that the Commission amend Regulation 1.39(a)(1)(i) by adding a subsection that would have allowed a broker to bid, if the intended execution price was above the market, or to offer, if the intended execution price was below the market, until the intended execution price was reached. At that point, if any part of the order that was exposed to the market

<sup>2</sup> Under the CME's proposed LOX procedures, a member receiving an order from an initiating party for 300 or more Standard & Poor's 500 ("S&P 500") Stock Index futures contracts would be able to solicit interest off the Exchange floor in the contra side of the initiating party's order prior to its execution in the pit. During such negotiations, the parties would determine a maximum quantity and an "intended execution price" at which the two orders could be crossed after exposing the initiating party's order to the pit.

If the initiating party's buy order was not higher than the existing bid or, alternatively, if its sell order was not lower than the existing offer, then the LOX order automatically would be canceled. If it was canceled, then a customer could choose from three possible options when giving his broker further instructions. The customer could request that: (1) His broker attempt a LOX procedure later or at a different price, (2) forego using the LOX procedure and have the broker execute the order on the floor by open outcry, or (3) drop the order completely. If the initiating party's order did better the existing bid or offer in the market, then the member would proceed with the trade by first notifying a designated Exchange official of his intention to execute the trade and then announcing to the pit that he was executing a LOX order to buy or sell and the quantity of the order.

Following this announcement, the member would submit to the pit the initiating party's order at the current market and hit bids or accept offers until he reached the "intended execution price." At that point, the member would fill all bids or offers in the pit at the intended execution price and then "cross" the balance of the initiating party's order with the contra party's order at that market price.

remained, it could be matched with the order that was not exposed to the market. The CME also proposed that the Commission delete Regulation 1.39(a)(4).

On June 28, 1990, the Commission published the CME's petition for comment in the Federal Register. In response to the CME's petition, the Commission indicated in this release that the goal of permitting large order execution procedures consistent with the Act and Commission regulations could be accomplished by adopting amendments to Regulation 1.39 that were narrower in some respects and less particularized in others than the CME's proposed amendments. Accordingly, the Commission also published an alternative proposal. Interested persons were invited to comment on both the CME proposal and the Commission alternative.

The Commission stated in the release that the CME's proposed amendments to 1.39 could be considered overly broad. The proposed amendments were not limited to special procedures for large orders and provided no standards regarding the size of orders to be crossed. Instead, the CME's proposed amendments would have permitted a member to cross any orders by exposing the initiating party's order to the pit if the intended execution price of that order were better than the bid/ask spread. In addition, the CME proposal would not have established requirements for special surveillance procedures.

At the same time, the Commission stated that the CME's proposed amendments to Regulation 1.39 were too narrow in that they effectively permitted only the specific LOX procedures contemplated by the CME and might not accommodate different large order execution procedures designed by other contract markets. As a consequence, adoption of the CME amendments would not have obviated further amendments to the regulation to address other LOX procedures.

The Commission received four comment letters on the proposed amendments, including a comment letter from one committee of a professional association and letters from three exchanges. The professional association committee, comprised of corporate employee benefit plan sponsors, submitted a letter supporting the removal of any legal impediments to LOX procedures.<sup>3</sup> Two exchanges

<sup>3</sup> The professional association committee indicated that the professional association represented over 13,000 senior financial executives

Continued



objected to the proposed amendments.<sup>4</sup> The CME submitted a letter discussing the potential economic effects on market participants of its proposed LOX procedures.

The Commission has considered the comment letters submitted and has determined to adopt a modified form of its proposed amendments to Regulation 1.39. The amendments to Regulation 1.39 would permit exchanges to adopt certain types of rules to facilitate the execution of large orders.<sup>5</sup> These amendments contemplate that all contract markets with LOX proposals that require an exemption from Regulation 1.39(a) may petition for such an exemption, provided that their petitions include an explanation of why the proposed rules do not comply with Regulation 1.39(a) and a description of a special surveillance program. The Commission's expectations for such surveillance programs are set forth in section VI below.

As discussed below, the Commission has reviewed the statutory and regulatory basis for its action, economic policy concerning LOX transactions, and issues raised in the comment letters. The Commission believes that the amendments it is adopting to Regulation 1.39 will permit exchange rules that facilitate the execution of large orders in a manner consistent with the Act. In particular, based upon the economic analysis presented below, the Commission believes that, pursuant to appropriately designed LOX rules approved under these amendments, the LOX customer's order could be executed at a better price for the customer, in a more timely manner, and with lower transaction costs than under current procedures. Except insofar as there are certain potential market costs described below, the Commission also believes that appropriately designed LOX procedures likely would not adversely affect small orders. As a result, small orders could benefit from any increase in market liquidity associated with such

procedures. Finally, the Commission believes that, at least initially, appropriately designed LOX procedures should be tested to determine whether they would provide net economic benefits to the market.

### III. Analysis of the Amendments to Regulation 1.39 Under the Commodity Exchange Act and Regulations

These amendments to Regulation 1.39 will allow for the exemption of appropriate LOX procedures from the requirement in Regulation 1.39(a) that both buy and sell orders must be exposed to the market prior to a crossing of the orders. Hence, a threshold issue is whether exposure of one side of the order under procedures approved by the Commission would be consistent with the Act.

Section 4b(D) of the Act, the principal statutory basis for Regulation 1.39, provides in pertinent part that

[n]othing in this section or any other section of the Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of such transactions. 7 U.S.C. 6b (1988).

The statute does not expressly address the specific question posed here, namely whether the exposure to the entire pit of one side of a LOX trade, rather than both sides of the trade, prior to a crossing of LOX orders can constitute a transaction executed "at public outcry" <sup>6</sup> within the meaning of section 4b(D). Accordingly, the Commission has examined the applicable legislative history for guidance on this issue.<sup>7</sup>

<sup>6</sup> The term "public outcry" is not defined in this section nor is it defined or used elsewhere in the Act.

<sup>7</sup> See 80 Cong. Rec. 7865-73, 7905-7907 (1936). Section 4b was enacted into law as one of the provisions of the Commodity Exchange Act of 1936. This act supplanted earlier acts which had dealt separately with grain or cotton futures. Grain Futures Act of 1922, Public Law 67-331, 42 Stat. 998; and the Cotton Futures Act of 1927, Public Law 69-657, 44 Stat. 1248. The 4b(D) exception cited above was first introduced as an amendment to the 1936 Act by Senator Smith from South Carolina on May 25, 1936. Senator Smith explained that the purpose of the amendment was to address a concern

The legislative history underlying the enactment of the exception to section 4b(D) makes clear that the purpose of this exception is to ensure that one order is not disadvantaged to the benefit of the other order or both orders disadvantaged to the benefit of the broker. As Senator Smith, the sponsor of the exception, himself stated during the legislative discussion preceding enactment of the exception in 1936, "[t]here is not a Senator who believes that a broker, when he receives two orders, one to buy and one to sell, should be allowed to use one order even incidentally to the detriment of the other."<sup>8</sup>

The legislative history, although demonstrating Congress' concern about protecting customers in this regard,<sup>9</sup> does not disclose a particular method or methods that Congress thought appropriate to provide such protection,<sup>10</sup> beyond the statutory requirements that the orders be executed "on the floor of the exchange" and "at public outcry across the ring."<sup>11</sup> In particular, there is no indication in the legislative history that Congress believed that the "public outcry" requirement may be satisfied only by procedures of the type described in Regulation 1.39(a).<sup>12</sup> As a result, it is reasonable to conclude that Congress intended to leave to the discretion of the agency charged with administering section 4b(D) the authority to craft an appropriate method or methods to provide for the protection of customers in this area.

When viewed in this light, the Regulation 1.39(a) requirement that members offer both buy and sell orders to the pit prior to a crossing of orders thus represents only one of the available ways of providing for customer

expressed by cotton traders that the prohibitions against bucketing and offsetting would prevent them from executing trades promptly when they received simultaneous orders to buy and sell futures contracts. 80 Cong. Rec. 7865 (1936).

As originally enacted, the amendment applied only to cotton contracts. In 1974, the provision was amended to substitute the words "a commodity" for the word "cotton," thereby broadening the scope of the exception to include all commodities.

<sup>8</sup> 80 Cong. Rec. 7867 (1936).

<sup>9</sup> See 80 Cong. Record 7865-7870, 7906 (1936). In contrast to these references to potential customer harm in the legislative history, under LOX procedures of the type proposed by the CME, the contra side could benefit from participation in the trade.

<sup>10</sup> See 80 Cong. Rec. 7905 (1936).

<sup>11</sup> 7 U.S.C. 6b (1988).

<sup>12</sup> Indeed, there is legislative history which provides support for the notion that compliance with the section 4b(D) exception need not require exposure to the pit of both orders which are to be crossed. 80 Cong. Rec. 7905 (1936) (Remarks of Senator Smith).

from more than 7,000 American corporations. The committee is itself comprised of members who oversee ERISA-governed benefit plans with collective assets totaling more than \$450 billion. As of December 31, 1989, these assets represented about one-third of total private pension plan assets, about one-half of which is invested in equities.

<sup>4</sup> They are the Chicago Board of Trade ("CBT") and the Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE").

<sup>5</sup> Discussion below of the CME's proposed LOX procedures has been provided solely for illustrative purposes as one example of LOX procedures. A second and substantially different proposal for a LOX procedure was submitted to the Commission for approval by the Commodity Exchange, Inc. ("Comex") on November 5, 1990. The Commission has published the proposed Comex rule for public comment. 56 FR 2506 (January 23, 1991).



protection. The Commission now has determined to exercise its discretion, consistent with these principles of customer protection, by amending Regulation 1.39 so as to allow contract markets to petition for exemption from Regulation 1.39(a).<sup>13</sup>

LOX procedures that are submitted with petitions for exemption pursuant to amended Regulation 1.39 will have to be reviewed by the Commission under section 5a(12) of the Act. Amended Regulation 1.39 provides for Commission review and approval of the contract market LOX procedures and petition for exemption, including Commission review of the contract market surveillance program. In reviewing petitions and proposed rules, the Commission will determine whether the LOX procedures comply with the Act, and whether any deviations from the applicable provisions of Rule 1.39(a) are appropriate.

#### IV. Potential Benefits and Costs From LOX Procedures

The Commission believes that the development and institution of LOX procedures are likely to provide net economic benefits. Several potential economic effects of large order execution procedures are discussed in this section.

<sup>13</sup> The Commission also has considered whether these amendments to Regulation 1.39 are inconsistent with any other provisions of the Act, the regulations thereunder, or CFTC or judicial case law, and has concluded that they are not. In this regard, and as more fully discussed below in response to particular comments received in this rulemaking, the Commission believes that trading in accordance with LOX procedures that are approved under these amendments to Regulation 1.39 is wholly distinguishable from trading which was found or was alleged by the Commission to have involved violations of section 4c of the Act.

In addition, the Commission believes that the competitive execution requirements of Commission Regulation 1.38, when read together with 4b(D), would not prohibit appropriately designed LOX procedures transacted pursuant to exchange rules approved by the Commission. LOX procedures approved by the Commission also would be consistent with Commission Regulation 155.2(f), which provides that contract markets shall adopt and submit for Commission approval rules that prohibit floor brokers from making any purchase or sale which has been directly or indirectly prearranged. In addition, with regard to Commission Regulation 155.2, which generally restricts the disclosure of a customer order by floor brokers, an appropriately designed LOX program that requires an initiating party's specific consent to disclosure of the order to be obtained by a futures commission merchant before contacting potential contra parties would be consistent with the customer consent exception in Regulation 155.2(c) and (d).

Finally, LOX procedures that were similar, to the CME's proposed procedures, if approved by the Commission, would be consistent with the order disclosure restriction applicable to futures commission merchants in Commission Regulation 155.3(b)(1) because, among other things, disclosure of LOX orders would be necessary to their effective execution.

Under the current trading system, individuals and institutions wanting to hold and trade large positions may be discouraged from participating in the futures market by higher costs of obtaining prompt fills compared to those accrued by small traders. Even in a well-functioning competitive market, the transaction costs per contract of an unusually large trade consummated on short notice can be greater than for a smaller trade. Two components of this elevated transaction cost are the "inventory component," attributable to the risk of holding contracts as temporary inventory, and the "asymmetric information component," attributable to the possible information content of orders.

The "inventory component" arises because no counter-party desiring to hold the opposite side of an order may be represented in the pit at the time the order arrives, and a counter-party must then be encouraged through price concessions to accept the position temporarily into his portfolio. Because the price of the contract could move against the counter-party before he is able to liquidate his position, he will require a price concession in order to take on this inventory. Because the counter-party's inventory risk increases with the size of the position relative to his financial resources, a more significant price concession is required for larger orders. To illustrate, if a broker attempts to execute a large order to sell 450 S&P 500 contracts by offering all 450 contracts to the pit at the current bid price, the inventory component indicates that potential counter-parties likely would be unwilling to buy the contracts at that price. Instead, the counter-parties would require a lower price before they were willing to accept the risk associated with holding such a large number of contracts.

A second component of transaction cost is the "asymmetric information" component. This component exists because information relevant for price discovery arises from many sources, and thus is not instantly available to all market participants. An important way in which information is transmitted to other participants is by trading. For instance, a trader who is aware of news or information that is not yet known to all and that decreases the value of a contract has an incentive to sell contracts. This information could include, for example, knowledge of a large purchase or sale in a related market or of political developments in pertinent countries. For convenience, this trader is referred to as "informed" in this section. Other participants, who

are referred to as "uninformed" in this section because they are not yet aware of the informed trader's news, are, however, aware that such information may be the cause of any sell order. To protect themselves against losses, those uninformed traders who wish to earn income as market makers must set a lower bid price than they otherwise would have. This price adjustment reflects the possibility of information in the trade and so is important for price discovery, but it is also a transaction cost to other uninformed sellers who would have to sell their contracts at the lower price. Analogous reasoning implies that there is a similar cost for buy orders. The arrival of large orders is generally interpreted as conveying greater information than that conveyed by small orders because the extent to which it is profitable to trade on information increases with the importance of the information. Therefore the transaction cost per contract due to asymmetric information is greater for orders involving many contracts than for orders involving only a few.

Individuals or institutions wishing to trade unusually large positions currently have three choices. First, they can attempt to execute large trades in the pit and incur the costs discussed above. The total of these costs may be viewed as the price paid for promptly obtaining a fill, often called the price of immediacy. Accordingly, a broker who attempts to execute an order to sell 450 S&P 500 contracts by offering the entire order to the pit at one time is likely to receive fills at prices below the existing bid. These lower prices reflect the cost of executing the trade quickly, or the price of immediacy. Second, it can purchase a smaller amount of immediacy via a series of small orders, and thus avoid paying the price of immediacy associated with large orders. This method of executing a large order is known as "working the order." Of course, if traders in the pit discern that an attempt is being made to trade a large position, the price would adjust to reflect the possible information contained in the trades. Also, because only limited immediacy is procured, individuals or institutions bear the risk of adverse price movements for a longer time. Finally, individuals or institutions can choose not to participate in contract market trading, and perhaps alternatively participate in some other market which otherwise would be less attractive. All three choices are costly to the large trader. If the third choice is made, the futures market would also bear a cost in the form of lower volume.



The establishment of appropriate LOX procedures likely will reduce the cost of immediacy to parties initiating large orders in a number of ways. First, by providing a mechanism for contacting counter-parties potentially willing to provide immediacy and whose capacity for bearing risk is greater than that of the floor at a particular time, the inventory component of the transaction costs could be reduced. This likely would be the case if the counter-parties contacted are large and well-capitalized. For example, a customer with an order to sell 450 S&P 500 contracts may determine that he could obtain a better price and more efficient execution of his order by having his broker contact large and potentially well-capitalized traders who may not be represented in the pit and who may have the capacity to accept the large position.

Second, under LOX procedures, persons who would trade large positions not based on information could identify themselves more convincingly during preliminary negotiations as "uninformed" to potential counter-parties. As a result, the asymmetric information component of their transaction cost could be lessened. Applying this concept to the example involving the sale of 450 S&P 500 contracts, the broker possibly could obtain a higher price for the order by relaying to a potential counter party that his customer's large order was in fact motivated by liquidity needs. For example, his customer may purchase stocks on a regular basis because of contributions made by the customer's clients or members, and may wish to hedge these purchases via the futures market.

However, the potential for a countervailing decrease in price discovery exists. To the extent that LOX procedures result in large uninformed traders convincingly identifying themselves as such to prospective counter-parties, the cost of executing large orders based on information would increase. If informed orders continued to be executed predominantly in the usual manner and uninformed large orders were executed predominantly through LOX procedures, then informed orders would become more conspicuous. Those executing orders based on information would then find prices moving more strongly against them, so that the reward to investing in information would be reduced. The reduced incentive for investing in information could lead to a reduction in its

collection, and thus reduced price discovery, as noted.<sup>14</sup>

Finally, LOX procedures would likely reduce the cost of transacting large orders because there would be no need for the counter-party to maintain a continuous and costly presence in the pit. This benefit, like the previous one, is associated with a potential cost in reduced price discovery. LOX participants would benefit from the price discovery provided in the pit, but traders in the pit might not be fully compensated for the price discovery services which resulted from their presence in the pit because they could not participate in LOX transactions beyond the intended execution price. Such lessened compensation could lead to reduced price discovery. Moreover, if a LOX procedure did not provide for floor participation, then the potential for reduced price discovery would be greater.<sup>15</sup>

As noted above, LOX procedures provide a mechanism for sellers external to the pit to be contacted in response to buyers for contracts. Similarly, the procedures could allow buyers external to the pit to be contacted in response to sellers of contracts. In addition to increasing the supply of immediacy for large trades, such a response would increase the aggregate number of sellers or buyers of contracts brought into the price discovery process, with the result that the price established for the trade would be of higher quality than otherwise. In a market where LOX procedures become heavily used, this benefit could be substantial. Thus, counterbalancing the potential detrimental effects on price discovery in certain circumstances mentioned above, is the potential that LOX procedures could foster price discovery and be beneficial to the market as a whole.

By providing a mechanism for contacting reserve market-making capacity, LOX procedures also

potentially would increase overall liquidity. Well-capitalized entities that would be interested in earning revenue by being counter-parties to large trades, but find it unprofitable to maintain a continuous market presence in order to participate in occasional trades, could be efficiently contacted through LOX procedures. This benefit would be most important if members executed large orders only occasionally in any particular futures or options contract but with some regularity in the futures market as a whole, for then well-capitalized entities would be able to provide immediacy without incurring the cost of maintaining a presence in pits where large trades infrequently occur. Although, as noted above, this increased liquidity would benefit large traders directly, there also could be a benefit to the market as a whole because these traders no longer would require the market-making capital of the pit, leaving it available for use by others.

This section has discussed the manner in which the development of LOX procedures can be expected to provide substantial benefits to large traders, and potentially provide net benefits to the market as a whole. In light of the prior restrictions resulting from Regulation 1.39 upon certain LOX trading, it has not been possible to study the actual impact of LOX procedures, such as those which have been proposed, on price discovery or liquidity in futures markets.<sup>16</sup> However, the Commission is of the view that it is appropriate to permit implementation of such procedures on a trial basis to assess, at least initially, the extent to which the potential benefits to the market outweigh the potential costs.<sup>17</sup> The Commission has adopted final amendments to Regulation 1.39 which allow contract markets to design certain LOX procedures for the futures market.

## V. Comments Received

### A. Employee Benefit Plan Committee Letter

The employee benefit plan committee supported removal of impediments to LOX procedures for futures contracts such as the CME's S&P 500 contract. The

<sup>14</sup> Alternatively if price discovery is not impaired, the availability of LOX procedures could result in increased costs of immediacy incurred by uninformed traders who do not use LOX procedures. Increased costs to each uninformed trader would result from the smaller group of uninformed traders available to compensate the providers of immediacy for their losses to informed traders.

<sup>15</sup> As discussed below in response to the CBT's comment letter, section 4b(D) of the Act requires that execution of orders pursuant to that section occur "at the market." In reviewing a LOX proposal, the commission would be concerned that procedures ensure that permissible intended execution prices and prices in the pit can be meaningfully compared. For example, if an intended execution price is adjusted to offset an unusually large or small negotiated commission, it could be set to preclude pit participation or to prevent a meaningful price from entering the public information flow.

<sup>16</sup> In this regard, the Commission notes that there is widespread use of "block trading" in other markets for many kinds of financial instruments. In the securities market, a "block" is generally considered to consist of 10,000 shares or more. 2 NYSE Guide (CCH) ¶ 2127.1. For examples of block trading rules, see 2 NYSE Guide (CCH) ¶ 2076, ¶ 2127.

<sup>17</sup> For example, the CME's LOX procedures would be implemented as a six-month pilot program. If approved, the Commission would review these procedures at the end of this six-month period.



committee expressed its belief that LOX procedures would reduce volatility in the financial futures market. For example, the committee stated that LOX procedures could reduce the impact that large futures transactions may have on equity futures prices, and thereby potentially could improve the overall equity market environment. The committee further stated that such procedures should reduce the price impact of large transactions and may increase market liquidity. Finally, the committee stated that allowing such procedures would not be inconsistent with the price discovery function of the futures market. In short, the employee benefit plan committee letter supported the policy analysis presented above in Section IV.

#### B. CBT Comment Letter

The CBT raised three objections to the proposed CME and Commission amendments to Regulation 1.39.<sup>18</sup> The CBT first argued that section 4b(D) of the Act precludes the exemption of rules from Regulation 1.39(a).<sup>19</sup> The CBT asserted that this exception to the prohibition on crossing orders cannot be applied to LOX procedures because it claimed that such orders are not "at the market." However, as noted above in section III, the Commission believes that LOX procedures can be consistent with this provision of section 4b(D). A procedure similar to that set forth in the CME's proposed LOX rule, for example, would be executed "at the market." Such a procedure would require that a broker submitting a LOX order to the pit must fill the initiating party's order against all orders at the current market price.

Upon filling all orders at that price, the broker then would continue bidding or offering until the market reached the intended execution price, that is, the agreed price for the crossing of orders. The broker would accept all opposite orders from the pit at this price. If any quantity remained of the initiating party's side of the order after participation by the pit at this price, then the broker would cross this

quantity with the contra side of the order "at the market."

Thus, throughout execution of the initiating party's order, the broker would execute that order at the highest bid or lowest offer in the pit. In this respect, execution of the initiating party's side of the order would be similar to execution of a market order. The contra side order, like a limit order, would be contingent upon the market reaching a specified price, the intended execution or limit price. When so viewed, execution and crossing of orders under the proposed CME LOX procedures could be seen as functionally similar to the crossing of market and limit orders. Therefore, both sides of the order would be executed at the market.<sup>20</sup>

In its second argument, the CBT asserted that both proposals represent a departure from prior Commission interpretation of what constitutes competitive execution of trades.<sup>21</sup> The Commission disagrees. Underlying the cases cited by the CBT is the notion that transactions which appear to be the result of open outcry but which, in reality, negate market risk or price competition constitute unlawful activity. Off-floor discussions alone do not make a trade noncompetitive. Rather, trading activities are illegal when such activities do not provide real opportunities for the entire pit to participate in the trades.<sup>22</sup>

LOX transactions such as those proposed by the CME are distinguishable from those trading activities that the Commission has found to be illegal. First, they do not negate market risk or price competition. Although they do involve off-floor discussion, they allow participation by the entire pit. Indeed, as one commenter on LOX procedures has opined, LOX transactions require "free and competitive forces to determine pricing,

even as to those trades which may be crossed when (and only if) market levels reach the intended execution price."<sup>23</sup> Second, LOX transactions would be conducted only pursuant to exchange rules approved by the CFTC, and enforced through a contract market surveillance program, including measures specifically tailored to LOX procedures, designed to ensure compliance with the Commodity Exchange Act.

With respect to the third argument raised by the CBT in its comment letter, the CBT contended that the proposed exemptive procedure did not include specific standards. The Commission's proposed regulation would have required that the petitions submitted by contract markets include explanations of why the proposed LOX rules did not comply with Regulation 1.39(a) and descriptions of special surveillance programs that would be followed by the contract markets in monitoring the LOX procedures. The CBT claimed that the Commission would have the discretion to consider LOX rule petitions on a case-by-case basis. Consequently, the CBT contended that it had not been provided the opportunity to comment effectively upon the requirements that the Commission would impose in granting petitions under this section.

The Administrative Procedure Act requires that a general notice of proposed rulemaking include, among other things, "either the terms or substance of the proposed rule or a description of the subjects and issues involved."<sup>24</sup> Section 553(b) does not require that interested parties be provided precise notice of each requirement eventually implemented.<sup>25</sup> Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process.<sup>26</sup>

The Commission believes that the public has been accorded sufficient notice and opportunity to comment on its proposed regulation. The proposed rule specified that petitioners submit to the Commission for review: (1) An explanation of why the LOX rules proposed would not comply with Regulation 1.39(a); and (2) a description of the special surveillance programs related to those rules. After review of these exchange submissions, the rule as

<sup>20</sup> With the exception of certain designated inter-regulatory or intermarket spreads, CBT Rule 350.10, the CBT does not permit the crossing of orders. CBT Rule 332.00.

For examples of order crossing rules at other exchanges, see CME Rule 533, CSCE Rule 3.13, Commodity Exchange, Inc. Rule 4.24, Minneapolis Grain Exchange Rule 742.00, New York Futures Exchange Rule 4.20, New York Cotton Exchange Rule 1.12-B, Citrus Association of the New York Cotton Exchange Rule 12, and New York Mercantile Exchange Rules 6.40 and 6.42.

<sup>21</sup> *In re Collins* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 (1986) reversed on other grounds sub nom. *Stoller v. Commodity Futures Trading Commission*, 834 F.2d 262 (2d Cir. 1987), and *In re Gimbel* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 (1988). CBT comment letter, January 4, 1990, pp. 11-13. In addition, the CBT cited a complaint, *In the Matter of Kidder, Peabody & Co., Inc.*, CFTC Docket No. 88-6. CBT comment letter, January 4, 1990, pp. 13-15.

<sup>22</sup> See, e.g., *In re Murphy & Rudman* [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 (CFTC 1985), and *In re Gimbel*, supra, note 21.

<sup>23</sup> January 17, 1990 Letter on the CME's Proposed Rule published at 54 FR 50266 (December 5, 1989) from the Association of the Bar of the City of New York, p.4.

<sup>24</sup> 5 U.S.C. 553(b) (1988).

<sup>25</sup> *Forester v. Consumer Product Safety Commission*, 559 F.2d 774, 787 (D.C. Cir. 1977).

<sup>26</sup> *Id.*

<sup>18</sup> In response to Commission publication of the initial CME LOX rule submission, the CBT submitted a comment letter objecting to that proposed CME rule. CBT comment letter, January 4, 1990. Although the CME rule is not at issue here, the Commission will address certain points from the CBT's January 4 comment letter in order to clarify public understanding of the Commission's amendment of Regulation 1.39.

<sup>19</sup> The CBT's argument regarding the Commission's statutory authority to amend Regulation 1.39 is specifically directed at the CME's proposed LOX procedures. As previously noted, the amendments to 1.39 generally would permit LOX procedures that qualified for the exemption.



proposed would have specified that the Commission grant the petition upon good cause shown.

Regulations 1.39(a) (2) and (3) include the types of surveillance issues likely to be considered in Commission review of LOX petitions. Regulation 1.39(a)(2) requires that contract market members must execute simultaneous buy and sell orders in the presence of an official contract market representative designated to observe these transactions, clearly identify by appropriate descriptive words or symbol all such transactions on his trading card or other record, note thereon the exact time of execution, and promptly present this record to the official representative for verification and initialing. Regulation 1.39(a)(3) requires that the contract market keep a permanent record of each such transaction. Also, in this connection, in its publication of the CME's proposed LOX rules for comment, the Commission specifically invited comment on a number of surveillance issues, including:

(5) the extent to which the LOX procedure presents any unique opportunities to manipulate prices; (6) the need to address the possibility that brokers solicited to take the other side of LOX orders may attempt to enter proprietary trades based on their knowledge of the impending LOX trade; \* \* \* [and] (8) the adequacy of special surveillance programs contained in the proposal, including their ability to ensure that the LOX procedure does not facilitate violations of the Act and Commission regulations.<sup>27</sup> These issues also are the type which would be considered by the Commission in its review of LOX petitions.

In addition to the foregoing, Regulation 1.39 has been amended to be made consistent with the standards for granting exemptions included in other Commission regulations. Exemption provisions previously have been employed by the Commission to address matters such as speculative position limits, registration, foreign futures and option transactions, domestic option transactions, and trading standards for floor brokers.<sup>28</sup> Typically, these regulations require that a petition for exemption set forth with particularity the reasons why an applicant should be exempted from stated requirements. Such regulations also typically provide that the Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The Commission has adopted this same

standard in its amendments to Regulation 1.39.

An exemptive procedure is appropriate for two reasons. First, a waiver from the requirements of Regulation 1.39 might not be required for all LOX procedures. The Commission, therefore, has maintained existing requirements for application to LOX procedures that do not require an exemption. Second, an exemptive procedure accords the Commission sufficient flexibility, among other things, to oversee the contract market's program and to ensure that the contract market has tailored its special surveillance program to match the particulars of its proposed LOX rule.

This approach is based upon the Commission's expectation that the scope of market activity covered by a LOX rule could vary among contract markets. For example, some contract markets could apply the LOX rule to one or two specified contracts, while other contract markets could seek to extend the rule to the entire contract market. Some contract markets could consider limiting the operation of the LOX rule to certain specified periods, while other markets could extend the rule to the entire trading day. In addition, the minimum size for a LOX order could vary among contract markets. With each variation in proposed LOX procedures, the Commission would consider, among other things, whether the special surveillance program addressed issues peculiar to those procedures.

#### C. CSCE Comment Letter

In its comment letter, the CSCE argued that LOX rules would have a negative economic impact, for purposes of the Regulatory Flexibility Act ("RFA"), upon floor members who transacted primarily small orders and customers who placed small orders.<sup>29</sup>

<sup>27</sup>The CSCE also asserted its belief that the CME's proposed LOX rule was anticompetitive. However, the CSCE's argument was based upon an element of the CME's proposed LOX procedures which the CME has changed. The CME Board of Governors approved these changes on March 14, 1990. The Commission published a notice of the amendments and a request for comment on June 6, 1990. 55 FR 23,127 (June 6, 1990).

The CSCE asserted that the market price at the time that the LOX orders would be brought to the pit would determine whether the buy or sell order would be exposed to the pit. If the initiating party's order were not exposed to the market, then it would not be filled at prices more advantageous than the intended execution price. Therefore, the CSCE argued that the CME's proposed LOX rule would be anticompetitive because "the initiating customer might be denied the best price the market could provide." CSCE comment letter, p. 2.

Although the CME's original rule proposal would have had the result noted by the CSCE, the CME amended its proposed LOX rule to establish that, if the broker proceeded with the trade, the initiating

The Commission has determined, however, that an RFA analysis is not required here for two reasons. First, since the RFA does not apply to Commission approval of exchange rules,<sup>30</sup> the Commission need not consider the RFA in any review of proposed exchange LOX rules. Second, the Chairman, on behalf of the Commission, certifies that the amendments to Regulation 1.39 would not have a significant economic impact on a substantial number of small entities. The legislative history of the RFA clearly indicates that Congress was concerned about the disproportionate burden upon small businesses and entities of regulations which apply uniformly to both large and small businesses.<sup>31</sup> The high cost to small entities of complying with uniform regulations, particularly reporting and recordkeeping requirements, prompted Congressional action.<sup>32</sup>

Thus, Congress called upon agencies to consider these costs in regulatory flexibility analyses and to weigh alternative proposals from the public prior to adoption of final rules.<sup>33</sup> This required analysis, however, is limited to the small entities, if any, which must comply with the proposed regulation. For example, RFA analyses are to include "a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply."<sup>34</sup> The analyses also should include "a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the small classes which will be subject to the requirement."<sup>35</sup> Hence, in considering whether an RFA analysis is warranted, an agency must first determine whether the entities are subject to the requirements of the rule.

Since Regulation 1.39, when applicable, regulates the conduct of contract market members and not customers, the RFA requirements for analyzing the burden of compliance with

party's side of the order would always be the side exposed to the pit. Thus, the initiating customer would be likely to obtain the best price that the market could provide.

Finally, section 15 of the Act requires the Commission to consider the least anticompetitive means of achieving the objectives of the Act. In amending Regulation 1.39, the Commission considered the requirements of section 15. See section VI below.

<sup>30</sup> See 5 U.S.C. 601(2) (1988), (definition of "rule").

<sup>31</sup> S. Rep. No. 878, 96th Cong., 2d Sess. 3 (1980), reprinted in 1980 U.S. Code & Ad. News 2788, 2790.

<sup>32</sup> S. Rep., *supra* note 31, at 2792.

<sup>33</sup> S. Rep., *supra* note 31, at 2798.

<sup>34</sup> 5 U.S.C. 603(b)(3) (1988).

<sup>35</sup> 5 U.S.C. 603(b)(4) (1988).

<sup>27</sup> 55 FR 50,267 (Dec. 5, 1989).

<sup>28</sup> See 17 CFR 1.35(l), 1.61(e), 3.12(g), 3.16(g), 3.32(i)(1), 30.10, 32.4(b), 155.2(i) (1990).



this proposed rule do not apply to customers.<sup>36</sup> As to contract market members, the Commission's amendments to Regulation 1.39 are permissive rather than obligatory. The final amendments would allow but would not obligate a contract market to petition for an exemption from existing requirements in connection with a LOX rule submission. Even if a contract market should submit a petition for Commission review which was granted, the amendments would impose no compliance requirements directly upon contract market members as regulated entities.<sup>37</sup> Indeed, the amendments would increase the options available to customers<sup>38</sup> and members, rather than impose extensive requirements upon them.

Some of the potential benefits resulting from the institution of LOX procedures are discussed above in section IV. One benefit to these procedures would be a potential increase in market liquidity, which would benefit all market participants.

#### VI. Amendments to Regulation 1.39

The Commission has amended Regulation 1.39 to permit approval of certain contract market LOX procedures. In amending Regulation 1.39, the Commission addressed the requirements of Section 15 of the Act. Section 15 requires the Commission to consider the least anticompetitive means of achieving the objectives of the Act. Section 15 of the Act does not require that the Commission take the least anticompetitive course of action. Instead, it directs the Commission to "take into consideration the public interest to be protected by the antitrust laws" and to "endeavor to take the least anticompetitive means" of accomplishing a policy or purpose of the Act.<sup>39</sup> Thus, section 15 requires that the Commission balance concerns about possible anticompetitive effects of a proposal against the proposal's potential

for achieving the objectives, policies, and purposes of the Act.

In this rulemaking procedure, the Commission considered two approaches to amending Regulation 1.39, the amendments suggested by the CME's petition and the Commission's own alternative rule proposal. In adopting its own proposal, the Commission is providing more flexibility than would be provided by the CME proposal for designating LOX procedures. The Commission has determined that the facilitation of such procedures, including procedures under which both sides of a crossing of orders need not be exposed to the market prior to execution of the trade, is consistent with section 15 of the Act.

The Commission bases its determination on the economic analysis of the potential benefits and costs of LOX procedures presented above in section IV and on its view that LOX procedures which would be permitted under amended 1.39 would require trades to be executed in the pit in a manner that permitted real opportunities for participation by the entire pit. Finally, such LOX procedures could also provide benefits to the market now sought by many market users, including the ability to execute promptly equity-related trading strategies involving the execution of large orders which benefit from a guaranteed fill of those large orders.

The Commission's determination that the amendments to Regulation 1.39 are consistent with section 15 of the Act is also based upon a consideration of other procedures which could be used to execute large trades, including "sunshine trading," the exchange of futures for physicals ("EFPs") and computerized trade execution systems. The Commission considered these alternative procedures in order to determine whether they provide the specific benefits contemplated under the amendments to Regulation 1.39. The Commission concluded that, although these other procedures could provide benefits to the market and remain as options which the Commission would be willing to consider, none of the possible procedures for executing large orders considered by the Commission necessarily would provide the specific benefits cited above.

In adopting the final amendments, the Commission is replacing language stating that the Commission may grant a petition to apply for LOX procedures "upon good cause shown" with language stating that the petition will be granted

if the exemption is not contrary to the public interest and purposes of the provision from which exemption is sought. This change makes the regulation similar to other Commission exemption procedures. In addition, the Commission has substituted the term "contract market" for the term "exchange" in Regulation 1.39(b)(2) to render that section consistent with the terminology in the remainder of the regulation.<sup>40</sup>

As adopted, Regulation 1.39(b)(1) requires that a contract market include an explanation of why its proposed LOX rules do not comply with paragraph (a) of Regulation 1.39 in any petition for exemption from that provision. The Commission expects that such an explanation would include a statement of why the exemption is necessary to operation of the proposed LOX procedures. In addition, the contract market should specify the minimum size of the orders which the contract market would deem to qualify for execution pursuant to its LOX procedures and an explanation as to why that order threshold was chosen.

Regulation 1.39(b)(1) also requires that a contract market describe special surveillance measures that would be taken to monitor proposed LOX procedures. The Commission contemplates that a contract market's special surveillance program for LOX procedures would provide safeguards similar to those required by Regulation 1.39(a) (2) and (3). In addition, the contract market's surveillance program should address potential abuses which could result from LOX procedures. Specifically, the surveillance program should be designed to deter and detect possible frontrunning based on preliminary negotiations of LOX orders, to ensure that every interested party represented in the pit has the opportunity to participate in a LOX order before it is crossed, and to identify

<sup>36</sup> See *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission*, 773 F.2d 327 (D.C. Cir. 1985).

<sup>37</sup> If approved, LOX procedures would be accompanied by appropriate surveillance measures, which could affect contract market members.

<sup>38</sup> For example, customers with small orders may benefit from any increased volume relating to LOX procedures by taking the opposite side of the initiating party's order when that order is submitted to the pit.

<sup>39</sup> 7 U.S.C. 15 (1988) (emphasis added). See *British American Commodity Options Corp. v. Bagley*, Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part on other grounds*, 55 F.2d 482 (2d Cir. 1977), *cert. denied*, 434 U.S. 938 (1977).

<sup>40</sup> The Commission's proposed amendments also redesignated Regulation 1.39(b) as paragraph (c). It should be noted that, because of an error in the reprinting of Regulation 1.39 in the Commerce Clearing House's compilation of the regulations (the "white book"), the Commission's proposed rule presented a slightly different version of new paragraph (c) than paragraph (b) as promulgated. Specifically, the white book version refers to the execution of orders in compliance "with the conditions set forth" in comparison to the actual language which refers to the execution of orders in compliance "with the conditions herein set forth." 17 CFR 1.39, *reprinted in, Commodity Exchange Act As Amended and Regulations Thereunder*, (CCH) (1989). The Commission's final regulation leaves the language of this paragraph unchanged from its official version.



all LOX trades, both prior to their execution and after their completion.

A contract market's program should include both floor and record surveillance of LOX trades. In particular, a contract market should take steps to deter possible frontrunning, including setting requirements that member firms establish and enforce internal rules, procedures, and controls to prevent communication of information relating to LOX orders within member firms other than for the purpose of effectuating LOX procedures.<sup>41</sup> The Commission also expects that contract market rules would provide for the separate designation or separate audit trail of LOX trades and establish "upstairs" recordkeeping requirements. Surveillance measures directed to LOX procedures also should be designed to detect potential manipulation. Finally, the Commission expects that exchanges will include surveillance measures which provide for the review of LOX execution prices to assure that such prices are economically meaningful.<sup>42</sup>

## VII. Related Matters

### A. Regulatory Flexibility Act

The RFA, 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The proposed amendments to Regulation 1.39 could affect contract markets. The Commission, however, previously has determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of a proposed amendment on contract markets for purposes of the RFA. 47 FR 18618, 18619 (April 30, 1982). As noted above, the Commission also has determined that, for this regulation, the RFA does not require an analysis of the effect of the amendment upon customers and contract market members. The rule is permissive rather than obligatory. A contract market would not need to petition for exemption unless it submitted to the Commission a proposed large order execution rule and this rule were inconsistent with Regulation 1.39(a).

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1168 (5 U.S.C. 605(b)), and based on currently available information, the Chairman, on

behalf of the Commission, certifies that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("Act"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission previously submitted this regulation in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this regulation on June 29, 1990 and assigned OMB control number 3038-0022 to the regulation. While this proposed regulation has no burden, the group of regulations of which this is a part has the following burden:

Average Burden Hours Per Response—80.83  
Number of Respondents—339  
Frequency of Response—On Occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340.

### List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customers, Large order execution procedures, Futures commission merchants, Members of contract markets, Cross trades, Exemptions, Petitions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4d, 4e, 5, 5a, and 8a, thereof, 7 U.S.C. 6, 6b, 6c, 6d, 6e, 7, 7a, and 12a, the Commission hereby amends part 1, chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. In § 1.39, paragraph (b) is redesignated as paragraph (c) and

revised, and new paragraph (b) is added to read as follows:

### § 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

\* \* \* \* \*

(b) *Large Order Execution Procedures.* A member of a contract market may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with large order execution procedures established by written rules of the contract market that have been approved by the Commission: *Provided, That*, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by proposed contract market rules to implement the large order execution procedures. The petition shall include:

(1) An explanation of why the proposed large order execution rules do not comply with paragraph (a) of this section; and

(2) A description of a special surveillance program that would be followed by the contract market in monitoring the large order execution procedures.

The Commission may, in its discretion and upon such terms and conditions as it deems appropriate, grant such petition for exemption if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition shall be considered concurrently with the proposed large order execution rules.

(c) *Not deemed filling orders by offset nor cross trades.* The execution of orders in compliance with the conditions herein set forth will not be deemed to constitute the filling of orders by offset within the meaning of paragraph (D) of section 4b of the Act, nor to constitute cross trades within the meaning of paragraph (A) of section 4c of the Act.

Issued in Washington, DC, on March 19, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-6938 Filed 3-22-91; 8:45 am]

BILLING CODE 6351-01-M

<sup>41</sup> See, e.g., securities market "Chinese wall" requirements. 17 CFR 240.14e-3(b)(2) (1990).

<sup>42</sup> For a brief discussion of economically meaningful prices, see note 15.



## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 4

[T.D. 91-26]

Customs Regulations Amendment  
Extending Reciprocal Privileges to  
Vessels of the United Arab EmiratesAGENCY: U.S. Customs Service,  
Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding the United Arab Emirates to the list of nations whose vessels may transport empty cargo vans, empty lift vans, and empty shipping tanks between points embraced within the coastwise laws of the United States. The Department of State has supplied Customs with evidence that the United Arab Emirates place no restrictions on the carriage of empty cargo vans, empty lift vans, empty shipping tanks, equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for such barges; and empty instruments for international traffic; and stevedoring equipment and material by vessels of the United States between ports in the United Arab Emirates. This amendment recognizes the United States granting reciprocal privileges for vessels registered in the United Arab Emirates.

**DATES:** The reciprocal privileges for vessels registered in the United Arab Emirates became effective on February 4, 1991. This amendment is effective March 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kristina Ver Steeg, Carrier Rulings Branch (202-566-5706).

**SUPPLEMENTARY INFORMATION:****Background**

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. app. 883), (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, states that, upon a finding by the Secretary of the Treasury (pursuant to information obtained and furnished by the Secretary of State) that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between

points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the United States for transportation of empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; empty instruments of international traffic; and stevedoring equipment and material.

On September 18, 1990, the Department of State advised the Chief, Carrier Rulings Branch, Customs Service Headquarters, that the United Arab Emirates places no restrictions on the transportation of empty cargo vans, empty lift vans, empty shipping tanks, equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for such barges; empty instruments for international traffic; and stevedoring equipment and material by vessels of the United States between ports in that country.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

**Finding**

On the basis of the information received from the Department of State, it has been found that the United Arab Emirates places no restrictions on the transportation of empty cargo vans, empty lift vans, empty shipping tanks, equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for such barges; empty instruments for international traffic; and stevedoring equipment and material by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in the United Arab Emirates as of February 4, 1991.

**Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12291**

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same

reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, and accordingly, a regulatory impact analysis is not required.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Cargo vessels, Coastwise trade, Maritime carriers, Vessels.

**Amendment to the Regulations**

To reflect the reciprocal privileges granted to vessels registered in the United Arab Emirates, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

**PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The authority for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

**§ 4.93 [Amended]**

2. Section 4.93 (b)(1) and (b)(2) are amended by adding "the United Arab Emirates" in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Dated: March 19, 1991.

Kathryn C. Peterson,  
Chief, Regulations and Disclosure Law Branch.

[FR Doc. 91-7013 Filed 3-22-91; 8:45 am]

BILLING CODE 4820-02-M

**19 CFR Parts 122 and 178**

[T.D. 91-25]

RIN 1515-AA78

**The Air Carrier Smuggling Prevention Program**

AGENCY: U.S. Customs Service  
Department of the Treasury



**ACTION:** Final rule.

**SUMMARY:** This document adopts final regulations concerning the Air Carrier Smuggling Prevention Program, implemented through interim regulations. The Anti-Drug Abuse Act of 1988 directed that the Customs Service implement this program in regulations.

The program is a logical extension of the Customs expanded interdiction program, and will exist for a 2-year test period commencing December 18, 1989. The regulations make the program available at the Miami, Dallas, and Los Angeles International Airports. Participation in the program is optional for carriers. In order to be considered for the program, a carrier has to provide Customs with its comprehensive security plan designed to assist in preventing illicit drugs from entering the United States. Those carriers which apply for, are accepted into, and adhere to the terms of the program will be deemed to have exercised the highest degree of care and diligence should any contraband violation occur. Accordingly, a participating carrier will be exempted from seizure and penalties should illegal drugs be found on its aircraft if the participating carrier establishes that it was not grossly negligent or did not engage in willful misconduct. The program is intended to increase the cooperative effort which prevails between Customs and the carriers. Because the amendment requires the submission of information to Customs, part 178, the list of sections which contain approved collections of information, is also being amended.

**EFFECTIVE DATE:** April 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ron Griffith, Office of Inspection and Control, U.S. Customs Service (202) 566-2140.

**SUPPLEMENTARY INFORMATION:****Background**

On November 17, 1989, the Customs Service published an Interim Rule which implemented the Air Carrier Smuggling Prevention Program (ACSPP) in the *Federal Register* (54 FR 47761). Although the interim regulation was effective 30 days after publication, the document invited comments from the public on the interim regulation.

The ACSPP is the result of section 7369 of the Anti-Drug Abuse Act of 1988 (19 U.S.C. 1584 Note), in which Congress sought to reinforce the cooperative efforts of Customs and the air carriers by directing the Customs Service to establish a 2-year demonstration program at three international airports classified as high risk. Customs

determined that the 2-year demonstration of the ACSPP would be conducted at the Miami, Dallas, and Los Angeles International Airports. These sites vary in size, airport configuration, and geographic proximity to narcotic source countries, as well as in level of risk, and will provide an adequate assessment of this program.

Participation in the program is optional for carriers. In order to be considered for the program, a carrier has to develop a comprehensive security plan designed to assist in preventing illicit drugs from entering the United States. Three copies of this plan will have to be submitted to Customs for review. Those carriers which apply for, are accepted into, and adhere to the terms of the program will be deemed to have exercised the highest degree of care and diligence. Should any contraband violation occur on a participating carrier's aircraft, the ACSPP carrier will be exempted from seizure and penalties if the participating carrier establishes that it was not grossly negligent or did not engage in willful misconduct.

In response to its invitation for comments on the interim regulation, the Customs Service received several replies. The significant points raised in those comments are addressed below.

**Analysis of Comments**

*Comment:* As currently phrased, the regulation appears to require a carrier which wishes to participate in the program to provide the same level of intensive security to all its flights which may arrive at any of the test airports, regardless of their point of origin. The commentator states that the program should provide carriers the option of designating only those flights which arrive from "high risk" areas as participating in the program. There should also be the option of limiting the number of airports at which a carrier participates.

*Response:* Customs agrees with the concept that the degree of smuggling threat differs according to the point of origin of a flight and that resources should be allocated accordingly. Therefore, the regulations are being modified to allow carriers more options. Prospective participants will be permitted to designate those flights and airports which they wish to have included within the program in their applications. Actual routes and participation will be subject to Customs approval of the carrier's application. Carriers should be aware that the penalty and forfeiture protections accorded to flights which are included within the ACSPP will not be available

to those flights which are not included within the ACSPP. Carriers will still be subject to the existing law and procedure should narcotics be discovered aboard those flights.

*Comment:* The Customs requirement that the carrier perform background security checks is excessive and should be confined to the points and routes that the program covers.

*Response:* Customs has reviewed the interim regulation and agrees that not all carrier employees hold sensitive positions. The final rule has been modified to reflect this situation. However, Customs stands firm on its position that positive security background checks be performed on all carrier employees who have access to aircraft, baggage or cargo anywhere along a carrier's participating route to the extent permitted by law. Because inbound international cargo has the capability of moving to inward airports to be cleared by Customs, thorough background checks of all carrier employees with access to potentially sensitive areas will lessen the risk of internal conspiracies. The regulation will not require such background checks be performed on airline personnel who do not have such access.

*Comment:* Comments expressed concern that Customs might use different criteria in evaluating carrier applications and requested assurances that all applications be uniformly judged.

*Response:* It was never Customs intention that different criteria would be used in reviewing applications. However, to remove unnecessary concerns, specific language is included in the final rule to specify that uniform criteria will be used by the Assistant Commissioner in evaluating not only applications, but also carriers performance questions and issues of carrier removal or suspension from the program.

*Comment:* The requirement that carriers employ a system to assure that no unmanifested cargo is placed on board is impracticable in view of the volume of cargo carried aboard aircraft. The commentator suggests that a carrier be allowed to use a "good faith effort" to properly manifest cargo placed on board its aircraft.

*Response:* Historically, statutes and regulation have placed the burden of proper manifesting on the carrier. The carrier must know what is aboard its aircraft and is only asked to take a basic approach by assuring that air waybills have properly detailed documentation, each box or container is properly marked, the weight of all cargo is



verified against the exporter's claim, and that the piece count is correct before loading the aircraft. Allowing a "good faith effort" approach would contradict Customs efforts to ensure accurate manifests, current FAA initiatives and open the door to internal conspirators within the airline to smuggle drugs as long as they made a good faith effort to manifest properly.

**Comment:** Use of the term "mismanifested" in the proposed regulation to indicate errors in identifying cargo on a manifest is incorrect.

**Response:** Customs agrees that the term is misleading. Customs intent is to have the carriers advise Customs of cargo or baggage that is not manifested as cargo, unaccompanied checked baggage, or unaccompanied baggage when the carrier discovers the item and has modified the regulation accordingly.

**Comment:** Concern was raised over the requirement that carriers assure that thorough security measures are implemented at foreign locations. The commentor states that the degree to which a carrier can exercise control over security at foreign locations will vary and requests that Customs recognize this situation.

**Response:** Customs does realize that in some cases the carrier will have limited control over the total security of the airport complex. However, in such instances where the carrier has no control over the airport, it must establish and maintain security over its airplane. Customs expects the carrier to at least have control and knowledge of the baggage, cargo, passengers and other materials placed on board the aircraft. Customs points out that the carrier's inability to achieve this level of security would also violate FAA regulations.

**Comment:** Concern was expressed concerning shipper-loaded containers, palletized and shrink-wrapped consolidated shipments, or other shipper-assembled cargo. The comment stated that carriers should not be responsible for verifying the contents of such shipper prepared cargo. In such instances, the comment states that reliance on the shipper's load and count notation should be sufficient to relieve the carrier of liability.

**Response:** Pursuant to Customs Regulations, an air carrier is responsible for all cargo and baggage placed aboard its aircraft. Consolidated shipments remain the responsibility of the carrier. The burden is removed from the carrier only when cargo is received in a locked and sealed air container and when the weight and seal number are verified and properly manifested. All other palletized, shrink wrapped or other type

of non-sealable/lockable container cargo remains the responsibility of the air carrier.

**Comment:** Concern was raised over several elements which were identified in the proposal which could be grounds for removal for automatic removal of a carrier if an officer was convicted of a felony.

**Response:** Customs agrees with the comment and has modified that portion of the regulation to clarify that the conviction would have to be for a crime performed in the individual's official capacity, unless the underlying violation was Customs-related, for the removal to be automatic. As with all other grounds for removal, the regulations provide the carrier with an opportunity to appeal the decision of the Assistant Commissioner and demonstrate that the removal is unwarranted.

#### Determination

After consideration of all the comments received in response to the publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

#### Consultation With Secretary of Transportation

This regulation is being issued after consultation with the Secretary of Transportation.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis is required.

#### Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515-0171. The estimated burden associated with this collection of information is 1,800 hours, per respondent or recordkeeper, depending on circumstances. Comments concerning the accuracy of this burden

estimate and suggestions for reducing the burden should be directed to the U.S. Customs Service, Paperwork Management Office, 1301 Constitution Avenue NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

#### Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects

##### 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports.

##### 19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

#### Amendment to the Regulations

The interim rule amending part 122 of the Customs Regulations (19 CFR part 122) which was published at 54 FR 47761 on November 17, 1989, is adopted as a final rule as set forth below. Part 178 of the Customs Regulations (19 CFR part 178), is also amended as set forth below:

#### PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122, Customs Regulations (19 CFR 122), continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1624, 1644, 49 U.S.C. App. 1509.

Subpart R, also issued under 19 U.S.C. 1584 note.

2. Part 122 is amended by revising subpart R consisting of §§ 122.171 through 122.176, to read as follows:

#### Subpart R—Air Carrier Smuggling Prevention Program

Sec.

- 122.171 Description of Program.
- 122.172 Eligibility.
- 122.173 Application procedures.
- 122.174 Operational procedures.
- 122.175 Exemption from penalties.
- 122.176 Removal from ACSPP.

#### Subpart R—Air Carrier Smuggling Prevention Program

##### § 122.171 Description of program.

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers, as defined in 19 U.S.C. 1584 note, in Customs efforts to prevent the smuggling



of controlled substances. If carriers develop and implement thorough and complete internal security procedures at ACSPP designated terminals and foreign departure and intermediate points, the opportunity for their conveyances being used for transportation of controlled substances will be greatly reduced. Participation in the program is voluntary, and may be limited to specific routes. Should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier however, the carrier will be exempt from seizure and penalties should it satisfy the provisions of § 122.175 of this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

#### § 122.172 Eligibility.

Any air carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

#### § 122.173 Application procedures.

(a) *Application.* An air carrier which wishes to participate in the ACSPP shall submit an application to the Assistant Commissioner, Office of Inspection and Control, in which it:

- (1) Identifies specific routes and designated departure points and ACSPP airports for which application is made;
- (2) Certifies that it has developed and will continue to maintain standard operating procedures (SOP) which are designed to safeguard the integrity of its employees, cargo and conveyances. The application shall be accompanied by three (3) copies of the SOP developed by the air carrier.

(b) *Approval criteria.* Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Inspection and Control, will apply uniform standards and verify that, at a minimum, procedures are in place which:

- (1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, who have access to baggage, cargo or secure areas on participating routes, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo is placed on board the conveyance or brought into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or improperly manifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points on ACSPP participating routes which will assure that the carrier has control and knowledge of the baggage, cargo, passenger and other materials placed on board its aircraft.

(c) *Acceptance and notification.* Upon verification by Customs that a carrier's SOP meets all the criteria outlined in § 122.173(b) of this part, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

#### § 122.174 Operational procedures.

##### (a) *Participating carriers.*

Participating carriers are required to develop and adhere to procedures whereby they will:

(1) Provide security personnel for every international arrival participating in the ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.

(2) Provide security personnel at the foreign point of departure for every international departure which is participating in ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the departing aircraft;

(ii) Maintain total control of all passengers and cargo being loaded on the aircraft from either the passenger terminal or the carrier's cargo facility;

(iii) Verify that all cargo placed on the aircraft is properly manifested, marked and weighed and that piece counts are properly performed;

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being loaded; and

(v) Maintain similar positive security measures at all foreign intermediate airports prior to the arrival of the aircraft at an ACSPP designated airport.

##### (b) *U.S. Customs.* U.S. Customs will:

(1) Retain all current options available regarding the search and inspection of any and all passengers, cargo and conveyances; and

(2) Provide training to carrier personnel to assist the development of proper operational procedures.

#### § 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, on a route identified by the carrier as one participating in the ACSPP and which has been approved by Customs, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the district director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

#### § 122.176 Removal from ACSPP.

(a) *Grounds for removal from ACSPP.* The Assistant Commissioner, Inspection and Control, may revoke or suspend the privilege of operating as a member of the ACSPP if:

(1) Acceptance into the program was gained through fraud or the misstatement of a material fact;

(2) The carrier refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to its cooperation within the program;

(3) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony or misdemeanor involving theft, smuggling, or other theft-connected crime which was committed in his or her official capacity as an officer of the



carrier, or is convicted of any Customs-related crime;

(4) The carrier fails to retain merchandise which has been designated for examination;

(5) The carrier does not provide secure facilities or properly safeguard merchandise within its area of control; or

(6) The carrier fails to observe any of the procedures which it had set forth in the SOP which served as the basis for the carrier's acceptance into the program; and

(7) The carrier has been notified in writing that it has been found in noncompliance with a provision of the program and has failed to correct such noncompliance after having been given a reasonable opportunity to correct such noncompliance.

(b) *Notice and appeal.* The Assistant Commissioner, Office of Inspection and Control, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate to the office of the Assistant Commissioner, Inspection and Control, and shall set forth response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision.* The Assistant Commissioner, Office of Inspection and Control, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

(d) *Use of uniform criteria.* When making any determination regarding a carrier's participation or continuation in the ACSPP, the Assistant Commissioner, Office of Inspection and Control, shall employ a uniform standard of performance and evaluation.

#### PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number in the column indicated:

#### § 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB Control No.
§ 122.173.....	Application for Entry Into the Air Carrier Smuggling Prevention Program.	1515-0171

Carol Hallett,  
Commissioner of Customs.

Approved: March 5, 1991.

Peter K. Nunez,  
Assistant Secretary of the Treasury.  
[FR Doc. 91-7012 Filed 3-22-91; 8:45 am]  
BILLING CODE 4820-02-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

##### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium (CYGRO) With Roxarsone or Bacitracin Methylene Disalicylate; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that amended the animal drug regulations to remove those portions reflecting approval of two new animal drug applications (NADA's) held by American Cyanamid Co. This document corrects an oversight which failed to remove all affected regulations.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Lehmann, Center for Veterinary Medicine (HFV-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3134.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 30, 1990 (55 FR 49615 and 49705), FDA published the withdrawal of NADA's 140-821 and 140-823 held by American Cyanamid Co., Agricultural Research Division, Box 400, Princeton, NJ 08540. The document failed to remove all the affected portions in 21 CFR part 558 to reflect the withdrawal of approval of the NADA's. This document corrects that oversight.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

##### § 558.76 [Amended]

2. Section 558.76 *Bacitracin methylene disalicylate* is amended by removing paragraph (d)(3)(xiv).

##### § 558.530 [Amended]

3. Section 558.530 *Roxarsone* is amended by removing paragraph (d)(3)(xxiv).

Dated: March 18, 1991.

Richard H. Teske,  
Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91-6961 Filed 3-22-91; 8:45 am]

BILLING CODE 4160-01-M

#### DEPARTMENT OF JUSTICE

##### 28 CFR Part 0

[Order No. 1481-91]

#### Office of Special Counsel for Immigration Related Unfair Employment Practices

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This order will amend part 0 of title 28, Code of Federal Regulations, to designate the Assistant Attorney General for the Civil Rights Division as the person through whom the Special Counsel for the Office of Special Counsel for Immigration Related Unfair Employment Practices will report. This order updates the Code of Federal Regulations to accurately reflect the Department's internal management structure. The Department of Justice will continue to treat the Office of Special Counsel as a separate component of the Department for budgetary and personnel purposes.

**EFFECTIVE DATE:** March 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gaylord D. Draper, Executive Officer, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice,



P.O. Box 65490, Washington, DC 20035-5490; (202) 653-8121 or 1-800-255-7688; (202) 653-5710 (TDD).

**SUPPLEMENTARY INFORMATION:** This order has been issued to increase efficiency within the Department of Justice and is a matter of internal Department management. It does not have a significant economic impact on a substantial number of smaller entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

The Office of Special Counsel for Immigration Related Unfair Employment Practices ("Office of Special Counsel") was created by section 102 of the Immigration Reform and Control Act, 8 U.S.C. 1324(b), to investigate allegations, by United States citizens and intending citizens, of employment discrimination based on citizenship status, and to bring complaints of such discrimination before an administrative law judge. The Office is headed by a Special Counsel, who is appointed to a four-year term by the President by and with the advice and consent of the Senate. Attorney General Order No. 1299-88 established the Office of Special Counsel as a separate office within the Department of Justice, subject to the general supervision and direction of the Attorney General, the Deputy Attorney General, or designee. 53 FR 35,811 (Sept. 15, 1988).

Although currently independent of other Department of Justice components, the Special Counsel frequently consults the Assistant Attorney General for the Civil Rights Division about non-routine matters, and provides the Civil Rights Division with a weekly report of routine cases. To formalize this informal reporting process, and to centralize and coordinate the Department's anti-discrimination activities under one official who will act as the Attorney General's principal policy advisor for civil rights matters, this order designates the Assistant Attorney General for the Civil Rights Division as the person through whom the Office of Special Counsel for Immigration Related Unfair Employment Practices will report to the Attorney General. This order does not alter the status of the Office of Special Counsel for budgetary and personnel purposes.

#### List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and functions (Government agencies), Whistleblowing.

#### PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, and 28 U.S.C. 509 and 510, part 0 of title 28 of

the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201, *et seq.*, 4241 *et seq.*, 6003(b); 21 U.S.C. 871 *et seq.*, 881(d), 904, 965; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. 101-203; Pub. L. 91-513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. The authority citation for subpart V-2, part 0 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 8 U.S.C. 1324A.

3. Section 0.129 of subpart V-2, part 0 is revised to read as follows:

#### § 0.129 Organization.

The Office of Special Counsel for Immigration Related Unfair Employment Practices shall be headed by a Special Counsel for Immigration Related Unfair Employment Practices, appointed for a term of four years by the President by and with the advice and consent of the Senate under section 102 of the Immigration Reform and Control Act of 1986.

(a) Subject to the general supervision and direction of the Attorney General or the Deputy Attorney General, the Special Counsel for Immigration Related Unfair Employment Practices shall report through the Assistant Attorney General, Civil Rights Division.

(b) In the event of a disagreement between the Special Counsel and the Assistant Attorney General, Civil Rights Division, over matters involving litigation, regulatory, or other concerns, the Assistant Attorney General shall refer the matters to the Deputy Attorney General for resolution.

Dated: March 12, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-6977 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-01-M

#### POSTAL SERVICE

#### 39 CFR Part 111

#### Authorized Independent Audits

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** Section 425.52 of the Domestic Mail Manual is amended to state that when publishers request authorized independent audit bureaus to perform their postal audits they should

advise the original entry postmasters accordingly. The audit bureau will then coordinate the verifications with the original entry postmasters.

**EFFECTIVE DATE:** June 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Martin L. Cohen (202) 268-5169.

**SUPPLEMENTARY INFORMATION:** On January 28, 1991, the Postal Service published a proposal to amend § 425.52 of the Domestic Mail Manual, to require publishers who want an independent audit bureau to perform a postal audit to notify both the audit bureau and the original entry postmaster by January 31 of each year. In addition, it was proposed that if such notification was not made by a publisher, the audit required for that year would be performed by the original entry postmaster. Any postal audits not scheduled by the end of January would not be accepted by the Postal Service.

Two written comments were received. One recommended that a strict scheduling rule should not be adopted. Thus, in circumstances when late notification is reasonable, postal audits scheduled to be performed by audit bureaus after January 31 would be acceptable. This would save the Postal Service the expense of performing the audits. The other commenter suggested that instead of tightening the rule, the Postal Service should promote the performance of audits by independent audit bureaus to reduce postal costs. In view of these comments, and after further consideration, the proposed cutoff date of January 31 for scheduling postal audits by audit bureaus and the prohibition against accepting the results of such audits not scheduled by the end of that month have not been adopted in the final rule. However, § 425.52 of the Domestic Mail Manual is revised to state that audit bureaus will coordinate their postal audits with the postmasters at the original entry post offices instead of through the Postal Service Headquarters.

The Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Postal service.

#### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.



2. 425.52 of the Domestic Mail Manual is revised to read as follows:

**Part 425—Maintenance and Verification of Publisher Records**

**§ 425.5 Verification Procedures.**

**425.52 Requests for Audit Bureau Verification.** Publishers who desire to have postal audits performed by one of the authorized independent audit bureaus must make their request directly to the audit bureau and advise the original entry postmaster accordingly. The audit bureau will then coordinate the verifications with the postmasters at the post offices where original second-class mail privileges have been authorized for the publications. The original entry postmasters may forgo verification of those publications for the year verified by the audit bureau when the results of the postal audit, including the completed Form 3548, are furnished to them.

A transmittal letter making the changes on a page of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,  
Assistant General Counsel, Legislative Division.

[FR Doc. 91-7019 Filed 3-22-91; 8:45 am]

BILLING CODE 7710-12-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 268**

[FRL-3915-6]

**Hazardous Waste Management System: Land and Disposal Restrictions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; granting of treatability variance for Craftsman Plating and Tinning Corporation (Craftsman) and Northwestern Plating Works (Northwestern) both facilities located in Chicago, Illinois.

**SUMMARY:** The United States Environmental Protection Agency (EPA or Agency) is today granting a site-specific treatability variance from the Land Disposal Restriction (LDR) standards for F006 wastes generated by Craftsman and Northwestern, two facilities located in Chicago, Illinois.

Additionally, the Agency is withdrawing its proposal to grant a site-specific treatability variance to CyanoKEM, Inc. for treatment of F011 and F012 wastes because of the company's decision to withdraw their petition. CyanoKEM has submitted information indicating that its treatment system has been upgraded to achieve total and amenable cyanides levels lower than the promulgated treatment standards for F011 and F012.

Upon promulgation of this rule, Craftsman and Northwestern may dispose of their wastes on land provided they comply with the alternative treatment standards for total cyanides set forth in today's rule and with all other existing treatment standards for the wastes specified in 40 CFR 268.43. For Craftsman and Northwestern, the alternative total cyanide treatment standards for F006 nonwastewaters are 1800 mg/kg and 970 mg/kg, respectively. Also, the wastewater existing these two facilities' alkaline chlorination systems must contain no more than 0.86 mg/l of amenable cyanides. The facilities must also comply with 40 CFR 268.7.a.4 for appropriate monitoring frequency consistent with the facility's waste analysis plan.

**DATES:** This final rule is effective on March 5, 1991.

**ADDRESSES:** The RCRA regulatory docket for this final rule is identified as Docket Number F-90-TLVF-FFFFF, and is located in the EPA RCRA Docket, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424-9346 (toll-free) or at (202) 382-3000. For technical information concerning this notice, please contact Monica Chatmon-McEaddy, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8467.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**A. Authority**

Under section 3004(m) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or

substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." Prohibited wastes that do not meet this standard before land disposal are normally banned from such disposal. RCRA sections 3004 (d)-(g)

EPA has interpreted this statutory language to mean that the treatment standard would be based on the performance of the best demonstrated available technology (BDAT). This interpretation was sustained by the DC Cir. Court in *HWTC v. EPA*, 886 F.2d 355 (DC Circuit 1989), cert. denied—U.S.— (October 1990). In developing this approach, the Agency also recognized that there may be wastes that cannot be treated to the levels specified in the rules using BDAT, because those wastes are in a form that is substantially more difficult to treat than the wastes the Agency evaluated in establishing the treatment standard (51 FR 40605-606, November 7, 1986). For such wastes, EPA has established a treatability variance (§ 268.44), which, if granted, becomes the treatment standard for the particular waste.

Under that variance, applicants are required to demonstrate that "because the physical or chemical properties of the waste differs significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels \* \* \*". § 268.44(a). In applying this standard, the Agency has indicated in 51 FR 40606 that

In determining whether a variance would be granted, the Agency will first look at the design and operation of the treatment system being used. If EPA determines that the technology and operation are consistent with BDAT, the Agency will evaluate the wastes to determine if the waste matrix and/or physical parameters are such [that] the BDAT properly reflects treatment of the waste.

**B. Summary of Petitions**

The treatment systems operated by Craftsman and Northwestern for electroplating wastewater generate a wastewater treatment sludge that is listed as F006 and that is subject to the land disposal restriction standards for F006 nonwastewaters. EPA has established treatment standards for both total and amenable cyanides for this waste of 590 mg/kg and 30 mg/l, respectively. (§ 268.43.) The total cyanide standard of 590 mg/kg is measured by SW-846 methods 9010 or 9012 using a 10-gram sample size and a distillation time of 1 hour and 15 minutes (55 FR at 22578 (June 1, 1990)).



Both petitioners state that they are unable to achieve the standard for total cyanides even though they are using the treatment technology on which EPA based its treatment standard. They state further that they are operating that treatment system correctly to achieve significant reduction of amenable cyanides.

### C. Technical Determination for Granting Variances

In the rule establishing treatment standards for cyanide in F006 nonwastewaters, the Agency based the promulgated treatment standard for amenable and total cyanide in F006, F007, F008, and F009 wastes on the performance of alkaline chlorination technology (54 FR 26607, June 23, 1989). This technology is normally applied to wastewaters (i.e., it is applied before sludges are generated), but sludges are also amenable to alkaline chlorination treatment. *Id.* at 26607-608; EPA anticipated, however, that the treatment would normally be applied to electroplating wastewaters; subsequent treatment (normally clarification and precipitation) of the wastewater exiting alkaline chlorination treatment would generate a sludge that would meet the F006 cyanide standards. *Id.*

In assessing the variance applications, the Agency first had to determine whether the applicants utilized the BDAT technology, and if so, whether the treatment systems, in this case alkaline chlorination were properly designed and well operated. If so, the Agency would conclude that the waste could not be treated to the specified treatment standard using the properly designed and operated model technology and therefore would be different from the wastes examined in establishing the treatment standard. See 51 FR at 40606.

As part of our evaluation of these two variance petitions, the Agency conducted engineering site visits at the facilities in late November of 1989. (Summaries of the visits are available for review in the administrative record for the proposed rule.) During those visits, the Agency conducted an on-site inspection of the electroplating and treatment operations. Both Craftsman and Northwestern perform plating on metal substrates with cyanide on more than 50 percent of their plating operations.

Cyanide is generally destroyed by oxidation. Chlorine is used primarily as an oxidizing agent in industrial waste treatment to destroy cyanides. The procedure is a two-step process where the cyanide is partially oxidized to cyanate (step one), or completely oxidized to carbon dioxide and nitrogen

(step two). The destruction of cyanide by chlorination can be accomplished by direct addition of sodium hypochlorite or by addition of chlorine gas plus sodium hydroxide to the waste. Oxidation of cyanide to cyanate is accomplished under alkaline conditions and is referred to as alkaline chlorination. The equipment often consists of an equalization tank followed by two reaction tanks, although the reaction can be carried out in a single tank. The reactions are monitored using an electronic recorder-controller or other means to maintain required operating conditions, such as pH, oxidation-reduction potential (ORP), and excess sodium hypochlorite.

Craftsman operates a 2-stage alkaline chlorination system. During both stages, the pH and ORP are maintained at a level ranging from 10.5 to 11 and 150 millivolts, respectively. The retention time ranges from 30-45 minutes. The wastewater treatment system operated by Craftsman consists of equalization before alkaline chlorination, followed by pH adjustment, flocculation, and clarification. The clarifier overflow is sent to a polishing filter before the wastewater is discharged to a Publicly Owned Treatment Works (POTW).

Northwestern also operates a 2-stage alkaline chlorination system. During both stages, the pH is maintained at a level of 10.5. Northwestern does not control the reaction by ORP monitoring. Instead, Northwestern relies on the use of excess sodium hypochlorite. Northwestern performs a spot test, that determines excess sodium hypochlorite by a color change, which indicates that the cyanide in the wastewater has been fully oxidized to carbon dioxide and nitrogen. The wastewater treatment system consists of equalization followed by the continuous alkaline chlorination system, followed by pH adjustment, flocculation, and clarification.

Both facilities reduce amenable cyanides in the wastewaters to less than 1 ppm. This is a key element in determining whether alkaline chlorination is being operated properly, because the technology is intended to destroy amenable cyanides. The Agency's purpose in basing the treatment standard on alkaline chlorination treatment, in fact, was to ensure destruction of amenable cyanides rather than merely precipitating amenable cyanides in a sludge. 54 FR at 26609. Craftsman is reducing (i.e., destroying) amenable cyanides from 383 ppm in the influent wastewater to less than 1 ppm in the effluent wastewater (i.e., wastewaters exiting alkaline chlorination treatment) and the sludge. Thus, more than 99

percent of amenable cyanides are destroyed by the alkaline chlorination treatment process. Northwestern is also reducing amenable cyanides from 300 ppm in the influent to less than 1 ppm in the effluent wastewater and the sludge. Again, this accounts for over 99 percent reduction. Based on the engineering site visits and the data provided in the variance petitions and by the facilities, the Agency considers that Craftsman and Northwestern's alkaline chlorination systems to be properly designed and operated.

However, to ensure proper operation, the Agency is requiring both of the facilities to achieve a 0.86 mg/l amenable cyanide standard measured in the effluent exiting the alkaline chlorination system. (This requirement would operate in addition to the existing standard for amenable cyanides in the sludge (i.e., 30 mg/l), which is not being altered in this proceeding.) The treatment level of 0.86 mg/l amenable cyanides is the existing standard for F006 wastewaters (see Section 268.43) and was transferred from the wastewater standard from the Effluent Limitations Guidelines and Standards for the Metal Finishing Industry<sup>1</sup> and requires BDAT performance of alkaline chlorination by assuring that amenable cyanides are being destroyed and not precipitated. EPA believes that this level of performance—which involves compliance with the Clean Water Act treatment standard at the source rather than at the end of pipe to ensure maximized destruction of amenable cyanides—does constitute legitimate treatment (see 51 FR 40606). EPA believes further that so long as the petitioners' alkaline chlorination systems are operated to achieve these levels, the operating results of the system can be used as the basis for alternative treatment standards for total cyanides in the sludges that are generated after alkaline chlorination treatment.

## II. Basis for Determination

### A. Site-Specific Conditions

Under 40 CFR 268.44, EPA may grant site-specific treatability variances in cases where a waste is generated under conditions specific to only one facility and the petitioners demonstrate that the waste cannot be treated to the specified standard, even though well-operated treatment of the type used to establish the treatment standard is utilized.

<sup>1</sup> U.S. Environmental Protection Agency, Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing—Point Source Category, June 1983, pp. II-2-II-3.



EPA has reviewed the petitions submitted by both Craftsman and Northwestern and believes that a site-specific treatability variance is warranted with respect to the total cyanide standard for both facilities. Similarly, the Agency believes that an appropriate alternative treatment standard for total cyanide would only reflect the site-specific processing conditions at Craftsman and Northwestern.

#### *B. Alternative Treatment Standard for Total Cyanides*

##### **1. Basis for Granting Variances for Total Cyanides in F006 Nonwastewaters**

EPA's technical rationale for approving the site-specific treatability variances for Craftsman and Northwestern is that the facilities are performing proper alkaline chlorination treatment. Consistent with this position, EPA believes that if the concentration of amenable cyanides (i.e., those amenable to destruction by alkaline chlorination, the BDAT technology) in the treated wastewater and nonwastewater is examined, and treatment system operation and design is examined, a determination can be made regarding whether a facility has properly designed and is properly operating its alkaline chlorination system. EPA finds here that both petitioners are performing proper alkaline chlorination treatment and therefore the total cyanide levels in their sludges represents the performance of BDAT treatment.

The Agency cannot say with assurance precisely why the petitioners are unable to achieve the national treatment standard for total cyanide (590 mg/kg) in their sludges. The raw influent wastewaters entering the petitioner's alkaline chlorination treatment system contain less cyanides, less iron, and less total metals than the raw wastes that were used as the basis for the national treatment standard for F006 nonwastewaters. This comparison is somewhat misleading, however. (The data used to calculate the promulgated total cyanide treatment standards was based on performance data from an alkaline chlorination unit operated by CyanoKEM and involved some proprietary modifications to the treatment process. While this process is acceptable, the Agency's BDAT was based on normal alkaline chlorination of cyanide-bearing wastewaters.) The determination of BDAT was the Agency's belief that most of the facilities generating F006 and using alkaline chlorination could achieve the treatment standard. This determination was made by thoroughly searching the

1986 Generator Survey and the TSDR Survey (see 54 FR at 26610) and concluding that over 80 percent of the facilities could achieve the treatment standard, using alkaline chlorination treatment without substantial modification.

The Agency speculates that one possible reason why the petitioners cannot achieve the promulgated treatment standard is because of the lower levels of metals in the rinse waters. That is, both Craftsman and Northwestern treat electroplating wastewaters containing less total metal concentrations than the wastes treated by CyanoKEM. Higher levels of metals in the waste prior to precipitation followed by clarification will, in effect, result in lower concentrations of total (non-amenable) cyanides in the resultant sludge. Conversely, at petitioners' facilities, lower levels of total metals in the waste before precipitation and clarification will result in higher levels of total cyanides in the sludge. The Agency believes that this fact is true by performing a theoretical mass balance on the entire treatment system; this analysis can be found in the Final Background Document for this rule.

The Agency's basis for granting the variances, however, is the finding that the facilities are properly operating a well-designed BDAT treatment. From this, EPA infers that the facilities' wastes differ in some material way from those typically treated by this technology to achieve the total cyanide treatment standard.

##### **2. Basis for Revised Total Cyanide Standard for Petitioners**

Craftsman submitted eight data points as part of its petition for a treatability variance. EPA analyzed these data based on the statistical protocol used in the BDAT process. Based on this analysis, one data point was determined to be an outlier and was not included in the calculation of the alternative treatment standard. Using the remaining data and accounting for variability of cyanide concentration in the waste, EPA has determined that an appropriate alternative total cyanide standard for the Craftsman facility located in Chicago, Illinois, is 1,800 mg/kg. The calculation of the treatment standard can be found in the Final Background Document for this site-specific treatability variance. The alternative treatment standard is derived by using a site-specific variability factor of 3.27 times the mean concentration of total cyanides in the waste.

Northwestern submitted five data points in its submission. The

concentration of total cyanide in the waste ranged from 615 to 823 mg/kg. Using these data and accounting for variability, EPA has determined that an appropriate alternative total cyanide standard for the Northwestern facility located in Chicago, Illinois, is 970 mg/kg. The calculation of the treatment standard can be found in the Final Background Document. The alternative treatment standard is derived by using a site specific variability factor of 1.28 times the mean concentration of total cyanides in the waste.

#### *C. Conditions for Total Cyanide Variance*

The revised treatment standard for both Craftsman and Northwestern requires that they perform a total and amenable cyanide analysis of the effluent leaving the alkaline chlorination system, as well as for the F006 waste. The amenable cyanide concentration leaving the alkaline chlorination system must be no greater than 0.86 mg/l. The amenable cyanide concentration in F006 waste is the current BDAT standard for F006 nonwastewaters of 30 mg/kg. (As indicated, EPA is granting a variance for total cyanide only. Based on the information in this record, both facilities are able to comply with the amenable cyanide standard for the F006 wastes; therefore, the Agency is not changing the amenable cyanide standard.) Failure to comply with these treatment standards would result in the prohibition of land disposal of these wastes.

### **III. Responses to Major Comments**

This section presents the Agency's response to some of the major comments submitted on the proposed rule. For detailed responses to the comments, please see the Response to Comments Background Document, which is available in the administrative record for today's rule.

The Agency received comments from five parties: Craftsman, Northwestern, CyanoKEM, Inc., Environmental Defense Fund (EDF), and the Hazardous Waste Treatment Council (HWTC). Craftsman and Northwestern both supplied the Agency with additional treatment data, which were in turn supplied to the other commenters for additional comment.

#### *1. Calculation of Alternative Treatment Standard*

CyanoKEM and HWTC said that the Agency should not develop the alternative treatment standards for each petitioner based on one data point, as proposed. The commenters argue that the burden of proof should be placed on



the petitioners to provide sufficient performance data to support the standard. The commenters also argue that the Agency should use the upper limit of the petitioners' treatment data as the alternative treatment standard rather than using the concentration of one data point and multiplying by a variability factor of 2.8. The commenters also argue that variability factors account for nationwide variability as opposed to variations within a single facility; therefore, they believe that alternative treatment standards developed as part of the treatability variance process should not account for a variability factor.

The Agency agrees with the commenters that the development of alternative treatment standards for treatability variances should not be based on one data point. The Agency prefers to base treatment standards on more than one data point and with the associated QA/QC for the data. The Agency also agrees with the commenters that the burden of proof for treatability variances is on the petitioners. (Indeed, § 268.44(a) requires that the petitioners must demonstrate the basis for a variance.) The petitioners need to provide enough performance data supported by QA/QC data and treatment system operating and design parameters to support the Agency's determination of whether the treatment system is well designed and operated. Therefore, during the comment period for this proposed rule, the Agency requested and received additional performance data from Craftsman and Northwestern (which were in turn supplied to the commenters for additional comment). Analysis of these data supports the fact that there is variability in the treatment system and hence in the total cyanide concentrations in the wastes generated at these facilities. The Agency has evaluated these data and the associated QA/QC, and has determined that those data should be used to develop the alternative treatment standards.

EPA disagrees, however, with the commenters' point that alternative treatment standards developed for individual plants should not reflect a variability factor. Individual plants experience variability in wastes being treated; in addition, there is operating variability in individual treatment systems. The variability factor used to calculate performance standards takes into account that well-designed and well-operated treatment systems will experience some fluctuations in performance. These fluctuations may result from treatability variations

caused by changing influent loads, unavoidable variations in procedures for collecting treated samples, or variations in sample analysis. (The additional data submitted by petitioners here confirm that these types of variability are present. As a matter of fact, the variability factor associated with the treatment data that were the basis of the national cyanide treatment standard was 2.4, which shows that variability can exist within a facility.) Therefore, the Agency believes that it is justified in calculating (indeed required to calculate) a variability factor for a single facility.

#### 2. Analysis of the Analytical Data

Some commenters suggested that the analytical data should be available to prove the source of nonamenable cyanides in the F006 sludge. The Agency has carefully examined data from the facility (and obtained QA/QC for these data) and is convinced that the source of nonamenable cyanide in the sludge is the plating process and is not due to non-optimized treatment.

As stated in the variance request, the data show that the amenable cyanides present in the wastewater were almost completely destroyed by alkaline chlorination (less than 1 ppm of amenable cyanides present in the effluent wastewater and in the filter cake). It follows that the other cyanide constituents present, which contribute to the total cyanide concentration in the F006 nonwastewaters (i.e., the sludge), are not amenable to chlorination. Based on a review of the petitions and the Agency's visit to the facilities, these facilities were not adding iron to the wastewaters before alkaline chlorination treatment, in order to complex cyanides. Rather, Northwestern states, in its petition that ferrous sulfate is added to the wastewater after the alkaline chlorination treatment in order to aid in the precipitation of complex cyanides. This was done in May of 1987 because Northwestern was violating metal and cyanide discharge standards under the Clean Water Act. After the addition of ferrous sulfate, Northwestern's facility was able to comply with these standards.

In summary, these facilities were able to destroy amenable cyanides to less than 1 ppm in the wastewaters because of proper operation, i.e., pH and residence time, and not because of the addition of ferrous sulfate during the precipitation step.

#### 3. Treatment of F006 Wastes

The commenters also stated that the petitioners' sludge should be treated by alkaline chlorination to try and meet the

treatment standard, rather than just treating the influent wastewater. In establishing the treatment standard, EPA did not intend for alkaline chlorination to be performed twice. Rather, the Agency stated that the treatment standard for the sludge was typically achievable by treating the wastewaters (54 FR at 26608-610). The model treatment train thus would consist of alkaline chlorination to treat cyanides followed by precipitation, clarification, and filtration to precipitate metals. *Id.* Thus, there is no need to redissolve and retreat the sludge. (Similarly, the Agency's capacity estimates were based on alkaline chlorination of wastewater, rather than on a treatment system requiring retreatment of the sludge.)<sup>2</sup>

#### 4. Alternative Commercial Treatment

HWTC and CyanoKEM made two further arguments. CyanoKEM indicates that its modified treatment process, which is no longer simple alkaline chlorination but rather involves a significant number of proprietary improvements (including significant improvements since the conclusion of the rulemaking establishing the F006 nonwastewater total cyanide treatment standard), is probably capable of treating the petitioners' waste sludges to meet the existing treatment standard. Their points are that first, the Agency should not grant a treatability variance unless there is no alternative available capacity to be utilized, and second, that a treatability variance should not be granted if another treatment system is capable of treating the waste to meet the standard.

EPA disagrees. The treatability variance process seeks to ascertain whether the waste can be treated to meet the treatment standard using properly designed and operated BDAT technology (51 FR at 40606). Thus, the focus of inquiry is (1) whether the waste is being treated by a type of treatment system on which the Agency based the treatment standard, and if so, (2) whether that treatment system is properly designed and operated. EPA has determined (after conducting engineering site visits at both petitioners' facilities) that this is the case here. Thus, there is no necessary connection between other treatment capacity and granting a treatability

<sup>2</sup> U.S. Environmental Protection Agency, Office of Solid Wastes, Background Document for Second Third Wastes to Support 40 CFR part 268 Land Disposal Restrictions Final Rule—Second Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity—Volume II, June 8, 1989, pp. A-1—A-110.



variance. (Nor has EPA ever suggested such a connection. The rules do not require a search of other capacity, nor did EPA, when suggesting information that might accompany a treatability variance application (51 FR 40606), indicate that such a search was needed.)

Of course, if a second firm was able to show that it was capable of treating the petitioners' waste to meet the treatment standard using the model technology, this would be strong (if not decisive) evidence that a treatability variance is unwarranted. Those are not the facts here, however. Thus, CyanoKEM does not operate the model treatment technology, but rather an improved form of treatment. EPA does not believe itself precluded from granting a treatability variance, or, put another way, does not believe that it must require generators incapable of meeting a treatment standard with properly operated and designed BDAT technology to use different treatment technology, because a superior form of treatment has been developed. The language of section 3004(m) allows EPA latitude in determining what treatment minimizes waste toxicity and mobility. It does not mandate a technology-forcing approach. The legislative history likewise indicates that Congress did not necessarily envision technology-forcing section 3004(m) treatment standards. Rather, such standards were intended to

force use of generally available, effective types of treatment. See 125 Cong. Rec. S 9178 (July 25, 1984) (statement of Senator Chaffee introducing the amendment that became section 3004 (m)).

The requisite levels [or] methods of treatment established by the Agency should be the best that has (sic) been demonstrated to be available. This does not require a BAT-type process as under the Clean Air or Clean Water Acts which contemplates (sic) technology-forcing standards. The intent here is to require utilization of available technologies in lieu of continued land disposal without prior treatment.

In light of this legislative intent, and the fact that BDAT for F006 wastes is based on the performance of the type of treatment system that petitioners operate, we do not believe that the petitioners should be required to utilize a different treatment technology to treat their F006 sludges.

The Agency is sensitive to a claim that such an approach discourages innovative treatment. We note that the Agency may amend BDAT treatment standards in the future to reflect improved treatment performance (see section 3004(m)). At this time, however, the Agency's view is that further treatment beyond that performed by properly designed and operated treatment is not required, and that a treatability variance is obtainable without utilizing additional treatment.

Dated: March 5, 1991.

Jeffery Denit,

Deputy Director, Office of Solid Waste.

#### List of Subjects in 40 CFR Part 268

Hazardous Waste, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended by adding and reserving paragraphs (m) and (n) and by adding paragraph (o) to read as follows:

#### § 268.44 Variance from a treatment standard.

\* \* \* \* \*

(m) [Reserved]

(n) [Reserved]

(o) The following facilities are excluded from the treatment standard under § 268.43(a), Table CCW, and are subject to the following constituent concentrations:

TABLE.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.43(A)

Facility name <sup>1</sup> and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
Craftsman Plating and Tinning, Corp., Chicago, IL.	F006	Table CCWE in 268.41 .....	Cyanides (Total) .....	1.2	( <sup>2</sup> )	1800	( <sup>4</sup> )
			Cyanides (Amenable) .....	.86	( <sup>2</sup> and <sup>3</sup> )	30	( <sup>4</sup> )
			Cadmium .....	1.6		NA	
			Chromium .....	.32		NA	
			Lead .....	.040		NA	
			Nickel .....	.44		NA	
Northwestern Plating Works, Inc., Chicago, IL.	F006	Table CCWE in 268.41 .....	Cyanides (Total) .....	1.2	( <sup>2</sup> and <sup>3</sup> )	970	( <sup>4</sup> )
			Cyanides (Amenable) .....	.86	( <sup>2</sup> )	30	( <sup>4</sup> )
			Cadmium .....	1.6		NA	
			Chromium .....	.32		NA	
			Lead .....	.040		NA	
			Nickel .....	.44		NA	

(<sup>1</sup>)—A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

(<sup>2</sup>)—Cyanide Wastewater Standards for F006 are based on analysis of composite samples.

(<sup>3</sup>)—These facilities must comply with 0.86 mg/l for amenable cyanides in the wastewater exiting the alkaline chlorination system. These facilities must also comply with 40 CFR § 268.7.a.4 for appropriate monitoring frequency consistent with the facilities' waste analysis plan.

(<sup>4</sup>)—Cyanide nonwastewaters are analyzed using SW-846 Method 9010 or 9012, sample size 10 grams, distillation time, 1 hour and 15 minutes.

Note: NA means Not Applicable.

[FR Doc. 91-6736 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Family Support Administration

### 45 CFR Part 95

#### Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation (FFP)

**AGENCY:** Family Support Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments concerning automatic data processing equipment and services, conditions for Federal financial participation. This amendment addresses an inadvertent omission from § 95.611(a)(3) of the phrase " \* \* \* from the Department as specified in paragraph (b) of this section, \* \* \*" The Department has in the past, and continues to require prior written approval of State plans to acquire ADP equipment and services in support of the operation of the approved State Medicaid System, in accordance with the provisions of § 95.611(b), as they appeared prior to the final revised rules published on February 7, 1990, and as modified by the February 7, 1990 revision. This amendment brings the requirement of the rule technically in line with past and continued practice, as well as with the requirements of part 11, of the State Medicaid Manual entitled "Medicaid Management Information Systems".

**EFFECTIVE DATE:** February 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph F. Costa, Director, State Data Systems Staff, Office of Management and Information Systems, Family Support Administration, Washington, DC 20447, telephone (202) 401-9360.

#### List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

Dated: March 15, 1991.

Fred Wirth,

*Acting Deputy Assistant Secretary for Information Resources Management.*

#### PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

**Authority:** Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act (42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.)

#### § 95.611 [Amended]

2. The first phrase of § 95.611(a)(3) is changed from "A State shall obtain prior written approval," to "A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section,".

[FR Doc. 91-6857 Filed 3-22-91; 8:45 am]

BILLING CODE 4150-04-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 640

[Docket No. 901224-1056]

RIN 0648-AD22

#### Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to implement Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This rule (1) imposes a fee of \$26 per application to cover the administrative costs of issuing commercial, seasonal vessel permits, and (2) specifies who must meet the earned income from fishing requirement for a commercial, seasonal vessel permit. The intended effects of this rule are to recover the cost to the Government for the services provided in reviewing applications and issuing commercial, seasonal vessel permits and to ensure that commercial permits are not obtained by persons for whom the spiny lobster bag limit is intended to apply.

**EFFECTIVE DATE:** This rule is effective March 25, 1991, for applications for spiny lobster permits for the season that commences August 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 3 to the FMP (1) contains a definition of overfishing for spiny lobster, as required by 50 CFR 602.11(c), and specifies actions to be taken if overfishing occurs; (2) authorizes NMFS to charge a fee for reviewing and processing applications and issuing the Federal seasonal vessel permits that are required for the commercial spiny lobster fishery in the exclusive economic zone; and (3) states the Councils' intent that a person not be able to use a corporate structure to circumvent the ten-percent earned income from fishing requirement to obtain a commercial, seasonal vessel permit and, thus, exceed the bag limits. To implement the Councils' intent, this rule specifies that the qualifying requirement must be met by a shareholder or officer of a corporate-owned vessel, a general partner of a partnership-owned vessel, or the vessel operator.

Additional information on the definition of overfishing and actions to be taken if overfishing occurs is contained in Amendment 3, the availability of which was announced in the *Federal Register* on November 30, 1990 (55 FR 49659). Additional information on the changes to the regulations is contained in Amendment 3 and in the proposed rule, which was published on December 20, 1990 (55 FR 52196).

#### Comments and Responses

Comments were received on Amendment 3 and the proposed rule from a commercial fisherman, a private individual, and a recreational diver. Comments and responses by subject matter follow.

#### Permit Fee

The commercial fisherman objected to the fee for the commercial, seasonal vessel permit. NOAA disagrees. Individuals benefitting from management of the fishery and the permitting system should bear the administrative costs associated with such system, as is authorized by the Magnuson Act.

#### Permit Regime

The commercial fisherman also recommended that if the Federal government requires fishing permits, it should follow Florida's example by issuing one license with endorsements for specified fisheries. NOAA believes that the recommendation has merit. Such a regime will be considered for future development.



### Definition of Overfishing

The private individual believed that the present regulatory regime has allowed the prevailing fishing mortality rates to reduce the reproductive potential of the spiny lobster resource. He recommended a more conservative definition of overfishing (i.e., an egg per recruit ratio greater than 6 percent), and regulatory changes to achieve this goal. A team of scientists from academia, Florida, and NOAA developed the definition of overfishing and the recovery plan. The Scientific and Statistical Committees of the Councils reviewed and concurred with the team's recommendations. The Science and Research Director, Southeast Fisheries Center, certified that the definition of overfishing and associated recovery plan are based on the best available scientific information. Therefore, the definition of overfishing and the recovery plan are approved. However, NOAA shares the commenter's concern about the ability of the management regime to prevent overfishing. NOAA has urged the Councils to consider modification in the near future of the definition of overfishing to make it more sensitive to resource abundance.

### Eligibility Requirements for the Commercial Permit

The recreational diver opposed Amendment 3 and the regulations because the proposed regulatory regime favors the commercial sector by tightening up the eligibility requirements for the commercial permit. The result, in his opinion, requires recreational divers to comply with an unnecessary bag limit. NOAA agrees that one of the effects of the change in the eligibility requirements is to prevent a recreational diver from obtaining a commercial permit. To reduce the potential for overfishing the resource, the Councils' intent is to ensure that only bona-fide commercial fishermen obtain permits and exceed the bag limit that has been determined necessary to prevent overfishing.

### Changes From the Proposed Rule

In § 640.4(c), the phrase specifying that fees are applicable for permit applications for the season that commences August 6, 1991, is removed as unnecessary. As stated under **EFFECTIVE DATE**, above, all parts of this rule are effective for permit applications for that season.

### Classification

The Secretary determined that Amendment 3 is necessary for the conservation and management of the

spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review (RIR) that analyzes the economic impacts of this rule and describes its effects on small business entities. The RIR concludes that Amendment 3 will have minimal economic effects and will not have a significant economic impact on a substantial number of small entities. Accordingly, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, North Carolina, and South Carolina agreed with the determination. The other states did not comment within the statutory time period; therefore, consistency is presumed.

This rule involves a previously approved collection-of-information requirement subject to the Paperwork Reduction Act, namely, applications for commercial, seasonal vessel permits. Office of Management and Budget Control Number 0648-0205 applies.

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

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause; namely, to ensure that all applications

for spiny lobster permits for the season that commences August 6, 1991, are reviewed on the same basis and are subject to the same fee, that it is contrary to the public interest to delay for 30 days the effective date of this rule.

### List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

### PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

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

2. In § 640.4, the heading is revised, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and new paragraphs (a)(4) and (c) are added to read as follows:

#### § 640.4 Permits and fees.

(a) \* \* \*

(4) For a corporation or partnership to be eligible for a seasonal vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(viii) of this section must be met by, and the statement required by that paragraph must be submitted by, a shareholder or officer of the corporation, a general partner of the partnership, or the vessel operator.

\* \* \* \* \*

(c) *Fees.* A fee of \$26 will be charged for each permit application submitted under paragraph (b) of this section. The appropriate fee must accompany each permit application.

\* \* \* \* \*

#### § 640.7 [Amended]

3. In § 640.7, in paragraph (t), the reference to "§ 640.4(f)" is revised to read "§ 640.4(g)."

[FR Doc. 91-6945 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M

### 50 CFR Part 650

[Docket No. 901247-1059]

### Atlantic Sea Scallop Fishery

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



**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to amend the regulations governing the Fishery Management Plan for Atlantic Sea Scallops (FMP). This rule clarifies the language and intent of § 650.21 (a) and (b). In these sections the word "presumed" is replaced with the word "deemed."

**EFFECTIVE DATE:** April 22, 1991.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR), Environmental Impact Statement (EIS), and Regulatory Flexibility Analysis (RFA) may be obtained from the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Resource Management Specialist, 508-281-9273.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published on January 11, 1991 (56 FR 1161), and no public comments were received. In light of the conflicting court decisions, discussed in the proposed rule, regarding the word "presumed," NOAA changes the language of § 650.21 (a) and (b) to clarify the intent of those sections. In these sections the word "presumed" is replaced by the word "deemed." This change is necessary to prosecute scallop compliance and sampling cases.

Further background information for this rule was given in the preamble of the proposed rule and is not repeated here.

**Comments and Responses**

No comments were received.

**Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is consistent with the FMP.

The Assistant Administrator has determined that this final rule, which implements a revision to the language in the regulations implementing the FMP, as amended, does not alter the scope or intent of the FMP or the conclusions arrived at in the RIR, EIS, or RFA for the FMP, as amended, or implementing regulations. Copies of these documents may be obtained from the New England Fishery Management Council (see **ADDRESSES**).

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

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

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone Management program.

**List of Subjects in 50 CFR Part 650**

Fisheries, Reporting and recordkeeping requirements.

Dated: March 19, 1991.

Michael F. Tillman,  
Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

**PART 650—ATLANTIC SEA SCALLOP FISHERY**

1. The authority citation for part 650 continues to read as follows:

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

**§ 650.21 [Amended]**

2. In § 650.21, paragraphs (a) and (b), the word "presumed" is removed, and the word "deemed" is added in its place.

[FR Doc. 91-6944 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 56, No. 57

Monday, March 25, 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

### Federal Grain Inspection Service

#### 7 CFR Part 802

#### Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act, as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS proposes to incorporate by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", 1990 edition (Handbook 44) and all the requirements of NIST Handbook 105-1, "Specifications and Tolerances for Reference Standard Weights and Measures," 1990 revision (Handbook 105-1). Currently, the 1988 Edition of Handbook 44 and the 1972 edition of Handbook 105-1 are incorporated into Part 802 by reference.

**DATES:** Comments must be submitted on or before May 24, 1991.

**ADDRESSES:** Comments must be submitted in writing to Allen Atwood, Federal Grain Inspection Service, USDA, Room 0628-S, Box 96454, Washington, D.C. 20090-6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Allen Atwood, TLX: 7607351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27 (b)).

#### FOR FURTHER INFORMATION CONTACT:

Allen Atwood, address as above, telephone (202) 475-3428.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This proposed action has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

##### Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

##### Background

Part 802 of the regulations, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems (7 CFR 802.0-802.1), sets forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services. This review of the regulations includes a determination of continued need for and consequences of the regulations. An objective of the review is to ensure that the regulations are consistent with FGIS policy and authority and are up-to-date. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, therefore, proposes that the 1990 edition of Handbook 44 and the 1990 revision of Handbook 105-1 be incorporated by reference into Part 802 of the regulations in order to update the regulations.

Effective September 28, 1988, FGIS incorporated by reference into Part 802 of the Regulations most provisions in the

National Institute of Standards and Technology (NIST) (formerly the National Bureau of Standards) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1988 edition (Handbook 44), and all provisions in NIST Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures," 1972 edition (Handbook 105-1) (53 FR 37727). Those provisions in Handbook 44 that did not pertain to or were not practical for FGIS grain scales were not incorporated by reference. The provisions that were not incorporated are listed in section 802.0(b) of the regulations.

##### Proposed Action

In 1986 FGIS originally incorporated by reference the 1972 edition of Handbook 105-1. Handbook 105-1 was recently revised by NIST (1990 edition). Accordingly, it is proposed that section 802.0(a) of the regulations be revised to incorporate by reference the 1990 edition of Handbook 105-1 in place of the 1972 edition.

Changes from the 1972 edition to the 1990 edition include:

1. Additional tolerances for weights less than 10 g, which have been in use informally since 1975, have been incorporated into the tolerance tables. The formula used to calculate the tolerances for weights less than 10 g is included in the text.

2. The appendix which gave separate requirements for field standard weights used by service companies has been deleted. The weights used by service companies should meet all specifications and tolerances described in the handbook.

3. Several changes address materials and manufacturing practices and designs. Some of these were made to meet current manufacturing practices, while other changes address designs which have been shown to be unacceptable.

- a. Brass is no longer an acceptable material for weights; the metal is too soft for maintaining the required tolerances.

- b. Fabricated (filled shell) and laminated weight designs are no longer acceptable. These types of weight have not shown the necessary stability for



maintaining tolerances during test cycles.

c. Current standards for surface finish and hardness have been formally adopted, consistent with current use and good manufacturing practices. Surface finish modifications, using non-similar material (e.g., filler putty), are unacceptable.

d. The cavity opening design, counterbore sizes, and cavity location have been specified to provide a consistent and practical basis for the manufacturer and evaluation of Class F weights. Screw knobs and threaded closures are no longer acceptable due to lack of stability and adjustment difficulties.

The 1988 edition of Handbook 44 has been changed annually by NIST as new items are adopted, deleted, or revised. Many of these changes were for clarity. Further, most State weights and measures organizations automatically adopt each new edition of Handbook 44 and Handbook 105-1. Accordingly, FGIS is proposing to revise section 802.0(a) by incorporating by reference the 1990 edition of Handbook 44 including the following sections:

Section 1.10.. General Code

Section 2.20.. Scales

Section 2.22.. Automatic Bulk Weighing Systems

Section 2.23.. Weights

The following table lists those relevant codes and paragraphs in which amendments and editorial changes were made in 1988 and 1989 by the 73rd and 74th National Conference on Weights and Measures as they appeared in the 1989 and 1990 editions of Handbook 44. The column headed "Action", indicates changes noted as "added", "amended", "deleted", or "renumbered".

#### 1988 AMENDMENTS

Code	Paragraph	Action
Scales .....	S.2.2.2.....	Added
Scales .....	S.6.2.....	Amended
Scales .....	S.6.2.1.....	Amended
Scales .....	S.6.2.2.....	Added
Scales .....	S.6.7.....	Amended
Scales .....	S.6.7.1.....	Amended
Scales .....	S.6.7.2.....	Amended
Scales .....	N.1.3.4.....	Amended
Scales .....	N.1.9.....	Renumbered
Scales .....	N.3., Table 4.....	Amended
Scales .....	UR.1.1., Table 7A.....	Amended
Scales .....	UR.3.6.....	Amended
Scales .....	UR.3.7.....	Amended
Scales .....	Definition (C.L.C.).....	Added
Scales .....	Definition (Span).....	Added
Scales .....	Definition (Weighing Element).....	Added

#### 1988 EDITORIAL CHANGES

Code	Paragraph	Change
Scales .....	S.5.1.....	Added "(Non-retroactive as of January 1, 1986)"
Scales .....	S.5.2.....	Added "(Non-retroactive as of January 1, 1986)"
Scales .....	T.N.2.2.....	Deleted "humidity"
Scales .....	Definition.....	"load cell": changed to delete the reference to weighing element for which a definition was adopted
Automatic....	A.1.....	Changed "successive" to "each"
Bulk-weighing.	Definition.....	"strain load test": deleted the word "weight" in lines 4 and 5

#### 1989 AMENDMENTS

Code	Paragraph	Action
General .....	G-A.6.....	Amended
General .....	G-5.8.....	Amended
General .....	G-T.1.....	Amended
General .....	Definition (non-retroactive).....	Amended
Scales .....	S.1.11.....	Amended
Scales .....	S.6.9.....	Added
Scales .....	S.6.10., S.6.11.....	Renumbered
Scales .....	N.3., Table 4.....	Amended
Scales .....	T.1.9.....	Amended
Scales .....	T.N.4.5.....	Amended
Scales .....	UR.1.1., Table b.....	Amended
Scales .....	UR.3.7.1.....	Deleted
Scales .....	UR.3.8.....	Added
Scales .....	Definition (Strain-load test).....	Added

#### 1989 EDITORIAL CHANGES

Code	Paragraph	Change
General .....	G-S.5.2.2.(d).....	"indicated" replaced by "scale division"
Scales .....	UR.2.6.1.....	"sectional capacity" replaced by "concentrated load capacity"

Changes in Handbook 44 also necessitate a revision to 802.0(b). Therefore, FGIS proposes to revise section 802.0(b) by revising the list of those provisions that do not pertain to or are not practical for FGIS supervised grain scales. These provisions are as follows:

S.1.8.....	Computing Scales
S.2.3.1.....	Monorail Scales Equipped with Digital Indications
N.1.3.6.....	Monorail Scales
N.3.....	Recommended Minimum Test Weights and Test Loads
N.4.....	Nominal Capacity of Prescription Scales
T.1.5.....	Prescription Scales

T.1.6.....	Jewelers' Scales
T.1.7.....	Dairy—Product-Test Scales
T.1.9.....	Railway Track Scales Weighing in Motion
T.1.10.....	Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
T.2.3.....	Prescription Scales
T.2.4.....	Jewelers' Scales
T.2.5.....	Dairy—Product-Test Scales
T.N.3.6.....	In-Motion Weighing, other than Monorail Scales
T.N.3.7.....	In-Motion Weighing, Monorail Scales
T.N.3.8.....	Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials

#### List of Subjects in 7 CFR Part 802

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For the reasons set out in the preamble, 7 CFR part 802 is proposed to be amended as follows:

#### PART 802—OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 802.0 is revised to read as follows:

#### § 802.0 Applicability.

(a) The requirements set forth in this Part 802 describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y weighing services and inspection services under the Act. All scales used for official grain weight and inspection certification shall meet applicable requirements contained in the FGIS Weighing Handbook, the General Code, the Scales Code, the Automatic Bulk Weighing Systems Code, and the Weights Code of the 1990 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices" (Handbook 244); and NIST HANDBOOK 105-1, (1990 Edition), "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures" (Handbook 105-1). Pursuant to the provisions of 5 U.S.C. 552(a), with the exception of the Handbook 44 requirements listed in paragraph (b), the materials in Handbooks 44 and 105-1



are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. The NIST Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. They are also available for inspection at the Office of the **Federal Register**, Room 8401, 1100 "L" Street, NW., Washington, DC.

(b) The following Handbook 44 requirements are not incorporated by reference:

#### Scales Code (2.20)

S.1.8.....	Computing Scales
S.2.3.1.....	Monorail Scales Equipped with Digital Indications
N.1.3.6.....	Monorail Scales
N.3.....	Recommended Minimum Test Weights and Test Loads
N.4.....	Nominal Capacity of Prescription Scales
T.1.5.....	Prescription Scales
T.1.6.....	Jewelers' Scales
T.1.7.....	Dairy—Product-Test Scales
T.1.9.....	Railway Track Scales Weighing in Motion
T.1.10.....	Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials
T.2.3.....	Prescription Scales
T.2.4.....	Jewelers' Scales
T.2.5.....	Dairy—Product-Test Scales
T.N.3.6.....	In-Motion Weighing, other than Monorail Scales
T.N.3.7.....	In-Motion Weighing, Monorail Scales
T.N.3.8.....	Materials Test on Customer-Operated Bulk-Weighing Systems for Recycled Materials

Dated: February 5, 1991.

John C. Foltz,  
Administrator.

[FR Doc. 91-6955 Filed 3-22-91; 8:45 am]

BILLING CODE 3410-EN-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 228

#### Incidental Take of Marine Mammals; Spotted and Bottlenose Dolphins

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

**ACTION:** Notice of receipt of request for rulemaking and request for information.

**SUMMARY:** NMFS has received an amended request from the American Petroleum Institute (API) for a small take of spotted and bottlenose dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer

Continental Shelf in the Gulf of Mexico over the next 5 years. NMFS is requesting information, suggestions, and comments on whether it is appropriate to issue such regulations and the structure and content of any such regulations.

**DATES:** Comments on this request should be received no later than May 9, 1991.

**ADDRESSES:** Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the request may be obtained in writing to this address or from the information contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ziobro, Protected Species Management Division, NMFS, (301) 427-2323.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5) of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made.

This permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a "negligible impact" on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. On September 29, 1989, (54 FR 40338) NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986 that allow a take of depleted as well as non-depleted marine mammals and also changed the conditions under which incidental takings are allowed.

##### Description of Request

On October 30, 1989, NMFS received the initial request from the API for an incidental take of bottlenose dolphins (*Tursiops truncatus*) and spotted dolphins (*Stenella plagiodon*). After the initial comment period, API amended their request to address the comments. The amended request was received December 13, 1990. API is representing operators who remove oil and gas drilling and production structures and related facilities in the Gulf of Mexico in state waters and Outer Continental Shelf waters adjacent to the coasts of Texas, Louisiana, Alabama, Mississippi, and Florida.

Over the next 5 years, the petitioner estimates that 670 structures will be removed in the Gulf of Mexico. Most of the structures are in water less than 100 feet (30.5 meters) deep. Over the next 35 years, it is estimated that about 5,500 structures will need to be removed.

Some structures have already been removed using the methods described by the petitioners. The most frequently used procedure is to wash the soil out from inside the piling, lower an explosive charge to 15 feet (4.6 meters) below the mudline, and detonate the charge which cuts the piling. Most wells are removed by using explosive devices.

Under section 7 of the Endangered Species Act, NMFS has consulted on the removal of over 150 oil and gas drilling and production structures and related facilities in the Gulf of Mexico. These consultations involve endangered and threatened sea turtles and require Minerals Management Service, Department of the Interior (MMS) or the U.S. Army Corps of Engineers (COE) to adhere to recommendations made by NMFS to avoid adverse impacts to the species. As an interim measure, MMS, COE, and the platform removal operators have been following these recommendations to also avoid taking dolphins. The recommendations include: The use of qualified observers; 30-minute aerial surveys within 1 hour before and after each blasting episode; if dolphins are observed within 1000 yards (914 meters) of the blast site, the blast(s) will be delayed until attempts are successful in removing the animals at least 1000 yards (914 meters) from the site; detonation of explosives will occur no sooner than 1 hour following sunrise and no later than 1 hour prior to sunset; and charges are staggered by 0.9 seconds to minimize the cumulative effects of the blasts. However, because these animals are under the authority of the MMPA (and are not listed as threatened or endangered), the applicants must receive an authorization under the MMPA before a take is allowed.

Impacts to dolphins will come from exposure to sound and pressure waves associated with detonating the explosives. The sizes of the explosive charges are generally 50 pounds (22.7 kg) or less. The petitioners state that the most likely form of incidental take, as a result of platform removals, is harassment from low level sound and pressure waves. However, animals close enough to the detonation could be killed as a result of tissue destruction.



**Information Requested**

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of regulations to allow the taking. NMFS will consider this information in developing an environmental assessment, and if appropriate, proposed regulations allowing the taking of bottlenose and spotted dolphins incidental to removing oil and gas platforms and related structures in the Gulf of Mexico. If NMFS proposes regulations to allow this take, interested parties will be given ample opportunity to comment.

Dated: March 18, 1991.

**Michael F. Tillman,**

*Deputy Assistant Administrator for Fisheries.*

[FR Doc. 91-6936 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M



## Notices

Federal Register

Vol. 56, No. 57

Monday, March 25, 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.

### ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

#### Special Committee on Financial Services Regulations; Public Meetings

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2, Pub. L. No. 92-463), notice is hereby given of two meetings of the Special Committee on Financial Services Regulation of the Administrative Conference of the United States. The committee has scheduled these meetings to discuss revisions in a report on Federal Supervision of Safety and Soundness of Government Sponsored Enterprises, prepared by Thomas H. Stanton, Esquire, of Washington, DC. Attendance at each meeting is open to the interested public but limited to the space available. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. A member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**DATES:** Friday, April 5, 1991 and Friday, April 26, 1991.

**TIME:** 10 a.m.

**LOCATION:** Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (Library 5th floor).

#### FOR FURTHER INFORMATION PLEASE

**CONTACT:** Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC Telephone: (202) 254-7020.

*N.B.* Because space is limited, please inform the contact person of plans to

attend at least three (3) working days before each meeting.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 91-6981 Filed 3-22-91; 8:45 am]

BILLING CODE 6110-01-M

#### Committee on Judicial Review; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The meeting will be held at 10 a.m. on Friday, April 5, 1991, at the offices of Wilmer, Cutler & Pickering, 2445 M Street NW., Washington, DC 20037 (Conference Room 6E2).

The committee will meet to continue discussion of two projects: a draft recommendation on administrative procedures and judicial review in export controls proceedings at the Commerce Department, based on a study by Associate Dean Howard Fenton of Ohio Northern University School of Law, and a draft recommendation on the use of specialized courts to review administrative action, based on a study by Professor Harold Bruff of the University of Texas Law School.

For further information concerning this meeting, contact: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC. (Telephone: 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 20, 1991.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 91-7040 Filed 3-22-91; 8:45 am]

BILLING CODE 6110-01-M

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Oil and Gas Leasing; Lincoln Ranger District; Helena National Forest; Lewis and Clark County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The USDA, Forest Service, as lead agency, and the USDI, Bureau of Land Management will cooperatively participate in the preparation of an environmental impact statement (EIS) to disclose the environmental effects of oil and gas leasing and reasonably foreseeable actions resulting from subsequent exploration and development, as well as interconnected actions on a portion of the Lincoln Ranger District, Helena National Forest.

The Helena National Forest Management Plan and Record of Decision made the decision on which lands on the Forest are available for oil and gas leasing. This EIS will disclose the site specific analysis conducted to make the decision of whether or not to consent or "not object" to leasing at this time and if the decision is to lease, with what stipulations, consistent with the Federal Offshore Oil and Gas Leasing Reform Act of 1987. This analysis will be tiered to the Forest Plan and associated EIS, and will not reconsider the decisions made in the Forest Plan Record of Decision.

**DATES:** Comments concerning the scoping to identify issues should be received in writing by April 30, 1991.

**ADDRESSES:** Written comments concerning the analysis should be sent to Ernest R. Nunn, Forest Supervisor, Helena National Forest, 301 S. Park, Drawer 10014, Federal Office Building, Room 328, Helena, MT 59626.

#### FOR FURTHER INFORMATION CONTACT:

William F. Straley, Forest Geologist, Helena National Forest, Phone (406) 449-5201.

**SUPPLEMENTARY INFORMATION:** This analysis will address oil and gas leasing and the site specific application of lease stipulations on a portion of the Lincoln Ranger District Helena National Forest. The area is situated in Townships 13N; through 16N; Ranges 5W; through 8W; MPM in an irregular tier of blocks along



the Continental Divide from the Helena National Forest boundary south to approximately the Stemple Pass Road. The area encompasses approximately 58,000 acres, all Federal land and Federal minerals.

A wildcat well was drilled on private land just east of the analysis area and another was drilled approximately 10 miles to the north near Bean Lake. No drilling activity has occurred on any of the area being evaluated for lease.

The environmental impact statement (EIS) will address the environmental effects of leasing in the various management areas defined in the Helena National Forest Land and Resource Management Plan that was approved May 28, 1986. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plan.

The decision to be made is whether or not to issue oil and gas leases, and if so, what stipulations are necessary to protect other resource values. The Bureau of Land Management is responsible for the actual issuance of these leases, but the Forest Service, as the surface management agency must consent to the issuance of a lease, or not object to leasing of Public Domain lands under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This consent or no objection can be conditioned by requiring certain stipulations to be attached to the leases.

The decision to be made based on this analysis will not include decisions related to possible future site specific proposals for exploration or development of the oil and gas resources. When such a proposal is submitted that involves surface disturbance, a separate analysis will be conducted and disclosed in an appropriate NEPA document.

This analysis will address oil and gas leasing in the following Management Areas as described in the Helena Forest Plan:

Management Area	Resource Emphasis
A-1 .....	Administrative sites.
M-1 .....	Undeveloped uneconomical.
N-1 .....	Research natural areas (RNA's).
L-1 .....	Livestock.
L-2 .....	Livestock/big game.
R-1 .....	Dispersed recreation.
R-2 .....	Developed recreation.
T-1 .....	Timber.
T-2 .....	Timber/elk winter range.
T-3 .....	Timber/elk summer range.
T-4 .....	Timber travel routes.
T-5 .....	Timber/transitory range.
W-1 .....	Wildlife.

Management Area	Resource Emphasis
W-2 .....	Wildlife spring/summer/fall habitat.

Federal, state, and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. Input to identify the issues to be addressed in the conducting of this analysis will be gathered from the public through mailing of scoping information to all known interested publics. Similar information will be distributed through the local media. No public meetings are scheduled at this time.

Based on comments made by the public on past proposals or actions the following list of preliminary issues to be addressed has been identified. This list will be verified, expanded or modified based on public scoping for this proposal.

1. The effects of leasing and subsequent actions on wildlife habitat. (The area north of Highway 200 is occupied grizzly bear habitat).
2. The effects of leasing and subsequent actions on riparian areas.
3. The effect of leasing and subsequent actions on the roadless resource.
4. The effect on the scenic values of the area.
5. The effect on Wild and Scenic River candidate areas. (Copper Creek)

Alternatives to be considered in this analysis will depend on the comments received during scoping, but the following have been identified as preliminary alternatives: (1) No Action (no leasing at this time), (2) Issue leases with the stipulations identified as standards and guidelines in the Helena Forest Plan, and (3) Issue leases with standard lease terms (no additional stipulations).

The draft environmental impact statement is scheduled for release to the public for comment on or about March 30, 1992 and the final statement being filed by September 30, 1992. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental

review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.8 in addressing these points).

The responsible officials for this EIS and these decisions are John W. Mumma, Regional Forester, USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula, Montana 59807.

Dated: March 15, 1991.

Ernest R. Nunn,

Forest Supervisor.

[FR Doc. 91-6928 Filed 3-22-91; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Coastal Zone Management: Federal Consistency Appeal by Roger W. Fuller From an Objection by the State of North Carolina

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal and request for comments.



notice of appeal from Roger W. Fuller (Appellant). The appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of North Carolina (State) to the appellant's consistency certification that his proposal to construct a bulkhead and to fill wetlands and waters of Boiling Springs Lake in Brunswick County, North Carolina, for which a U.S. Army Corps of Engineers' permit must be obtained, is consistent with the State's coastal zone management program.

The CZMA provides that a timely objection by a State to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II), section 307(c)(3)(A). Mr. Fuller has appealed on the basis of Ground I.

To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program, 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulation at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Mr. Ole Varmer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Ms. Robin W. Smith, Assistant Attorney General, State of North Carolina, Department of Justice, P.O. Box 629, Raleigh, NC 27602.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the office of the State and the

On December 11, 1989, the Secretary of Commerce (Secretary) received a Office of the Assistant General Counsel for Ocean Services, NOAA.

**FOR ADDITIONAL INFORMATION CONTACT:** Mr. Ole Varmer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 (202) 673-5200.

Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.

Dated: March 12, 1991.

Thomas A. Campbell,  
General Counsel.

[FR Doc. 91-6974 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-08-M

### High Seas Salmon Fisheries Off Alaska

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

**ACTION:** Notice of approval of an amendment to a fishery management plan.

**SUMMARY:** NOAA announces the approval of Amendment 4 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska (FMP). Amendment 4 was prepared and submitted by the North Pacific Fishery Management Council (Council) and defines overfishing for the stocks of salmon covered by the FMP as required by NOAA regulations at 50 CFR part 602. The intent of the definition is to provide a basis for protecting the salmon stocks covered by the FMP from being overfished.

**EFFECTIVE DATE:** March 1, 1991.

**ADDRESSES:** Copies of Amendment 4 and the Environmental Assessment (EA) are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

**FOR FURTHER INFORMATION CONTACT:** Aven M. Andersen, National Marine Fisheries Service, Alaska Region, Juneau, Alaska, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

#### Background

NOAA guidelines (50 CFR part 602) require that each fishery management plan must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by the plan and provide an analysis of how

the definition was determined and how it relates to reproductive potential of the managed stock. The guidelines set forth an agency objective that all new and existing management plans should contain an overfishing definition for their respective stocks or stock complexes.

Because the existing FMP contained no definition of overfishing, the Council developed a definition in the form of Amendment 4 and submitted it for review by the Secretary of Commerce (Secretary). NOAA published a notice of availability of Amendment 4 on December 7, 1990 (55 FR 50574), and requested comments from the public until January 18, 1991. No public comments were received during the 60-day public comment period.

The Director, Alaska Region, NMFS (Regional Director), with the concurrence of the Assistant Administrator for Fisheries, NOAA, approved Amendment 4 on March 1, 1991. Because the FMP defers regulation of the fishery in the exclusive economic zone to the State of Alaska, and because the Council and the Secretary have a reduced ability to prevent overfishing under the FMP because the Alaska salmon fisheries take place predominately within State waters, the Council's definition adopts the definition and policies on overfishing promulgated by the Pacific Salmon Commission and the policies on overfishing promulgated by the State of Alaska. The Alaska salmon fishery has been well managed under the Alaska Board of Fisheries, the Council, and the Pacific Salmon Commission during the past decade and has produced record sustained harvests.

#### Classification

The Regional Director has determined that Amendment 4 to the FMP is necessary for the conservation and management of the Alaska salmon fisheries in the exclusive economic zone and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

Because no rulemaking is associated with Amendment 4, the following do not apply: Section 553 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291.

The North Pacific Fishery Management Council (Council) prepared an EA for Amendment 4. The Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the environment as a result of approving Amendment 4. A copy of the EA may be obtained (see ADDRESSES).



The Council determined that Amendment 4 is consistent to the maximum extent practicable with the coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The State did not comment within the statutory time period; therefore, concurrence is inferred.

Amendment 4 contains no collection-of-information requirements subject to the Paperwork Reduction Act.

On January 11, 1991, the NMFS completed a formal Section 7 Consultation on the Pacific salmon fishery in the EEZ off the Coast of Alaska and on the FMP. The biological opinion issued for that consultation concluded that the FMP and fishery are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of the NMFS. The Regional Director determined that Amendment 4 will have no effect on listed species.

Amendment 4 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

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

Dated: March 19, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 91-6946 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 9103553-1053]

### American Lobster Fishery

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

**ACTION:** Notice of control date for entry into the American Lobster Fishery.

**SUMMARY:** This notice announces that anyone entering the American lobster fishery after January 9, 1991 (control date), will not be assured of future access to the American lobster resource in Federal waters if a management regime is developed and implemented that limits the number of participants in the fishery. This notice sets forth the New England Fishery Management Council's potential eligibility criterion for access to the American lobster resource. This notice does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this notice is to discourage new entry into the fishery based on speculation, while

discussions continue on whether and how access to the American lobster resource should be controlled.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall (Executive Director, New England Fishery Management Council), 617-231-0422 or Patricia A. Kurkul (Resource Policy Analyst, Northeast Regional Office, NMFS), 508-281-9331.

**SUPPLEMENTARY INFORMATION:** The American Lobster Fishery Management Plan (FMP) is implemented by regulations appearing at 50 CFR part 649. The objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified regional management program for American lobster (*Homarus americanus*). The management program is designed to promote conservation, to reduce the possibility of recruitment failure, and to allow full utilization of the resource by the United States fishing industry. Amendment 1 to the FMP was approved and implemented in 1986 (51 FR 19210, May 28, 1986), amendment 2 in 1987 (52 FR 46088, December 4, 1987), and amendment 3 in 1989 (54 FR 48617, November 24, 1989).

The management program for American lobster is based primarily on a minimum size restriction. The New England Fishery Management Council (Council) is undertaking development of amendments 4 and 5 to the FMP, which will address controlling effort in this fishery. The Council's intent in publishing this notice is to discourage speculative entry into the fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Although fishermen are hereby notified that entering the fishery after the control date will not assure them of future access to the fishery on the grounds of previous participation, other qualifying criteria also may be applied for entry.

The Council first discussed establishing a control date for this fishery at a Lobster Oversight Committee meeting on June 11, 1990. Discussion continued at Council and Council committee meetings; however, a vote was not taken by the full Council until the Council meeting of January 9, 1991. The Council approved the adoption of the January 9, 1991, control date at that time. The Council also adopted the following purposes and guidelines for the control date.

#### Purposes

1. To discourage increases in fishing effort, and thereby fishing mortality, that are already recognized as being among

the highest for any marine species in the United States, and which prevent the attainment of optimum yield from the fishery and bring about the need for burdensome and disruptive regulations; and

2. To discourage speculative entry into, and increases in effort in, the American lobster fishery by individuals who anticipate future assignment of fishing rights. Through this action the Council announces that further entry or increases in effort in the American lobster fishery are contrary to the need to reduce effort in the fishery and will not likely be recognized by any future system of assigning fishing rights in this fishery.

#### Guidelines

1. It is the intent of the Council that in the event that a system of assigning fishing rights is developed as part of the FMP, such assignments shall be based upon historical levels of participation in the fishery prior to January 9, 1991, with consideration for recent investments that have not yet been reflected in measures of participation.

2. New or re-rigged vessels will be given consideration in the assignment of fishing rights if: (a) They were under construction or re-rigging for directed lobster fishing as of January 9, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and intent to participate in the lobster fishery; and (b) they possessed an American lobster permit and landed lobster prior to January 9, 1992.

3. The public is further notified that it is the intent of the Council that historical participation will transfer with a vessel, for transfers made after January 9, 1991, unless such transfer is accompanied by a written document indicating the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred with the vessel.

4. The Council further intends that any system of assigning fishing rights will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

a. The degree of economic dependence upon the lobster fishery including, but not limited to, the percentage of income derived from the lobster fishery;

b. Extent of past participation in the lobster fishery; and



c. Demonstration of intent prior to January 9, 1991, to re-enter the lobster fishery with a different vessel.

This notice hereby announces that January 9, 1991, may potentially be used to determine historical or traditional participation in the American lobster fishery. The action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the American lobster fishery. Harvesters are not guaranteed future participation in the American lobster fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date.

The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to harvesters in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson Fishery Conservation and Management Act.

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

Dated: March 19, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 91-6971 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M

### Taking and Importing of Marine Mammals

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

**ACTION:** Notice of embargo for yellowfin tuna.

**SUMMARY:** A U.S. embargo on imports of yellowfin tuna and tuna products caught by Mexican purse seine vessels operating in the eastern tropical Pacific Ocean (ETP) went into effect on February 22, 1991. The embargo was imposed as a result of a Federal court order originally issued by the U.S. District Court for the Northern District of California.

This notice also notifies intermediary nations of the effective dates and scope of the intermediary nation embargo provisions that NMFS will apply under the Marine Mammal Protection Act (MMPA).

**DATES:** This importation prohibition went into effect February 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** E.C. Fullerton, Director, Southwest Region, NMFS. Phone (213) 514-6196.

**SUPPLEMENTARY INFORMATION:** The MMPA (16 U.S.C. 1361 *et seq.*) requires a ban on the importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of ocean mammals in excess of U.S. standards. In the case of yellowfin tuna harvested with purse seines in the ETP, the MMPA requires the ban unless the harvesting nation has met standards comparable to those of the United States. The MMPA's ban also applies to an intermediary nation (a nation that exports yellowfin tuna or tuna products to the United States and that imports yellowfin tuna or tuna products) unless the intermediary nation has acted to ban "such products" from countries whose yellowfin tuna is embargoed by the United States. NMFS regulations (50 CFR 216.24(e)(5)(1)) ban the import of tuna or tuna products, by specified U.S. Harmonized Tariff Schedule Item Numbers, from countries that have not met the comparability standards of the MMPA, and from intermediary nations that have not acted to ban tuna and tuna products from nations embargoed by the United States.

On October 19, 1990, the U.S. District Court for the Northern District of California issued an order enjoining the importation of "yellowfin tuna, or yellowfin tuna products harvested with purse seines in the Eastern Tropical Pacific by the country of Mexico \* \* \*." On November 14, 1990, the U.S. Court of Appeals for the Ninth Circuit granted a motion to stay the district court's October 19 preliminary injunction, effectively removing the embargo. On February 19, 1991, the stay was vacated by the appellate court, reinstating the embargo. The embargo went into effect February 22, 1991.

NMFS will adhere to the terms of the court-ordered embargo with respect to any embargoes applied to intermediary nations as a result of that embargo, and will limit any intermediary nation embargoes to tuna and tuna products harvested with purse seines in the ETP by the harvesting nation.

Therefore, the Assistant Administrator for Fisheries, NOAA, announces that the U.S. Court of Appeals for the Ninth District has vacated the stay of the October 19, 1990, preliminary injunction ordered by the U.S. District Court for the Northern District of California, and, therefore, that the importation of "yellowfin tuna, or yellowfin tuna products harvested

with purse seines in the eastern tropical Pacific Ocean by the country of Mexico" is prohibited.

Under 50 CFR 216.24(e)(ix), all intermediary nations that export yellowfin tuna and tuna products to the United States and that also import yellowfin tuna and tuna products from Mexico must certify to the Assistant Administrator that they have acted within 60 days of the U.S. ban (by April 23, 1991) to prohibit imports from Mexico of yellowfin tuna and tuna products harvested by purse seine in the ETP. Yellowfin tuna and tuna products harvested by Mexico in the ETP will not be allowed to enter the United States from intermediary nations that fail to provide such certification within 90 days (by May 23, 1991).

Dated: March 15, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 91-6972 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M

### Taking and Importing of Marine Mammals

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

**ACTION:** Notice of finding of conformance.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, announces that the Government of Ecuador has submitted documentation that it is in compliance with the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the eastern tropical Pacific Ocean. An affirmative finding has been made that will allow yellowfin tuna and tuna products to be imported into the United States through December 31, 1991.

**DATES:** This finding is effective March 15, 1991, and remains in effect until December 31, 1991, or until superseded.

**FOR FURTHER INFORMATION CONTACT:** E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514-6196.

**SUPPLEMENTARY INFORMATION:** On March 30, 1990, NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act Amendments of 1988. The rule governed the importation of yellowfin tuna. Additionally, on November 16, 1990, NMFS published an interim final rule (55 FR 47880) that



established a provision for timely consideration and granting of an affirmative finding under the yellowfin tuna import regulations to a nation that prohibits its vessels from intentionally setting on marine mammals in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean. With an affirmative finding, yellowfin tuna and tuna products from the harvesting nation can be imported into the United States.

The Assistant Administrator, after consultation with the Department of State, finds that the Republic of Ecuador has submitted documentary evidence that establishes that its regulatory program complies with the tuna importation provisions of 50 CFR 216.24(e)(5)(vii). As a result of this affirmative finding, yellowfin tuna and tuna products from Ecuador can be imported into the United States through December 31, 1991.

Dated: March 15, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 91-6973 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 19, 1991.

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

**ACTION:** Issuing a directive to the  
Commissioner of Customs establishing  
limits for a new agreement year.

**EFFECTIVE DATE:** April 1, 1991.

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

#### SUPPLEMENTARY INFORMATION:

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

The current Bilateral Cotton, Wool  
and Man-Made Fiber Textile Agreement  
between the Governments of the United  
States and the Federative Republic of  
Brazil establishes limits for the new  
agreement year which begins on April 1,  
1991 and extends through March 31,  
1992.

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).

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

Dated: March 20, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation  
of Textile Agreements.

#### Committee for the Implementation of Textile Agreements

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

March 19, 1991.

Dear Commissioner:

Under the terms of Section 204 of the  
Agricultural Act of 1956, as amended (7  
U.S.C. 1854), and the Arrangement Regarding  
International Trade in Textiles done at  
Geneva on December 20, 1973, as further  
amended on July 31, 1986; pursuant to the  
Bilateral Cotton, Wool and Man-Made Fiber  
Textile Agreement, effected by exchange of  
notes dated September 15 and 19, 1988,  
between the Governments of the United  
States and the Federative Republic of Brazil;  
and in accordance with the provisions of  
Executive Order 11651 of March 3, 1972, as  
amended, you are directed to prohibit,  
effective on April 1, 1991, entry into the  
United States for consumption and  
withdrawal from warehouse for consumption  
of cotton, wool and man-made fiber textile  
products in the following categories,  
produced or manufactured in Brazil and  
exported during the twelve-month period  
which begins on April 1, 1991 and extends  
through March 31, 1992, in excess of the  
following levels of restraint:

Category	12-mo restraint limit
<b>Aggregate Limit</b>	
200-239, 300- 369, 400-469 and 600-670.	323,581,288 square meters equivalent.
<b>Sublevels in the Aggregate</b>	
218.....	3,983,364 square meters.
219.....	12,945,934 square meters.
225.....	6,970,887 square meters.

Category	12-mo restraint limit
300/301.....	5,402,358 kilograms.
313.....	36,646,951 square meters.
314.....	5,477,126 square meters.
315.....	16,431,378 square meters.
317/326.....	14,937,616 square meters.
334/335.....	107,191 dozen.
336.....	59,551 dozen.
338/339/638/639.....	1,071,914 dozen.
342/642.....	315,619 dozen.
347/348.....	774,160 dozen.
350.....	101,236 dozen.
361.....	809,891 numbers.
363.....	19,294,459 numbers.
369-D <sup>1</sup> .....	386,058 kilograms.
410/624.....	7,966,729 square meters of which not more than 2,498,242 square meters shall be in Category 410.
433.....	17,342 dozen.
445/446.....	67,937 dozen.
604.....	378,165 kilograms of which not more than 289,026 kilograms shall be in Category 604-A. <sup>2</sup>
607.....	3,511,533 kilograms.
647/648.....	357,305 dozen.
669-P <sup>3</sup> .....	1,286,859 kilograms.

<sup>1</sup> Category 369-D: only HTS numbers  
6302.60.0010, 6302.91.0005 and 6302.91.0045.

<sup>2</sup> Category 604-A: only HTS number  
5509.32.0000.

<sup>3</sup> Category 669-P: only HTS numbers  
6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for  
the period April 1, 1990 through March 31,  
1991 shall be charged against the levels of  
restraint to the extent of any unfilled  
balances. In the event the limits established  
for that period have been exhausted by  
previous entries, such goods shall be subject  
to the levels set forth in this directive.

The foregoing limits may be adjusted in the  
future under the provisions of the current  
bilateral agreement between the  
Governments of the United States and the  
Federative Republic of Brazil.

The conversion factor for Categories 338/  
339/638/639 is 10 square meters per dozen.

In carrying out the above directions, the  
Commissioner of Customs should construe  
entry into the United States to include entry  
for consumption into the Commonwealth of  
Puerto Rico.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation  
of Textile Agreements.

[FR Doc. 91-6951 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-DR-M

### Negotiated Settlement on Import Limits for Certain Cotton and Man- Made Fiber Textile Products Produced or Manufactured in Nigeria

March 20, 1991.

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



**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit for a new agreement year.

**EFFECTIVE DATE:** March 27, 1991.

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

In a Memorandum of Understanding (MOU) dated February 21, 1991 between the Governments of the United States and Nigeria, agreement was reached to establish a Bilateral Textile Agreement for cotton and man-made fiber textile products in merged Categories 219, 220, 313, 314, 315, and 317, produced or manufactured in Nigeria and exported during three consecutive one-year periods beginning on January 1, 1990 and extending through December 31, 1992. A formal exchange of notes will take place at a later date. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit 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). Also see 55 FR 36682, published on September 6, 1990.

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

Dated: March 20, 1991.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 20, 1991.  
Commissioner of Customs,  
Department of the Treasury,  
Washington, DC 20229.

Dear Commissioner:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to a Memorandum of Understanding dated February 21, 1991

between the Governments of the United States and Nigeria; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 27, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nigeria and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraining limit <sup>1</sup>:

Category	12-mo limit
219, 220, 313, 314, 315, and 317.	26,500,000 square meters of which not more than 8,480,000 square meters shall be in Category 219: 8,480,000 square meters shall be in 220. 8,480,000 square meters shall be in 313. 8,480,000 square meters shall be in 314. 9,540,000 square meters shall be in 315. 8,480,000 square meters shall be in 317.

Imports charged to the category limit for Categories 219, 220, 313, 314, 315, and 317 for the period January 1, 1990 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.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-6950 Filed 3-22-91; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons Policy; Meeting

**ACTION:** Cancellation of meeting.

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 1990.

**SUMMARY:** The meeting notice for the Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons Policy scheduled for 25 March, 1991, as published in the *Federal Register* (Vol. 56, No. 43, Page 9200, Tuesday, March 5, 1991, FR Doc. 91-5124) has been cancelled.

Dated: March 19, 1991.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-6942 Filed 3-22-91; 8:45 am]

BILLING CODE 3810-01-M

#### Defense Science Board Task Force on Advanced Naval Warfare Concepts; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on 16 April, 1991, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. app. II (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 19, 1991.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 91-6940 Filed 3-22-91; 8:45 am]

BILLING CODE 3810-01-M

#### Defense Science Board Task Force on Anti-Submarine Warfare; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Anti-Submarine Warfare will meet in closed session on 11 April, 1991, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of



Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will deliberate on findings and recommendations and review a draft of the Task Force's interim report.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: March 19, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-6941 Filed 3-22-91; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3916-6]

### Clean Air Act Advisory Committee; Open Meeting and Committee Appointments

**SUMMARY:** On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR No. 217 46,993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990. In the November 8, 1990 notice, EPA also sought nominations for candidates for membership on the CAAAC.

**OPEN MEETING DATES:** Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on April 11, 1991 from 9 a.m. to 5 p.m., at the Madison Hotel, 15th and M Streets, NW., Washington, DC. Please note that this date is a change from a previously advance notice for this meeting. Due to the size of the meeting room, seating is limited to approximately 150 individuals and will be made available on a first come, first served basis.

**APPOINTMENT OF COMMITTEE MEMBERS:** The following individuals, nominated for membership on the Clean Air Act Advisory Committee, have agreed to accept the U.S. Environmental Protection Agency's invitation to serve as members of this Committee:

### Members of the Clean Air Act Advisory Committee

#### State/Local Government

1. Mr. Iwan Choronenko, Director, Air Pollution Control Program, Environmental Protection Commission of Hillsborough County, Tampa, Florida
2. Senator Vernon J. Ehlers, President Pro Tem, Michigan State Senate, Lansing, Michigan
3. Ms. Stephanie A. Foote, Member, Denver City Council, Denver, Colorado
4. Mr. Charles R. Imbrecht, Chairman, California Energy Commission, Sacramento, California
5. Ms. Jananne Sharpless, Chairwoman, Air Resources Board, State of California, Sacramento, California
6. The Honorable Tommy G. Thompson, Governor, State of Wisconsin, Madison, Wisconsin
7. Ms. Susan F. Tierney, Secretary, Executive Office of Environmental Affairs, State of Massachusetts, Boston, Massachusetts

#### Academic Institutions

8. Mr. A. James Barnes, Dean, School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana
9. Dr. Steven A. Sahn, Professor and Director, Division of Pulmonary and Critical Care Medicine, Medical University of South Carolina, Charleston, South Carolina
10. Dr. Murray Wiedenbaum, Director, Center for the Study of American Business, Washington University, St. Louis, Missouri

#### Environmental/Public Interest Groups

11. Mr. S. William Becker, Executive Director, STAPPA/ALAPCO, Washington, DC
12. Mr. Peter A.A. Berle, President, Audubon Society, New York, New York
13. Mr. David Doniger, Senior Attorney, National Resources Defense Council, Washington, DC
14. Ms. Alma Williams, Director, Arizonians for Clean Air Now, Phoenix, Arizona

#### Unions

15. Ms. Mary Masulla, Legal Counsel, Sheetmetal, Occupational Health Institute, Washington, DC
16. Mr. Leo C. Zeferetti, Legislative Director, Building and Construction, Trades Department, American Federation of Labor, Congress of Industrial Organizations, Washington, DC

### Industries

17. Mr. Roger G. Ackerman, President and Chief Operating Officer, Corning, Incorporated, Corning, New York
18. Mr. Martin Andreas, Senior Vice President, Archer Daniels Midland Corporation, Decatur, Illinois
19. Mr. Frank S. Blake, General Counsel, GEIPS, Schenectady, New York
20. Dr. F. Peter Boer, Executive Vice President, W. R. Grace and Company, New York, New York
21. Mr. Robert H. Campbell, Executive Vice President, Sun Company, Inc., Radnor, Pennsylvania
22. Mr. Lawrence Codey, Senior Vice President, Public Service Electric and Gas Company, Newark, New Jersey
23. Mr. Charles A. Corry, Chairman of the Board/Chief Executive Officer, USX Corporation, Pittsburgh, Pennsylvania
24. Mr. Donald A. Deieso, President and Chief Executive Officer, Research Cottrell Companies, Sumerville, New Jersey
25. Mr. George W. Haney, General Manager, Nitrogen, Fertilizer Operations Farmland Industries, Inc., Lawrence, Kansas
26. Mr. James A. Henderson, President and Chief Executive Officer, Cummins Engines, Columbus, Indiana
27. Mr. Ben G. Henneke Jr., President, Enviro Fuels, Inc., Tulsa, Oklahoma
28. Mr. Kenneth L. Lay, Chairman and Chief Executive Officer, Enron Corporation, Houston, Texas
29. Mr. Charles D. Malloch, Director, Regulatory Management, Environmental Policy Staff, Monsanto Company, St. Louis, Missouri
30. Ms. Rebecca McDonald, Vice President for Strategic Planning, Tennaco Gas Company, Houston, Texas
31. Ms. Helen O. Petrauskas, Vice President, Environmental and Safety Engineering, Ford Motor Company, Dearborn, Michigan
32. Mr. Walter Quanstrom, Vice President, Environmental Affairs, Amoco Corporation, Chicago, Illinois
33. Mr. Ernest Rosenberg, Director, Legislation and Regulation, Occidental Petroleum, Los Angeles, California
34. Mr. John Rowe, President and Chief Executive Officer, New England Electric System, Westborough, Massachusetts
35. Mr. Robert J. Trunek, Senior Vice President, Manufacturing, Engineering and Technology, ARCO Products Company, Los Angeles, California



36. Mr. Thomas Zosel, Manager,  
Pollution Prevention Programs, 3M  
Corporation, St. Paul, Minnesota

#### Services

37. Mr. Ben Cooper, Senior Vice  
President for Government Printing  
Industries of America, Arlington,  
Virginia
38. Mr. Larry Feldcamp, Partner, Baker  
and Botts, Houston, Texas
39. Mr. Marc Himmelstein, Director,  
National Environmental Strategies,  
Washington, DC
40. Dr. Roger McCellan, President,  
Chemical Industries Institute of  
Toxicology, Research Triangle Park,  
North Carolina
41. Mr. George Sugiyama, Partner,  
Pillsbury, Madison and Sutro,  
Washington, DC
42. Mr. Lee Thomas, Chief Executive  
Officer, Law Environmental Group,  
Kennesaw, Georgia
43. Mr. Steve Wentworth, Board of  
Directors, National Corn Growers  
Association, St. Louis, Missouri
44. Mr. Robert A. Wyman, Partner,  
Latham and Watkins, Los Angeles,  
California
45. Mr. Frank G. Zarb, Chairman,  
President and Chief Executive Officer,  
Smith Barney Harris Upham and  
Company, Inc., New York, New York

**FOR FURTHER INFORMATION** concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, Fax (202) 245-4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: March 18, 1991.

Michael Shapiro,

*Acting Assistant Administrator, Office of Air  
and Radiation.*

[FR Doc. 91-6987 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3916-1]

#### National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under The Safe Drinking Water Act, as amended (Public Law 99-339), will be held at 9 a.m. on April 11, 1991, and at 8:30 a.m. on April 12, 1991, at the Hotel Riverparc, Ballroom, 100 S.E. Fourth Street, Miami, Florida 33131. Council Subcommittees will hold their meetings on April 8 and 9, 1991, at the Dade

County Environmental Resources  
Management Department.

The purpose of the meeting will be to seek the Council's advice and comments on the Reauthorization of the Safe Drinking Water Act. The Council has actively sought the opinions and comments of a variety of groups concerning reauthorization and will use this opportunity to provide the major issues to the Agency. There will be a briefing on the water quality and water quantity issues facing Southern Florida. Updates on the following regulations will also be provided: Lead and Copper; Radionuclides; Phase V; and Disinfection By-Products. Other issues to be discussed will include the implementation of the new regulations state primacy concerns and future data management needs.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before April 3, 1991.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M Street SW., Washington, DC 20460 or at (202) 382-2285.

Dated: March 8, 1991.

Peter L. Cook,

*Acting Director, Office of Drinking Water.*

[FR Doc. 91-6988 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3916-2]

#### Ecological Processes and Effects Committee; Marine Monitoring Task Group; Sediment Criteria Subcommittee; Open Meetings

Under Public Law 92-463, notice is hereby given that two meetings of subgroups of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on April 15-16, 1991, and April 16-17, 1991 in consecutive sessions at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia 22202. Both meetings are open to the public.

The Marine Monitoring Task Group meeting will start at 9 a.m. on April 15 and will adjourn no later than 12:30 p.m. on April 16. The main purpose of this meeting is to review a monitoring strategy which was developed by the Office of Marine and Estuarine Protection (OMEP) for application in the National Estuary Program which is administered by EPA. Copies of background documents for this meeting are available from Mr. Thomas Armitage, OMEP (WH-556-F), 401 M St., SW., Washington, DC 20460 (Phone: 202-475-7378).

The Sediment Criteria Subcommittee will start at about 1:30 p.m. on April 16 and will adjourn no later than 5 p.m. on April 17. The main purpose of this meeting is to review toxicity and bioaccumulation test methods that are used to evaluate dredged materials for possible ocean disposal. The Subcommittee will receive a briefing on the development of methods at several EPA laboratories and a comparison between the methods used in this latest revision and earlier versions of the manual for "Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters". Copies of the background material for this meeting are available from Mr. David Redford, OMEP (WH-556-F), 401 M St. SW., Washington, DC 20460 (Telephone: (202) 475-7179).

For additional information concerning either meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (Phone: (202) 382-2552; Fax: (202) 475-9693). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than April 8, 1991 both meetings. The Science Advisory



Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at both meetings will be on a first come basis.

Dated: March 12, 1991.

Sam Rondberg,

*Acting Director, Science Advisory Board.*

[FR Doc. 91-6989 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3916-3]

**Science Advisory Board; Nonionizing Electric and Magnetic Fields Subcommittee; Open Meeting; April 12-13, 1991**

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Nonionizing Electric and Magnetic Fields Subcommittee of the Science Advisory Board's Radiation Advisory Committee will meet April 12-13, 1991, at the Fountain Plaza, 37 Northeast, Loop 410, San Antonio, Texas 78216, in The Ballroom. The meeting will begin at 8:30 a.m. Friday and adjourn on Saturday no later than 5 p.m. On April 12, 1991, the Subcommittee will continue its review of a draft document prepared by the EPA's Office of Health and Environmental Assessment entitled "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields" (EPA/600/6-90-005B). Further information concerning this announcement, please refer to the notice contained in (55 FR 51958), December 18, 1990.

**DATES:** The meeting will be held April 12-13, 1991. In accordance with Public Law 92-463, the meeting is open to the public, and members of the public may provide comments to the SAB Subcommittee. However, seating is limited and is on a first-come basis.

**FOR FURTHER INFORMATION CONTACT:** Members of the public wishing to provide written comments in advance of the meeting should call Mrs. Kathleen Conway, Designated Federal Official, at (202) 382-2552 by 3 p.m., April 1, 1991. Written comment to be mailed to the Subcommittee in advance of the meeting must be given to Mrs. Conway by noon April 5, 1991. Written comments may also be submitted at the Subcommittee meeting. In either case commenters should provide at least 20 copies for

distribution to the Subcommittee. Oral comments should not duplicate written materials and opportunity for oral comment is limited.

Dated: March 12, 1991.

Sam Rondberg,

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 91-6990 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3916-4]

**Science Advisory Board; Environmental Engineering Committee; Pollution Prevention Subcommittee; Open Meeting**

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Pollution Prevention Subcommittee (PPS) of the Environmental Engineering Committee (EEC), will conduct a review of the Agency's Pollution Prevention Strategic Plan on Thursday, April 11, and Friday, April 12, 1991. The meeting will be in the Westin Hotel at Fountain Square, Cincinnati, Ohio 45202. The hotel telephone number is (513) 621-7700. This meeting of the SAB is being held in concert with the Seventeenth Annual Hazardous Waste Research Symposium on Remedial Action, Treatment and Disposal of Hazardous Waste, so that the participants in this symposium may also participate in this SAB review activity. The meeting will begin at 2 p.m. on Thursday, April 11th and 9 a.m. on Friday, April 12th and will adjourn no later than 4:30 p.m. on April 12th.

At this meeting, the PPS will hear presentations from the Office of Research and Development (ORD) Staff on their pollution prevention research strategic plan. It is expected that the PPS will prepare a draft report on this topic and will brief the ORD staff on the results of their review.

The meeting is open to the public. Any member of the public wishing to obtain the draft report of the Pollution Prevention Research Strategic Plan should contact Mr. Gregory Ondich, Office of Environmental Engineering and Technology Demonstration (RD681), USEPA, 401 M Street SW., Washington, DC 20460, telephone (202) 382-5747. Any member of the public wishing further information on the meeting or those who wish to submit written comments or to attend should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Marcy Jolly, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552

by April 3, 1991. Seating will be on a first come basis.

Dated: March 12, 1991.

Sam Rondberg,

*Acting Staff Director, Science Advisory Board (A101F).*

[FR Doc. 91-6991 Filed 3-22-91; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL COMMUNICATIONS COMMISSION**

**Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting Cancellation**

March 7, 1991.

The meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service scheduled for March 20, 1991, at 10 a.m. (DA 91-221; 56 FR 8351, February 28, 1991; DR Doc 91-4648) has been cancelled. The next Implementation Subcommittee meeting will be announced at a later date.

Any questions regarding the cancellation of this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 91-7018 Filed 3-22-91; 8:45 am]

BILLING CODE 6712-01-M

**FEDERAL RESERVE SYSTEM**

**CBW Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a



written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1991.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CBW Bancorp.*, Crawfordville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Wakulla, Crawfordville, Florida.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *San Juan Bancshares, Inc.*, San Juan, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of San Juan Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire San Juan State Bank, San Juan, Texas.

2. *San Juan Delaware Financial Corporation*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of San Juan State Bank, San Juan, Texas.

Board of Governors of the Federal Reserve System, March 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6966 Filed 3-22-91; 8:45 am]

BILLING CODE 6210-01-F

**Heron Lake Bancshares, 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 § 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 § 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 § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, 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 April 15, 1991.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Heron Lake Bancshares, Inc.*, Heron Lake, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Heron Lake Bancorporation, Inc., Heron Lake, Minnesota, and thereby indirectly acquire Heron Lake State Bank, Heron Lake, Minnesota.

In connection with this application, Applicant also proposes to acquire Heron Lake Agency, Heron Lake, Minnesota, and thereby engage in the sale of general insurance in communities which have populations of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Heron Lake, Oakabena, Brewster, Dundee and Kinbrae, Minnesota.

Board of Governors of the Federal Reserve System, March 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6967 Filed 3-22-91; 8:45 am]

BILLING CODE 6210-01-F

**Norwest Corp.; Acquisition of  
Company Engaged in Permissible  
Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1991.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire AVCO Financial of Mississippi, Inc., Irvine, California, and thereby engage in making and servicing consumer finance loans pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.



Board of Governors of the Federal Reserve System, March 19, 1991.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 91-6968 Filed 3-22-91; 8:45 am]

BILLING CODE 6210-01-F

**The Sumitomo Trust & Banking Co., Ltd.; Application To Engage de novo in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1991.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Sumitomo Trust & Banking Company, Limited*, Tokyo, Japan, to engage *de novo* through its subsidiary, STB Corporate Development Inc., Houston, Texas, in (1) Providing advice

to financial and nonfinancial institutions and high net worth individuals with respect to merger, acquisition, divestiture, and financing transactions, including loan syndications, interest rate swaps, interest rate caps and similar transactions; (2) rendering fairness opinions in connection with mergers, acquisitions, and similar transactions; (3) performing valuation services for financial and nonfinancial institutions and high net worth individuals; (4) preparing feasibility studies for corporations; and (5) furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to *Royal Bank of Scotland Group plc.*, 76 Federal Reserve Bulletin 866 (1990), and § 225.25(b)(4)(iv) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

Board of Governors of the Federal Reserve System, March 19, 1991.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 91-6969 Filed 3-22-91; 8:45 am]

BILLING CODE 6210-01-F

**Jack D. Sweet and Margaret D. Sweet, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 1991.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jack D. Sweet and Margaret D. Sweet*, Dallas, Texas; to acquire an additional 9.34 percent of the voting shares of T B & T, Inc., Dallas, Texas, for a total of 24.50 percent, and thereby indirectly acquire Texas Bank & Trust, N.A., Dallas, Texas.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director,

Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Albert and Dorothy Ratzlaff*, Kingsburg, California, as individuals and as Trustees of a Living Trust; to increase their combined ownership from 9.4 percent to 32.0 percent of the voting shares of Kings River Bancorp, Reedley, California, and thereby indirectly acquire Kings River State Bank, Reedley, California.

Board of Governors of the Federal Reserve System, March 19, 1991.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 91-6970 Filed 3-22-91; 8:45 am]

BILLING CODE 6210-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**Statement of Organization, Functions, and Delegations of Authority; Office of Coordinated Care Policy and Planning and the Office of Prepaid Health Care Operations and Oversight**

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect a reorganization of HCFA to abolish the Office of Prepaid Health Care and to establish a separate Office of Coordinated Care Policy and Planning (OCCPP) reporting directly to the Administrator, HCFA. The establishment of the OCCPP heightens the special nature of coordinated care by streamlining the planning, policy, and promotion roles reporting directly to the Administrator. In addition, an Office of Prepaid Health Care Operations and Oversight (OPHCOO) will be established reporting directly to the Deputy Associate Administrator for Operations. The OPHCOO centralizes the authority and responsibility for the oversight and operations of the prepaid health program in one responsible organization chain.

The specific changes to part F are:

- Section F.10., Health Care Financing Administration (Organization), is amended to read as follows:

**Section F.10., Health Care Financing Administration (Organization)**

The Health Care Financing Administration (HCFA) is an Operating Division of the Department. It is headed by an Administrator, HCFA, who is appointed by the President and reports



to the Secretary. It consists of the following organizational elements:

- A. Office of the Administrator (FA)
- B. Office of Legislation and Policy (FB)
- C. Office of Coordinated Care Policy and Planning (FJ)
- D. Medicaid Bureau (FM)
- E. Office of Executive Operations (FE)
- F. Office of the Associate Administrator for Communications (FG)
- G. Office of the Associate Administrator for Management (FH)
- H. Office of the Associate Administrator for Operations (FP)
- I. Office of the Associate Administrator for Program Development (FQ)

• Section FC.20., Office of Prepaid Health Care (FC) (Functions), is deleted in its entirety. The policy, planning, and promotion responsibilities are transferred to the new Office of Coordinated Care Policy and Planning. The daily operational responsibilities are transferred to the new Office of Prepaid Health Care Operations and Oversight, which will report directly to the Deputy Associate Administrator for Operations.

• A new Section FJ.20., Office of Coordinated Care Policy and Planning (FJ) (Functions), is established to read as follows:

**Section FJ.20., Office of Coordinated Care Policy and Planning (FJ)**

- Develops national policies and objectives for the development, qualification, and ongoing compliance of HMOs and CMPs. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents.
- Acts as the focal point for all Medicare prepaid health plan research, demonstration, and evaluation study activity within and external to the Department.
- Develops and implements programs to encourage greater access of Federal Medicare beneficiaries to HMOs and other prepaid health plans.
- Monitors and analyzes Federal activities and policies regarding Federal beneficiaries in Medicare, CHAMPUS, and the Federal Employees Health Benefits programs. Coordinates the development and implementation of health education and health promotion programs in prepaid health plans.
- Coordinates the Department's efforts to move toward a pluralistic health care delivery system.
- Conducts special studies of prepaid health plans operations and operating data and identifies trends and develops performance measures which can be used by the Office of Prepaid Health Care Operations and Oversight and by

the industry to assess the development and operation of prepaid health plans.

• Develops and issues technical guidance documents for use by the industry in the development of prepaid health plans and the improvement of operations in existing prepaid health plans.

• Develops and maintains close relationships with national organizations representing the prepaid health plans industry to enhance technical assistance capability and to establish appropriate performance measures.

• Plans, coordinates, and directs the development and preparation of coordinated care legislative proposals, regulatory proposals, and policy documents and performs strategic policy and planning functions and other special tasks as required by the Administrator.

• Provides liaison staff for activities with other Federal programs and agencies, health care professional associations, and trade associations.

• Section FP.10., Office of the Associate Administrator for Operations (Organization), is replaced by an amended statement to reflect the addition of the Office of Prepaid Health Care Operations and Oversight responsibilities. Section FP.10. reads as follows:

**Section FP.10., Office of the Associate Administrator for Operations (Organization)**

The Office of the Associate Administrator for Operations (OAAO), under the leadership of the Associate Administrator for Operations, includes:

- A. Bureau of Program Operations (FPA)
- B. Office of Prepaid Health Care Operations and Oversight (FPF)
- C. Health Standards and Quality Bureau (FPE)
- D. Offices of the Regional Administrators (FPD)

• Section FP.20., Office of the Associate Administrator for Operations (FP) (Functions), is deleted and replaced by the following updated functional statement. The statement is amended to reflect the transfer of prepaid health care daily operations responsibility to AAO. The new functional statement for the Office of the Associate Administrator for Operations reads as follows:

**Section FP.20., Office of the Associate Administrator for Operations (FP) (Functions)**

The Associate Administrator for Operations (AAO) is responsible for the effective direction, coordination and implementation of all aspects of Central

Office and regional program operations, including the Medicare financial management systems; the development, negotiation, execution and management of contracts with Medicare contractors; enforcement of health quality and safety standards for providers and suppliers of health care services; conduct of professional review and other medical review programs; the evaluation of contractors and State agencies against performance standards; the national direction and executive leadership for prepaid health operations activities, including health maintenance organizations (HMOs), competitive medical plans (CMPs), and other capitated health organizations; and the statistically based quality control programs which measure the financial integrity of Medicare. The 10 Regional Administrators and OPHCOO report to the AAO through the Deputy Associate Administrator for Operations.

• A new Section FP.20.B., Office of Prepaid Health Care Operations and Oversight (FPF), is added to read as follows:

**B. Office of Prepaid Health Care Operations and Oversight (FPF)**

- Provides national direction and executive leadership for prepaid health operations, including health maintenance organizations (HMOs), competitive medical plans (CMPs), and other capitated health organizations.
- Develops national operations objectives for the qualification and ongoing compliance of prepaid health plans.
- Develops long- and short-range program operational goals and objectives.
- Serves as the departmental focal point in the areas of prepaid health plan qualification, ongoing regulation, employer compliance efforts, and Medicare HMO and CMP risk contracting.
- Administers Medicare managed care contracts, the capitation formula, and reimbursement policies.
- Oversees the operation of the prepaid health information system.
- Determines the amounts of payments to be made to prepaid health plans and the amounts, methods, and frequency of retroactive adjustments.
- Incorporates a prospective payment system or prepaid health care through the implementation of Tax Equity and Fiscal Responsibility Act risk contracts.
- Evaluates cost reporting methodologies and conducts a continuing audit program to determine the final program liability for cost contracts.



- Administers beneficiary enrollment and disenrollment including coordination with beneficiary groups and other HCFA and HHS components.

### 1. Office of Qualifications (FPF1)

- Establishes qualification standards and determines the acceptability of entities seeking to become Federally "qualified."
- Coordinates and insures the consistency of regional office activities related to the qualification and Medicare prepaid health care contracting processes.
- Assists the Office of Coordinated Care Policy and Planning in the development of policy and regulatory proposals related to qualification. Evaluates the impact of policies, legislation, and regulations on the ability of projects to become qualified and provides guidance as to the interpretation of policy guidelines and regulations related to qualification.
- Oversees all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), Health Care Prepayment Plans, and national organizations.
- Reviews and analyzes national data on an ongoing basis for the purpose of monitoring Medicare prepaid health care in the areas of contract performance, plan enrollment, and payments.
- Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program.
- Processes reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services.

### 2. Office of Compliance (FPF2)

- Assures the continuing compliance of prepaid health plans with the statutory and regulatory requirements. Assures compliance by employers with a mandatory offering of the prepaid health plan alternative in employee health benefits plans.
- Assists the Office of the General Counsel in the development of legal actions against prepaid health plans and employers considered not to be in compliance with applicable standards and regulatory requirements.
- Reviews standards, procedures, and reporting requirements for monitoring of prepaid health plans that receive financial assistance under grants, loans, and loan guaranties.
- Directs and coordinates the prepaid health plan loan management activities and assures compliance by loan

recipients with legislative requirements for fiscal viability.

- Assists the Office of Coordinated Care Policy and Planning in the development of policy and regulatory proposals related to prepaid health plan compliance and evaluates the impact of policy, legislation, and regulations on the ability of qualified organizations to remain in compliance.

- Develops and implements strategy related to rehabilitation or liquidation and utilizes computerized data systems to maintain and monitor national prepaid health plan activity statistics.

### 3. Office of Financial Management (FPF3)

- Develops, plans, and conducts a comprehensive financial management program with respect to the operation of prepaid health plans (including Health Maintenance Organizations, Health Care Prepayment Plans, Competitive Medical Plans, and any capitation demonstration projects) for the provision of services under the Medicare program.
- Coordinates and monitors the financial management implementation with HCFA and HHS components in regard to capitation formula, reimbursement policies, and the prepaid health care information system.
- Determines the amounts of payments to be made to prepaid health plans and the amounts, methods, and frequency of retroactive adjustments.
- Incorporates a prospective payment system for prepaid health care through the implementation of Tax Equity and Fiscal Responsibility Act risk contracts.

- Evaluates cost reporting methodologies and conducts a continuing audit program to determine final program liability for cost contracts.
- Conducts or participates in studies aimed at long-range improvements and the overall evaluation of prepaid health care and its impact on the Medicare program.

- Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the areas of plan enrollment and payments.

Dated: March 18, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 91-6992 Filed 3-22-91; 8:45 am]

BILLING CODE 4120-01-M

## Centers for Disease Control

### Ryan White Comprehensive AIDS Resources Emergency (CARE) Act State and Local Health Department Representatives Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) announces the following meeting.

*Name:* CARE Act State and Local Health Department Representatives Meeting.

*Time and date:* 9 a.m.-4 p.m., April 9, 1991; 9 a.m.-12 noon, April 10, 1991.

*Place:* Sheraton Century Center Hotel, Clairmont Road at I-85, Atlanta, Georgia 30345.

*Status:* Open to the public, limited only by space available.

*Purpose:* State and local health department representatives will consider issues related to CDC's implementation of the CARE Act and review the fiscal year 1992 draft program announcement for state and local health departments concerning human immunodeficiency virus (HIV) formula grants for prevention and early intervention.

*Matters to be discussed:* State and local health department representatives will discuss issues related to the implementation of early intervention programs and linkage with prevention programs.

*Contact person for more information:* Gary R. West, Assistant Deputy Director (HIV), CPS, CDC, 1600 Clifton Road, NE., Mailstop E-07, Atlanta, Georgia 30333, telephone 404/639-1480 or FTS 236-1480.

Dated: March 19, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-6958 Filed 3-22-91; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

[Docket No. 90N-0055]

### Conjugated Estrogens Tablets; Withdrawal of Approval of 28 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 28 abbreviated new drug applications (ANDA's) for conjugated estrogens tablets. The basis for the withdrawal is that the products are no longer shown to be safe and lack substantial evidence of effectiveness for their indicated uses. These products, which are generic versions of Premarin Tablets, are no longer marketed. The products have been used for osteoporosis and other conditions



amenable to estrogen replacement therapy.

**EFFECTIVE DATE:** April 24, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Harry T. Schiller, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** In a notice published in the *Federal Register* of February 13, 1990 (55 FR 5074), the Director of the Center for Drug Evaluation and Research (the Director) offered an opportunity for a hearing on a proposal to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) to withdraw approval of previously approved ANDA's for conjugated estrogens tablets. The proposal was based on new information demonstrating that the products approved under ANDA's were potentially bioequivalent to Premarin Tablets, the innovator product manufactured by Wyeth-Ayerst Laboratories. Based on this new information and a reevaluation of other information, the Director found that the products approved under ANDA's were no longer shown to be safe and lacked substantial evidence of effectiveness. The sponsors for the following ANDA's failed to respond to the notice and, consequently, waived their opportunity for a hearing:

ANDA 83-354; 0.625 milligram (mg), 1.25 mg, and 2.5 mg of conjugated estrogens; Private Formulations, Inc., 460 Plainsfield Ave., Edison, NJ 08818-1904.

ANDA 83-356; 0.625 mg of conjugated estrogens; Heather Drug Co., Inc., No. 1 Fellowship Rd., Cherry Hill, NJ 08003.

ANDA 83-357; 0.625 mg, 1.25 mg, and 2.5 mg of conjugated estrogens; Organon Sub Akzona, Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052.

ANDA 83-360; 1.25 mg of conjugated estrogens; Heather Drug Co., Inc.

ANDA 83-592; 1.25 mg of conjugated estrogens; Private Formulations, Inc.

ANDA 83-761; 0.625 mg of conjugated estrogens; Cord Laboratories, Inc., 2555 W. Midway Blvd., P.O. Box 446, Broomfield, CO 80020-0446.

ANDA 83-762; 2.5 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 83-763; 1.25 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 83-996; 1.25 mg of conjugated estrogens; KV Pharmaceutical Co., Inc., 2503 South Hanley Rd., St. Louis, MO 63144.

ANDA 84-295; 1.25 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc., 1300 Abbott Dr., Elgin, IL 60120.

ANDA 84-296; 0.625 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc.

ANDA 84-297; 2.5 mg of conjugated estrogens; Standard Pharmaceutical Corp., Inc.

ANDA 84-368; 1.25 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc., 465 Industrial Way West, Eatontown, NJ 07724.

ANDA 84-371; 0.625 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc.

ANDA 84-372; 2.5 mg of conjugated estrogens; West Ward Pharmaceutical Corp., Inc.

ANDA 84-650; 2.5 mg of conjugated estrogens; Heather Drug Co., Inc.

ANDA 85-396; 1.25 mg of conjugated estrogens; KV Pharmaceutical Co., Inc.

ANDA 85-800; 0.625 mg of conjugated estrogens; Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.

ANDA 85-801; 1.25 mg of conjugated estrogens; Chelsea Laboratories, Inc.

ANDA 85-826; 2.5 mg of conjugated estrogens; Chelsea Laboratories, Inc.

ANDA 85-908; 2.5 mg of conjugated estrogens; Private Formulations, Inc.

ANDA 86-070; 0.3 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 86-084; 1.25 mg of conjugated estrogens; Cord Laboratories, Inc.

ANDA 86-085; 0.625 mg of conjugated estrogens; Cord Laboratories, Inc.

Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213, requested a hearing but subsequently withdrew its hearing request for the following ANDA's:

ANDA 83-272; 0.625 mg of conjugated estrogens.

ANDA 83-294; 1.25 mg of conjugated estrogens.

ANDA 83-295; 2.5 mg of conjugated estrogens.

ANDA 86-492; 0.3 mg of conjugated estrogens.

Accordingly, the Director, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 5.82), finds that:

(1) New evidence of clinical experience not contained in the applications listed above or not available until after the applications were approved, and tests by new methods, and tests by methods not deemed reasonably applicable when the applications were approved, evaluated together with the evidence available when the applications were approved, show that the conjugated estrogens tablet products approved under the applications listed above are now shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and

(2) On the basis of new information with respect to the conjugated estrogens tablet products approved under the applications listed above, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence

that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Therefore, pursuant to the foregoing finding, approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 24, 1991. Shipment in interstate commerce of the products listed above will then be unlawful.

Section 505(j)(6)(C) of the act requires that FDA immediately remove from its approved product list ("Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to the withdrawals of approval of the ANDA's listed above. Notice is hereby given that the drug products covered by these ANDA's are removed from the list

Dated: March 13, 1991.

Gerald F. Meyer,

*Deputy Director, Center for Drug Evaluation and Research.*

[FR Doc. 91-6960 Filed 3-22-91; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Program Announcement and Proposed Funding Priority for Advanced Nurse Education Grants

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1992, Grants for Advanced Nurse Education presently authorized under section 821(a), title VIII, of the Public Health Service (PHS) Act, as amended by Public Law 100-607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and authorization of appropriations.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 821(a) of the Public Health Service Act, as implemented by 42 CFR



part 57, subpart Z presently authorizes assistance to meet the costs of projects to:

- (1) Plan, develop and operate;
- (2) Expand; or
- (3) Maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

To be eligible to receive a grant, a school must be a public or private nonprofit collegiate school of nursing and be located in a state.

The period of Federal support should not exceed three years.

#### National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238.)

#### Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education and service programs which provide comprehensive primary care services to the underserved.

#### Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided,

and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

In addition, the following mechanism may be applied in determining the funding of approved applications: Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

#### Statutory Funding Priority

Section 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

#### Funding Priorities for Fiscal Year 1992

The following funding priorities were established in FY 1989 after public comment and the Administration is extending these priorities in FY 1992.

In determining the order of funding of approved applications a funding priority will be given to:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. Applicant institutions submitting applications to establish the first master's level nursing program in that institution may qualify for a funding priority if they can demonstrate an enrollment of minority students in their undergraduate program in excess of the national average for undergraduate nursing programs.

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases including AIDS patients.

#### Proposed Funding Priority

In addition, for FY 1992, it is proposed that a funding priority be given to:

Applicant institutions, where applicable, that have formal linkages between the education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved. This priority is designed to increase the delivery of health care services to underserved populations and to foster the interest of health professionals to serve in underserved areas following graduation.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before April 24, 1991 will be considered before the proposed funding priority is established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding priority will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline dates for FY 1992 are May 15, 1991 and October 1, 1991.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

For information regarding this program contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6333.



Requests for application materials, and questions regarding business management issues and grants policy should be directed to: Grants Management Officer (D-23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6960.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 93.299 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: February 15, 1991.

Robert G. Harmon,  
Administrator.

[FR Doc. 91-6962 Filed 3-22-91; 8:45 am]

BILLING CODE 4160-15-M

### **Program Announcement and Proposed Funding Priority for Nurse Practitioner and Nurse Midwifery Programs**

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992, Grants for Nurse Practitioner and Nurse Midwifery Programs are presently being accepted under the authority of section 822(a) of the Public Health Service (PHS) Act, as amended. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the authorization of appropriations.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR

part 57, subpart Y, presently authorizes assistance to meet the costs of projects to:

- (1) Plan, develop and operate,
- (2) Expand, or
- (3) Maintain programs for the training of nurse practitioners and/or nurse midwives.

Eligible applicants are public or nonprofit private schools of nursing and public health, public or nonprofit private hospitals, and other public or nonprofit private entities. Also eligible are public or nonprofit private schools of medicine which received grants or contracts under section 822(a) prior to October 1, 1985. The period of Federal support should not exceed three years.

### **National Health Objectives for the Year 2000**

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

### **Education and Service Linkage**

As part of its long range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

### **Review Criteria**

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in section 57.2405 of the program regulations and the appendix;
2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;
3. The capability of the applicant to carry out the proposed project;
4. The extent to which the project has joint program direction by qualified nurse and physician educators;
5. The soundness of the fiscal plan for assuring effective utilization of grant funds; and
6. The potential of the project to continue on a self-sustaining basis after the project period.

In addition, the following mechanisms as defined below may be applied in

determining the funding of approved applications:

1. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria; and
2. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For FY 1992, the following statutory and Departmental special considerations will be applied.

### **Statutory Special Considerations**

In accordance with the statute, section 822, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health professional shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long term care—including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

### **Funding Priorities for Fiscal Year 1991**

The following funding priorities were established in FY 1991, after public comment, and the Administration is extending these priorities in FY 1992.

In determining the order of funding of approved applications a funding priority will be given to:

#### **(1) Graduate Degree Programs**

Applicant institutions that have either a 3 year average enrollment of minority students in graduate nursing education in excess of the national average, or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. Applicant institutions submitting applications to establish the first master's level nursing program in that institution may qualify for a funding priority if they can demonstrate an enrollment of minority students in their undergraduate program in excess of the national average for undergraduate nursing programs.

#### **(2) For Certificate Level Programs**

Applicant institutions which demonstrate an increase in minority enrollment in the program which



exceeds the program's prior 3-year average.

#### Proposed Funding Priority

In addition, for FY 1992, it is proposed that a funding priority be given to:

Applicant institutions that have formal linkages between the education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved. This priority is designed to increase the delivery of health care services to underserved populations and to foster the interest of health professionals to serve in underserved areas following graduation.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1992 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 24, 1991, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline dates for FY 1992 are May 15, 1991 and October 1, 1991.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for grant application materials, questions regarding business management issues and grants policy should be directed to: Grants

Management Officer (D-24), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, telephone (301) 443-6960.

Completed applications should be returned to the Grants Management Officer at the above address.

Should additional programmatic information be required, please contact: Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 5C-26, Rockville, Maryland 20857, telephone (301) 443-6333.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 93.298 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: February 15, 1991.

Robert G. Harmon,  
Administrator.

[FR Doc. 91-6964 Filed 3-22-91; 8:45 am]

BILLING CODE 4160-15-M

#### Program Announcement and Proposed Funding Priorities for Nursing Special Project Grants

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 Nursing Special Project Grants are presently being accepted under the authority of section 820 (a), (b), (c), and (d) of the Public Health Service Act, as amended by Public Law 100-607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the authorization of appropriations.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice

regarding applications does not reflect any change in this policy.

Eligible applicants are public or nonprofit private schools of nursing and other public or nonprofit private entities.

The period of Federal support should not exceed three years.

#### Nursing Special Project Grants

Special Project Grants and Contracts are presently authorized under title VIII, section 820 of the Public Health Service Act to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in care delivery, and reduce vacancies and turnover in professional nursing positions.

Section 820(a) authorizes grants and contracts to public or nonprofit private schools of nursing or other public nonprofit private entities to improve the quality and availability of nurse training through projects that carry out one of the following purposes:

1. Provide continuing education for nurses;

2. Demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

3. Increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and provide nursing education courses to rural areas through telecommunications via satellite;

4. Provide training and education to (a) upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees and (b) develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;

5. Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

6. Collect data to facilitate communications between health facilities and nursing students and nursing personnel in respect to agreements under which the individuals would serve as nurses in the health facilities in exchange for repayment of their educational loans by the facilities (This activity will be carried out under contract with the Division of Nursing.)



Section 820(b) authorizes grants and contracts to accredited schools of nursing to assist in meeting the costs of providing projects:

1. To improve and education of nurses in geriatrics;
2. To develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
3. To expand and strengthen instruction in methods of such treatment;
4. To support the training and retraining of faculty to provide such instruction;
5. To support continuing education of nurses who provide such treatment; and
6. To establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

Section 820(c) authorizes grants to public and nonprofit private entities for projects to demonstrate innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice. Projects must include initiatives:

1. To restructure the role of the professional nurse to ensure that the expertise of such nurses is efficiently utilized and that they are engaged in direct patient care during a larger proportion of their work time;
2. To test innovative wage structures for professional nurses in order to (a) reduce vacancies in work shifts during unpopular work hours; and (b) provide financial recognition based upon experience and education; and
3. To evaluate effectiveness of providing benefits for professional nurses as a means of increasing their loyalty to health care institutions and reducing turnover in nursing positions.

Section 820(d) authorizes grants to public and nonprofit private entities accredited for the education of nurses for the purpose of:

1. Demonstrating innovative nursing practice models for (a) the provision of case-managed health care services (including adult day care) and health care services in the home or (b) the provision of health care services in long-term care facilities or;
2. Developing projects to increase the exposure of nursing students to clinical practice in nursing homes, home health care, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

Demonstration models must be designed (a) to increase the recruitment

and retention of nurses to provide nursing care for individuals needing long-term care; and (b) to improve nursing care in home health care settings and nursing homes.

To receive support, applicants must meet the requirements of 42 CFR part 57, subpart T.

#### National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238.)

#### Education and Service Linkage

As part of its long range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

#### Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

#### Statutory Requirements

Section 820(g)(2) of the statute requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose 2 of section 820(a), and section 820(b). Not more than \$2 million per year could be obligated for geriatric health education center projects.

Section 820(g)(2) further requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose No. 3 of section 820(a).

Section 820(g)(2) also requires that not less than 10 percent of funds for Special Project Grants be allocated for Purpose No. 4 of section 820(a).

In addition, the following mechanism may be applied in determining the funding of approved applications.

Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

For this program, the following funding priorities will be applied. These funding priorities were established in FY 1990 after public comment and are being extended in FY 1992.

#### Funding Priorities for Fiscal Year 1992

##### Section 820(a)(1)

A funding priority will be given to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses.

##### Section 820(a)(4) (A) & (B)

A funding priority will be given to projects for rapid transition programs toward achievement of professional nursing degrees.

##### Section 820(a)(5)

A funding priority will be given to:

1. Projects which include a target population of minority or disadvantaged persons.
2. Projects which demonstrate efforts to recruit and retain minority nurses.

The following funding priorities were established in FY 1991 after public comment and are being extended in FY 1992.

##### Section 820(c)

A funding priority will be given to applications which demonstrate efforts to recruit and retain minority nurses.

##### Section 820(d)

A funding priority will be given to applications which demonstrate efforts to recruit and retain minority nurses.

#### Proposed Funding Priorities

In addition, for FY 1992, the following funding priorities are proposed:

- (1) A funding priority will be given to applicant institutions, where applicable, that have formal linkages between the education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved. This priority is designed to increase the delivery of health care services to underserved populations and to foster the interest of health



professionals to serve in underserved areas following graduation; and

(2) A funding priority will be given to projects which demonstrate efforts to recruit and retain minority nurses. This priority is intended to increase the percentage of minority enrollment of students in nursing programs. Minority students are currently underrepresented in these programs.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1992 award cycle, the comment period has been reduced to 30 days. All comments received on or before April 24, 1991 will be considered before the proposed funding priorities are established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding priorities will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline dates for FY 1992 are May 15, 1991 and October 1, 1991. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date, and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form and general instructions, PHS 6025-1 HRSA Competing Training Grant Application and supplement for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

For information regarding this program contact: Chief, Nursing

Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-14, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6193.

Requests for application materials and questions regarding business management issues and grants policy should be directed to: Grants Management Officer (D10), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6915.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 93.359 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: February 15, 1991.

Robert G. Harmon,  
Administrator.

[FR Doc. 91-6963 Filed 3-22-91; 8:45 am]  
BILLING CODE 4160-15-M

## National Institutes of Health

### Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN, (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 8356, February 28, 1991) is amended to reflect the following changes in the Division of Research Grants (HNG): (1) Establish the Division of Information Systems (HNG3) and the Division of Referral and Review (HNG6). These changes will establish consistent organizational alignment with equivalent organizations within the NIH structure and provide each the opportunity to develop appropriate substructures to ensure greater accountability and tracking of functions.

Section HN-B, Organization and Functions, is amended as follows: (1) Under the heading Division of Research Grants (HNG), add the following:

Division of Information Systems (HNG3). (1) Develops and operates two large central information data systems (IMPAC and CRISP) for recording, compiling, and reporting operating and statistical data on NIH and the majority

of PHS extramural programs, and provides information on the scientific and administrative characteristics of research, training, and other grant applications and awards or contracts processed through and/or recorded in the system; (2) serves as the NIH central source of statistical and management information for the administration of the extramural programs and for responding to inquiries from other Government agencies, Congress, the scientific community, and the general public; (3) formulates and administers a continuing program, using special surveys and existing information systems, for analysis and evaluation of extramural programs; (4) designs and conducts a program for the compilation, presentation, analysis, and publication of extramural program operations to meet the reporting requirements of the NIH; (5) provides information retrieval and data processing support and assistance to NIH and other DHHS agencies; and (6) compiles, stores, and retrieves information on biomedical research institutions and other organizations which receive grants and contracts.

Division of Referral and Review (HNG6). (1) Receives and reviews applications for PHS research and training support to determine referral to the appropriate PHS health agency and to the appropriate NIH initial review groups; (2) administers the study sections which provide scientific review of NIH and PHS research grant, fellowship, and research career development applications; (3) develops criteria for determining appropriate assignment of applications within the NIH by program areas and by competencies of review groups; (4) recommends policies and procedures governing technical review of applications; (5) proposes uniform instructions to applicants for proper preparation of applications; (6) explains applications and interprets preliminary recommendations for the national advisory councils; (7) extracts and records preliminary data from such applications and serves as information center for applications pending review; (8) stimulates and coordinates the activities of NIH study sections or committees in surveys of research fields to determine current status of research and need for further development; and (9) coordinates scientific review activities with appropriate representatives of NIH and PHS components.



Dated: March 6, 1991.  
 William F. Raub,  
*Acting Director, NIH.*  
 [FR Doc. 91-6937 Filed 3-22-91; 8:45 am]  
 BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AA-680-01-4130-02]

#### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0104), Washington, DC 20503, telephone 202-395-7340.

*Title:* Surface Management of Public Lands Under the U.S. Mining Laws (43 CFR 3809), and Exploration and Mining, Wilderness Review Program (43 CFR 3802)

*OMB approval number:* 1004-0104.

*Abstract:* Section 302(b) and 603(c) of the Federal Land Policy and Management Act of 1976 require that "In managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the [public] lands." The 43 CFR 3802 and 43 CFR 3809 regulations have been promulgated to regulate surface disturbance and ensure reclamation on mining claims and sites located under the mining laws on public land, including areas being considered for wilderness, under the administration of Bureau of Land Management.

*Bureau Form Number:* None.

*Frequency:* Once.

*Description of respondents:* Respondents may range from an individual to multi-national corporations.

*Estimated completion time:* 11 hours.

*Annual responses:* 2,400.

*Annual burden hours:* 26,400.

*Bureau Clearance Officer (Alternate):*  
 Gerri Jenkins, 202-653-8853.  
 Hillary A. Oden,  
*Assistant Director for Energy and Mineral Resources.*  
 [FR Doc. 91-6976 Filed 3-22-91; 8:45 am]  
 BILLING CODE 4310-84-M

[AK-968-4230-15; AA-8485-A]

#### Alaska Native Claims Settlement

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Knikatnu, Incorporated for 14.34 acres. The lands involved are in the vicinity of Knik, Alaska in lot 2, sec. 12, T. 14 N., R. 4 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 24, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Christy Mitchell,  
*Acting Chief, Branch of Cook Inlet and Ahtna Adjudication.*  
 [FR Doc. 91-6975 Filed 3-22-91; 8:45 am]  
 BILLING CODE 4310-JA-M

[CO-030-91-4320-10-1784]

#### Montrose District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with 43 CFR subpart 1784, that a meeting of the Montrose District

Grazing Advisory Board will be held on April 9, 1991, in Dolores, Colorado.

**DATES:** A meeting is scheduled April 9, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Bill Hensley, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado, 81401, telephone (303) 249-7791.

**SUPPLEMENTARY INFORMATION:** The Board will convene at 10 a.m. on April 9, 1991, in the multiple use conference room at the Anasazi Heritage Center in Dolores, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, wild horse status, holistic resource management update, range improvement project review, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 5 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: March 12, 1991.

Alan L. Kesterke,  
*District Manager.*

[FR Doc. 91-7037 Filed 3-22-91; 8:45 am]  
 BILLING CODE 4310-JB-M

[OR-100-00-6310-02; G1-155]

#### Roseburg District Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The District Advisory Council for the Bureau of Land Management, Roseburg District will meet April 26, 1991, beginning at 9 a.m. in the Roseburg District Office Auditorium. On the agenda are election of officers and updates on FY 91 Timber Sale Plan, Wild and Scenic River Management Plan, New Forestry, yew tree policy, and the ten-year Resource Management Plan.



**ADDRESSES:** Bureau of Land Management, Roseburg District, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

**FOR FURTHER INFORMATION CONTACT:** Mel Ingeroi, Public Affairs Specialist, (503) 672-4491.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public, and a public comment period will be provided at 10:30 a.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: March 15, 1991.

Jim Moorhouse,  
District Manager.

[FR Doc. 91-6929 Filed 3-22-91; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-91-4212-14; N-54229]

#### Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada, has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA).

##### Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,  
Sec. 13, N $\frac{1}{2}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
Sec. 14, N $\frac{1}{2}$ ;  
Sec. 15;  
Sec. 16;  
Sec. 17;  
Sec. 18, lots 5 to 20, inclusive;  
Sec. 19, lots 5 to 18, inclusive;  
Sec. 20;  
Sec. 21, N $\frac{1}{2}$ ;  
Sec. 23, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
Sec. 24, N $\frac{1}{2}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ .  
T. 19 S., R. 62 E.,  
Sec. 18, lots 1 to 4, inclusive, E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ ;  
Sec. 19, lots 1 to 4, inclusive, E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ ;  
Sec. 20.

Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County, is being offered as a direct sale to the City of North Las Vegas and is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests.

The applicant will be required to pay a \$50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1 A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium. and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. Nev-061985 and Nev-067348 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959.

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Publication of this notice in the **Federal Register** shall establish April 5, 1991 as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any comments, this realty action will become the final

determination of the Department of the Interior.

The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws.

Dated: March 8, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-6284 Filed 3-22-91; 8:45 am]

BILLING CODE 4310-HC-M

#### Fish and Wildlife Service

##### Intent To Prepare an Environmental Assessment for the Rice and Skunk Lakes Wetland Complex Habitat Preservation Proposal in Morrison County, MN

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Assessment (EA) for a proposed national wildlife refuge in the Rice and Skunk Lakes wetland complex of Morrison County, Minnesota. A public meeting regarding this proposal and preparation of the EA will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in this scoping process are solicited.

**DATES:** Written comments should be received by April 25, 1991. A public meeting will be held in Little Falls, Minnesota, on March 26, 1991.

**ADDRESSES:** Comments should be addressed to: Regional Director; U.S. Fish and Wildlife Service; Federal Building, Fort Snelling; Twin Cities, Minnesota 55111; Attention Douglas Damberg, Project Manager.

**FOR FURTHER INFORMATION CONTACT:** Douglas Damberg, Project Manager; U.S. Fish and Wildlife Service; Federal Building, Fort Snelling; Twin Cities, Minnesota 55111; (612) 725-3306.

The public meeting on Tuesday, March 26, 1991, will be held in the Little Falls Community High School Commons



Area, 1001 Southeast Fifth Avenue, Little Falls, Minnesota 55345.

**SUPPLEMENTARY INFORMATION:** Douglas Damberg is the primary author of this document.

The Fish and Wildlife Service (Service), Department of the Interior, will prepare an EA to evaluate the feasibility of establishing a national wildlife refuge in Morrison County, Minnesota. The study area encompasses the Rice and Skunk Lakes wetland complex, 5 miles southeast of Little Falls, Minnesota.

The area features two shallow lakes, Rice and Skunk Lakes, at the confluence of the Platte River, Skunk River, Rice Creek, and Buckman Creek. Spring runoff frequently inundates this vicinity. Habitat types include open water, wet meadows, bottomlands hardwoods, and large areas of sedges and grasses mixed with shrubs. Upland areas, most of which are used for agriculture, project into and surround this complex. In most years, the lakes produce an abundant wild rice crop. The area attracts large numbers of migrant and breeding waterfowl and supports breeding populations of a number of bird species uncommon in central Minnesota including greater sandhill cranes, LeConte's sparrows, bobolinks, and upland sandpipers.

Habitat in and adjacent to the study area continues to be subjected to agricultural and residential development pressures. Alterations to the natural hydrology of the area are a result of drainage and irrigation. Other agricultural impacts that threaten the area include chemical runoff from farm fields, erosion, and haying of wet meadows and other areas during critical nesting and brood rearing periods. In addition, residential encroachment has accelerated as the area attracts interest from the nearby communities of Little Falls and St. Cloud, Minnesota.

The primary purposes for the proposed refuge are to protect, restore, and manage wetlands in support of the National Wetlands Priority Conservation Plan and the Prairie Pothole Joint Venture of the North American Waterfowl Management Plan; to provide resting, nesting, and feeding habitat for waterfowl and other migratory birds; to improve habitat for resident wildlife; to protect endangered and threatened species and their habitats; to increase biodiversity; and to enhance public opportunities for outdoor recreation and environmental education.

Several preliminary alternatives have been formulated for consideration. One alternative will be a no action plan. Other alternatives could include:

Acquisition by other organizations including State and local agencies and private conservation groups; acquisition by the Service; and acquisition of the core unit by the Service and acquisition of two adjacent units by other organizations. Any acquisition proposed as part of these alternatives would be consistent with the Service's policy of acquiring lands from willing sellers at appraised market value.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR parts 1500-1508), other applicable Federal regulations, and Service procedures for compliance with those regulations.

We estimate the draft EA will be available to the public by June 21, 1991.

Dated: March 18, 1991.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 91-6953 Filed 3-22-91; 8:45 am]

BILLING CODE 4310-55-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Fifth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on April 18, 1:30 p.m. to 5 p.m. and on April 19, 1991, from 8:30 a.m. to 11:30 a.m.

The purpose of this meeting is to consider further the reports and recommendations of the BIFADEC Task Force on Development Assistance and Cooperation and of the Joint Committee on Agricultural Research and Development, which were presented to the Board at the last meeting. The Board will also consider how it and the academic community can better relate to key development issues presently confronting AID and which ones should be given priority attention over the coming months.

Both Meetings will be held in the Department of State. The April 18 meeting will be held in room 1105 New State and the April 19 meeting will be held in room 1107 New State. Any interested person may attend and may present oral statements in accordance with procedures established by the

Board and to the extent the time available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification at all times while in the building.

Please let the BIFADEC staff know (at tel. nos. 663-2585 or 663-2578) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than April 15, 1991.

A BIFADEC staff member will meet you at the Department of State entrance at 22nd and C Streets with your visitor's pass.

Due to the strict security at the Department of State, (even though you are pre-cleared) visitors will be required to present a valid identification with photograph to the receptionist before they can be admitted to the building.

Curtis Jackson Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as AID Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, rm. 309, SA 18, Washington, DC 20523, or telephone him on (703) 875-4005.

Dated: March 19, 1991.

Ralph H. Smuckler,

Executive Director, BIFADEC.

[FR Doc. 91-6949 Filed 3-22-91; 8:45 am]

BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 374X)]

### CSX Transportation, Inc.— Abandonment Exemption—in Somerset County, PA; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 5.08-mile line of railroad between mileposts BVW 207.59 and BVW 211.16, and between mileposts BFI 42.57 and BFI 44.08, at Rockwood, Somerset County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a



State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 24, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 4, 1991.<sup>3</sup> Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 15, 1991, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See, *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 29, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 18, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-6860 Filed 3-22-91; 8:45 am]

BILLING CODE 7035-01-M

#### [Docket No. AB-55 (Sub-No. 357X)]

#### CSX Transportation, Inc.— Abandonment Exemption—in Belmont, Harrison, and Guernsey Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 53.83-mile line of railroad between milepost 4.47, at Bridgeport, and milepost 44.78, at Freeport, including the Egypt Valley Branch at Lafferty (between mileposts 0.00 and 6.48, and between mileposts 0.00 and 2.02) and the Skull Fork Branch at Freeport (between mileposts 0.00 and 5.02), in Belmont, Harrison, and Guernsey Counties, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

revocation under 59 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 18, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 29, 1991.<sup>3</sup> Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 8, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 22, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 19, 1991.

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.



By the Commission, David M. Konschnik,  
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7010 Filed 3-22-91; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America, v. Gerbaz, et al.*, No. 89-M-554 (consolidated with No. 89-M-555) (D. Colo.), has been lodged with the United States District Court for the District of Colorado.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of dredge and fill material into portions of the Roaring Fork River near Carbondale, Colorado, which constitute "waters of the United States." The consent decree requires defendant The Ranch At Roaring Fork Homeowners Association, Inc. ("Defendant") to pay a \$5,000 civil penalty and to perform restoration of various areas of the Roaring Fork River impacted by the alleged violations. The financial contribution towards restoration by defendant Robert Nieslanik, previously deposited with the Registry of the Court, will be available to the Defendant for restoration of particular portions of the site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: David J. Kaplan, P.O. Box 23986, Washington, DC 20026-3986 and should refer to *United States v. Gerbaz, et al.*, DJ Reference No. 90-5-1-1-3220.

The consent decree may be examined at the Clerk's Office, United States District Court, U.S. Courthouse Room C-145, 1929 Stout Street, Denver, Colorado 80294.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-6978 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on January 25, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the *Federal Register* pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26265). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990 (55 FR 925). On February 15, 1990, CFI filed an additional written notification. The Department published a notice in response to the further additional notification on April 23, 1990 (55 FR 15295).

CFI filed an additional notification on May 15, 1990. The Department published a notice in response to the additional notification on June 29, 1990 (55 FR 26792). CFI filed an additional notification on August 16, 1990. The Department published a notice in response to the additional notification on September 18, 1990 (55 FR 38417). CFI filed an additional notification on October 22, 1990. The Department

published a notice in response to the further additional notification on December 10, 1990 (55 FR 50786).

The purpose of this notification is to disclose certain changes in the membership of CFI. The changes consist of the following: (1) The addition of corporate members: Compaq Computer Corporation, Genrad, Ltd., Hitachi Ltd., Toshiba Corporation, VLSI Technology, Inc.; (2) the addition of associate members: Engineering Datexpress, Inc. (a Consultant Associate Member), Scientific & Engineering Software (a Subscription Associate Member), Jerry Erickson, Robert Harris, Mark E. Law, Michael McLennan, Ernst Siepman; (3) the listing for General Motors/Hughes Aircraft has been changed to Hughes Aircraft Company/GM-Delco.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6979 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-01-M

### Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") on January 28, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the *Federal Register* pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, April 19, 1990, July 24, 1990, and October 22, 1990, OSF filed additional written notifications. The Department published notices in the *Federal Register* in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14493), May 21, 1990 (55 FR 20861),



September 27, 1990 (55 FR 39528), and December 28, 1990 (55 FR 53368), respectively.

The identities of the new, non-voting members of OSF are as follows:

Member	Date
FCCN.....	10/15/90.
University of Trondheim.....	10/17/90.
Information Presentation Technology.....	10/18/90.
Advanced Computing Support Center, Inc.	10/19/90.
Patriot Partners.....	10/22/90.
Trusted Information Systems, Inc.....	10/24/90.
University of No. Texas, Dept. of Comp. Science.	10/25/90.
Retix.....	10/29/90.
Northeast Parallel Architectures Center.	10/31/90.
Oregon Graduate Institute of Sc. & Tech.	10/31/90.
Compaq Computer Corporation.....	11/02/90.
Bloomsbury Computing Consortium.....	11/08/90.
Technical University Chemnitz.....	11/08/90.
Worcester Polytechnic Institute.....	11/08/90.
University of Vermont.....	11/09/90.
DATSI (UPM).....	11/13/90.
Korea University.....	11/13/90.
Computer Associates International, Inc.	11/15/90.
MicroUnity Systems Engineering, Inc.....	11/20/90.
SCO, Ministry of Defense, Singapore.....	11/20/90.
Laboratory of Image Analysis.....	11/26/90.
Manchester Computing Centre/University of Manchester.	11/26/90.
State University of Ghent (Belgium).....	11/30/90.
Department of Defense-Fort Meade.....	12/03/90.
Citicorp.....	12/03/90.
Frame Technology Corporation.....	12/03/90.
Northwestern University.....	12/03/90.
Computing Laboratory, University of Kent.	12/04/90.
EDV-Zentrum Der Tu Graz.....	12/04/90.
National Centre for Software Technology.	12/07/90.
Rensselaer Polytechnic Institute.....	12/12/90.
Yonsei University.....	12/17/90.
CalTech/Jet Propulsion Laboratory.....	12/21/90.
BBN, Inc.....	12/21/90.
Barclays Bank PLC.....	12/21/90.
Northern Telecom Limited.....	12/21/90.
Polytechnic University.....	12/28/90.
Unilever PLC/NV.....	01/02/91.
Tandem Computers.....	01/07/91.
Mitsubishi Electric Corporation.....	01/15/91.
Sierra Geophysics, Inc.....	01/15/91.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-6980 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration

By Notice dated January 14, 1991, and published in the *Federal Register* on January 24, 1991, (56 FR 2775), DuPont Pharmaceuticals, The DuPont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530,

made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Oxycodone (9143) .....	II
Hydrocodone (9193) .....	II
Oxymorphone (9652) .....	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 11, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-6934 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-60]

### Joseph A. McMahon, M.D.; Revocation of Registration

On November 6, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Joseph A. McMahon, M.D., of 26 Downer Street, Pawcatuck, Connecticut 06379, proposing to revoke his Certificate of Registration, AM1516600, as a practitioner under 21 U.S.C. 824(a)(4), and to deny any pending applications for registration under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. McMahon's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f).

The Order to Show Cause was sent to Dr. McMahon by registered mail. On November 19, 1990, the Drug Enforcement Administration received a response from Dr. McMahon; however, such response did not request a hearing. On November 21, 1990, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to the Parties informing Dr. McMahon that he must request a hearing by December 7, 1990, if a hearing was desired, or that a final ordered would be entered based upon the investigative file. No response was received from Dr. McMahon. Pursuant to

21 CFR 1301.54(a) and 1301.54(d), Dr. Joseph A. McMahon is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on February 11, 1988, the State of California revoked Dr. McMahon's medical license based upon findings that Dr. McMahon prescribed controlled substances in 1983 and 1984 without a good faith prior examination and medical indication; that Dr. McMahon repeatedly engaged in excessive prescribing practices during 1983 and 1984; that Dr. McMahon issued false and fictitious prescriptions during 1983 and 1984; and that Dr. McMahon presigned prescriptions and permitted a physician assistant to sign his name on prescriptions during 1983 and 1984.

The Administrator further finds that, in 1986, Stonington, Connecticut police officers responded to a complaint of a disturbed person, later identified as Dr. McMahon. McMahon's violent behavior required the officers to subdue him and seek hospital treatment for him, since Dr. McMahon threatened to kill himself and others.

No evidence has been forwarded on behalf of Respondent; therefore, the Administrator concludes that Dr. McMahon has a history of illicit prescribing practices, that his medical license was revoked by the State of California, and that he has proved a danger to himself and to others in the State of Connecticut. Based on the above, the Administrator concludes that Dr. Joseph A. McMahon's continued registration with DEA would be inconsistent with the public interest, and therefore, the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AM1516600, previously issued to Joseph A. McMahon, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective April 24, 1991.

Dated: March 18, 1991.

Robert C. Bonner,  
Administrator.

[FR Doc. 91-6933 Filed 3-22-91; 8:45 am]

BILLING CODE 4410-09-M



## DEPARTMENT OF LABOR

Employment and Training  
AdministrationJob Training Partnership Act  
Allotments; Wagner-Peyser Act  
Preliminary Planning Estimates;  
Program Year (PY) 1991

**AGENCY:** Employment and Training  
Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1991 (July 1, 1991–June 30, 1992) for JTPA titles II–A and III, and for the summer youth program in Calendar Year (CY) 1991 for JTPA title II–B; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1991.

**FOR FURTHER INFORMATION CONTACT:** For JTPA allotments, contact the Office of Employment and Training Programs, room N4703, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, room N4470, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202–535–0157. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1991 (July 1, 1991–June 30, 1992) for JTPA titles II–A and III, and for the summer youth program in Calendar Year (CY) 1991 for JTPA title II–B; and, in accord with section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1991. The allotments and estimates are based on the appropriations of DOL for Fiscal Year (FY) 1990 and FY 1991.

Attached are a list of the allotments for PY 1991 for programs under JTPA titles II–A and III, a list of the allotments for the CY 1991 summer youth program under title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1991 allotments for title II–A and title III, and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1991, Public Law 101–517, for FY 1991. The CY 1991 allotments for title II–B are based on funds appropriated by the Department

of Labor Appropriations Act, 1990, Public Law 101–166, for FY 1990.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1990 data, and published in the Federal Register at a later date.

**JTPA Title II–A Allotments.** Attachment No. I shows the PY 1991 JTPA title II–A allotments by State on a total appropriation of \$1,778,484,000. The amount is composed entirely of PY 1991 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in computing the allotments:

- Data for areas of substantial unemployment (ASUs) are averages for the 12-month period, July 1989 through June 1990.
- The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.
- The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas, including the Freely Associated States, are based on estimated unemployment. The estimated unemployment data were developed using the 1980 Decennial Census unemployment data as a base, updated according to relative shifts in the population. A 90-percent relative share "hold-harmless" of the title II–A allotments for these areas and a minimum allotment of \$125,000 were also applied in determining the allotments.

PY 1991 title II–A funds are to be distributed among designated Service Delivery Areas (SDAs) according to the statutory formula contained in Section 202(a) of JTPA, as amended.

**JTPA Title II–B Allotments.** Attachment No. II shows the CY 1991 JTPA title II–B Summer Youth Program allotments by State based on a total FY 1990 available appropriation of \$699,777,000. The data used for these allotments are the same data as were used for title II–A allotments. The amount allotted is composed entirely of PY 1990 formula funds.

For the Insular Areas, the amount is based on the percentage of title II–B funds each area received during the previous summer.

CY 1991 title II–B funds are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 202(a) of JTPA, as amended.

**JTPA Title III Allotments.** Attachment No. III shows the PY 1991 JTPA title III

Dislocated Worker Program allotments by State, on a total appropriation of \$526,986,000. The total appropriation includes 80 percent allotted by formula to the States (\$421,588,800), and 20 percent for the National Reserve, including funds allotted to the Insular Areas.

Title III formula funds are to be distributed to State and substate grantees in accordance with the provisions in section 302 (c) and (d) of JTPA. There are no matching requirements that apply to these funds as there had been prior to PY 1989.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the September 1989 through August 1990 period. Long-term unemployed data used were for CY 1989.

Allotments for the Insular Areas are based on the proportion of title II–A funds these jurisdictions received.

A reallocation of these published Title III formula amounts, as provided for by Section 303 of JTPA will be completed on or about October 1, 1991, based on expenditure reports submitted by the States. Title III allotments will be adjusted upward or downward, based on whether the State is eligible to share in reallocated funds or is subject to recapture.

**Wagner-Peyser Act Employment Service Preliminary Planning Estimates.** Attachment No. IV shows planning estimates which have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1990 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued within 90 days, based on Calendar Year 1990 data, as required by the Wagner-Peyser Act.

The total planning estimate reflects \$19,322,808 or 2.4 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of Employment Service business.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, \$23,573,826 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds



are distributed in two steps to States which have lost in relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year but which do

not meet the size and density criteria for step one. The technical change introduced in PY 1990 remains in effect. The change redefined a "losing" State as one losing in relative share of total current available resources under the Wagner-Peyser base formula allocation as compared to its relative share of the prior year's total allotment.

Ten percent of the total sums allotted to each State shall be reserved for use

by the Governor to provide performance incentives for public employment service offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 19th day of March, 1991.

Roberts T. Jones,  
Assistant Secretary of Labor.

BILLING CODE 4510-30-M



## ATTACHMENT I

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION  
PY 1991 JTPA TITLE II-A ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	40,351,940
Alaska	5,798,920
Arizona	24,837,138
Arkansas	24,835,446
California	191,090,309
Colorado	24,991,892
Connecticut	14,724,035
Delaware	4,434,424
District of Columbia	4,434,424
Florida	86,730,556
Georgia	42,110,420
Hawaii	4,434,424
Idaho	7,579,545
Illinois	91,261,566
Indiana	33,030,624
Iowa	13,867,747
Kansas	7,601,780
Kentucky	35,285,472
Louisiana	62,649,281
Maine	6,055,031
Maryland	17,884,434
Massachusetts	31,981,900
Michigan	100,403,422
Minnesota	19,070,724
Mississippi	33,308,015
Missouri	34,651,006
Montana	6,633,118
Nebraska	5,102,381
Nevada	5,303,397
New Hampshire	4,434,424
New Jersey	36,830,923
New Mexico	14,370,335
New York	118,997,409
North Carolina	22,249,626
North Dakota	4,434,424
Ohio	80,220,127
Oklahoma	22,466,491
Oregon	17,888,463
Pennsylvania	63,197,892
Puerto Rico	79,795,456
Rhode Island	6,314,141
South Carolina	18,700,428
South Dakota	4,434,424
Tennessee	34,608,308
Texas	143,124,481
Utah	7,720,151
Vermont	4,434,424
Virginia	27,530,401
Washington	33,002,889
West Virginia	20,567,853
Wisconsin	23,568,550
Wyoming	4,434,424
American Samoa	157,859
Guam	1,189,129
Marshall Islands	504,888
Micronesia	1,188,566
Northern Marianas	125,000
Palau	125,000
Virgin Islands	1,424,143
NATIONAL TOTAL	1,778,484,000



## ATTACHMENT III

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION  
PY 1991 JTPA TITLE III ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	10,468,754
Alaska	1,570,481
Arizona	3,877,395
Arkansas	6,288,391
California	40,019,381
Colorado	5,057,044
Connecticut	3,589,150
Delaware	493,790
District of Columbia	1,012,992
Florida	22,391,129
Georgia	9,695,200
Hawaii	490,630
Idaho	1,439,677
Illinois	27,775,566
Indiana	8,635,706
Iowa	3,045,105
Kansas	2,254,856
Kentucky	7,314,292
Louisiana	11,679,200
Maine	975,891
Maryland	3,238,099
Massachusetts	8,090,462
Michigan	30,699,004
Minnesota	4,151,377
Mississippi	7,299,034
Missouri	9,672,559
Montana	1,392,136
Nebraska	944,261
Nevada	1,266,379
New Hampshire	1,146,899
New Jersey	7,855,684
New Mexico	3,285,649
New York	26,117,788
North Carolina	4,460,468
North Dakota	582,470
Ohio	22,224,928
Oklahoma	4,923,786
Oregon	4,798,144
Pennsylvania	15,668,841
Puerto Rico	17,075,338
Rhode Island	1,910,579
South Carolina	4,145,738
South Dakota	589,822
Tennessee	6,562,650
Texas	38,638,274
Utah	1,439,021
Vermont	468,203
Virginia	4,846,509
Washington	8,462,216
West Virginia	6,324,259
Wisconsin	4,411,911
Wyoming	821,682
American Samoa	37,521
Guam	282,642
Marshall Islands	120,006
Micronesia	282,508
Northern Marianas	29,711
Palau	29,711
Virgin Islands	338,501
National Reserve	104,276,600
NATIONAL TOTAL	526,986,000



## ATTACHMENT II

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION  
PV 1990 JTPA TITLE II-B ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	15,613,982
Alaska	2,191,245
Arizona	9,434,944
Arkansas	9,430,892
California	73,985,530
Colorado	9,469,781
Connecticut	5,700,867
Delaware	1,714,718
District of Columbia	3,911,941
Florida	33,579,170
Georgia	16,304,513
Hawaii	1,714,718
Idaho	2,859,240
Illinois	35,333,017
Indiana	12,788,612
Iowa	5,137,528
Kansas	2,922,847
Kentucky	13,410,523
Louisiana	23,697,705
Maine	2,344,612
Maryland	6,837,410
Massachusetts	12,383,073
Michigan	38,869,431
Minnesota	7,384,159
Mississippi	12,644,355
Missouri	13,416,089
Montana	2,523,987
Nebraska	1,920,995
Nevada	1,999,811
New Hampshire	1,714,718
New Jersey	14,260,618
New Mexico	5,464,182
New York	46,074,781
North Carolina	8,606,777
North Dakota	1,714,718
Ohio	31,058,409
Oklahoma	8,541,090
Oregon	6,926,094
Pennsylvania	24,469,968
Puerto Rico	30,892,782
Rhode Island	2,444,694
South Carolina	7,240,950
South Dakota	1,714,718
Tennessee	13,185,892
Texas	55,412,026
Utah	2,914,625
Vermont	1,714,718
Virginia	10,659,686
Washington	12,777,557
West Virginia	7,962,701
Wisconsin	8,893,805
Wyoming	1,714,718
American Samoa	53,123
Guam	647,895
Marshall Islands	19,093
Micronesia	45,247
Northern Marianas	24,850
Palau	7,493
Virgin Islands	367,365
Native Americans	12,726,012
NATIONAL TOTAL	699,777,000



## ATTACHMENT IV

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION  
PRELIMINARY PY 1991 WAGNER-PEYSER PLANNING ESTIMATES

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,809,154	0	187,292	187,292	11,996,446
Alaska	7,456,566	1,085,393	0	1,085,393	8,541,959
Arizona	9,570,333	0	224,519	224,519	9,794,852
Arkansas	7,029,722	0	257,784	257,784	7,287,506
California	83,028,273	0	0	0	83,028,273
Colorado	9,691,890	0	382,624	382,624	10,074,514
Connecticut	9,826,021	0	0	0	9,826,021
Delaware	2,128,854	0	66,006	66,006	2,194,860
District of Columbia	4,744,818	0	435,750	435,750	5,180,568
Florida	37,111,800	0	0	0	37,111,800
Georgia	18,515,418	0	137,127	137,127	18,652,545
Hawaii	2,545,719	0	228,819	228,819	2,774,538
Idaho	6,212,646	904,325	0	904,325	7,116,971
Illinois	36,240,697	0	0	0	36,240,697
Indiana	16,359,476	0	0	0	16,359,476
Iowa	8,102,235	0	744,085	744,085	8,846,320
Kansas	6,770,682	0	128,923	128,923	6,899,605
Kentucky	10,293,139	0	453,362	453,362	10,746,501
Louisiana	12,218,721	0	1,122,131	1,122,131	13,340,852
Maine	3,694,602	537,794	0	537,794	4,232,396
Maryland	13,064,197	0	123,901	123,901	13,188,098
Massachusetts	18,103,425	0	0	0	18,103,425
Michigan	29,774,124	0	0	0	29,774,124
Minnesota	12,778,038	0	0	0	12,778,038
Mississippi	7,504,747	0	381,031	381,031	7,885,778
Missouri	15,168,409	0	9,148	9,148	15,177,557
Montana	5,077,007	739,019	0	739,019	5,816,026
Nebraska	6,101,564	888,156	0	888,156	6,989,720
Nevada	4,935,385	718,404	0	718,404	5,653,789
New Hampshire	3,476,071	0	0	0	3,476,071
New Jersey	22,078,692	0	0	0	22,078,692
New Mexico	5,697,294	829,309	0	829,309	6,526,603
New York	48,936,167	0	4,460,979	4,460,979	53,397,146
North Carolina	17,309,748	0	0	0	17,309,748
North Dakota	5,169,911	752,542	0	752,542	5,922,453
Ohio	31,648,917	0	26,606	26,606	31,675,523
Oklahoma	11,178,390	0	1,026,589	1,026,589	12,204,979
Oregon	8,420,429	0	446,307	446,307	8,866,736
Pennsylvania	33,147,238	0	0	0	33,147,238
Puerto Rico	9,357,343	0	165,680	165,680	9,523,023
Rhode Island	3,153,945	0	0	0	3,153,945
South Carolina	9,449,386	0	0	0	9,449,386
South Dakota	4,778,186	695,523	0	695,523	5,473,709
Tennessee	13,412,223	0	176,174	176,174	13,588,397
Texas	50,521,112	0	1,568,336	1,568,336	52,089,448
Utah	10,450,475	1,521,191	0	1,521,191	11,971,666
Vermont	2,238,377	325,823	0	325,823	2,564,200
Virginia	16,637,229	0	0	0	16,637,229
Washington	14,446,779	0	223,095	223,095	14,669,874
West Virginia	5,469,107	796,094	0	796,094	6,265,201
Wisconsin	13,763,044	0	264,365	264,365	14,027,409
Wyoming	3,707,148	539,620	0	539,620	4,246,768
FORMULA TOTAL	760,304,873	10,333,193	13,240,633	23,573,826	783,878,699
Guam	367,690	0	0	0	367,690
Virgin Islands	1,547,803	0	0	0	1,547,803
Indicia Postage	19,322,808	0	0	0	19,322,808
NATIONAL TOTAL	781,543,174	10,333,193	13,240,633	23,573,826	805,117,000

\* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1990 TO THE PY 1991 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1990 RELATIVE SHARE.

\*\* - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 24 STATES LOSING IN RELATIVE SHARE FROM PY 1990 TO THE PY 1991 TOTAL ALLOTMENT AMOUNT.

\*\*\* - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.



**Mine Safety and Health Administration****[Docket No. M-91-23-C]****Petition for Modification**

The following party has filed a petition to modify the application of mandatory safety standards under 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Freeman United Coal Mining Company**

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Crown No. 2 Mine (I.D. No. 11-02236) and Crown No. 3 Mine (I.D. No. 11-02632) located in Macoupin County, Illinois. The petitioner proposes to operate a diesel powered generator without an earth referenced grounded system.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 24, 1991.

Copies of the petition are available for inspection at that address.

Dated: March 18, 1991.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 91-7001 Filed 3-22-91; 8:45 am]

BILLING CODE 4510-43-M

**Occupational Safety and Health Administration****Wyoming State Standards; Approval****Background**

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been

approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming Plan and adoption of subpart BB to part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by: (1) Advisory Committee coordination; (2) Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings; (3) Adoption by the Wyoming Health and Safety Commission; (4) Review and approval by the Governor; (5) Filing with Secretary of State and designation of an effective date.

OSHA regulations (20 CFR parts 1953, 22 and 23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By letter dated January 16, 1991 from Stephan R. Foster, OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs—OSHA, to Bryon R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards (29 CFR 1910.66 Powered Platforms for Building Maintenance; Final Rule, 54 FR 31408, 7/28/89; 29 CFR 1910.1000: Air Contaminants; Final Rule, 54 FR 2332, 1/19/89; 29 CFR 1910, 1915, 1917, and 1918 Occupational Exposure to Lead; Final Rule, 55 FR 3300, 1/30/90; 29 CFR 1910.120: Hazardous Waste Operations and Emergency Response; Final Rule, 54 FR 9294, 3/06/89; The Control of Hazardous Energy (Lockout/tagout); Final Rule, 54 FR 36644, 9/01/89).

The above adoptions of Federal Standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations (General), as required by Wyoming Statute 1977, section 27-11-105(a)(viii).

State Standards for 29 CFR 1910.66: Powered Platforms for Building Maintenance; Final Rule were adopted by the Health and Safety Commission of Wyoming on December 8, 1989 (effective 1/09/90); State Standards for 29 CFR 1910.1000: Air Contaminants; Final Rule

were adopted by the Health and Safety Commission of Wyoming on June 2, 1989 (effective 7/03/89 and 1/09/90); State Standards for 29 CFR parts 1910, 1915, 1917, and 1918: Occupational Exposure to Lead; Final Rule: were adopted by the Health and Safety Commission of Wyoming on December 8, 1989 (effective 1/09/90); State Standards for 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response; Final Rule were adopted by the Health and Safety Commission of Wyoming on August 30, 1989 (effective 4/13/90); State Standards for 29 CFR 1910.147: The Control of Hazardous Energy (Lockout/Tagout) were adopted by the Health and Safety Commission of Wyoming on February 23, 1990 (effective 4/13/90). Adoption of all these Standards was pursuant to Wyoming Statute 1977, section 27-11-105.

**Decision**

The above State Standards have been reviewed and compared with the relevant Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are substantially identical. OSHA therefore approves these Standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

**Location of Supplement for Inspection and Copying**

A copy of the Standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80924; the Department of Employment, Division of Employment Affairs—OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

**Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan



as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective March 25, 1991, Sec. 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Denver, Colorado this 22 day of February, 1991.

Gregory J. Baxter,

Acting Regional Administrator, VIII.

[FR Doc. 91-7000 Filed 3-22-91; 8:45 am]

BILLING CODE 4510-26-M

### **Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 91-19; Exemption Application No. D-8492]

### **Exemption for Certain Transactions Involving Delta Government Options Corporation**

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains a final exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The exemption permits transactions relating to the participation of employee benefit plans in a U.S. Treasury security options trading system, and the attendant purchases or sales of options and extensions of credit between such employee benefit plans and parties in interest. The exemption affects participants and beneficiaries of plans participating in the system, the fiduciaries of such plans, the persons who maintain, service and insure the system, and other participants in the system.

**EFFECTIVE DATE:** This exemption is effective on or before March 25, 1991.

**SUPPLEMENTARY INFORMATION:** On November 23, 1990, the Department of Labor (the Department) published in the Federal Register (55 FR 48932) a notice of proposed exemption from certain of the restrictions of sections 406(a) of the Act and from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The exemption was requested in an application (D-8492) filed with the Department, by Delta Government Options Trading Corporation (Delta), pursuant to section 408(a) the Act and

section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The Department received one written comment which was filed by Delta and generally requested technical amendments and clarifications to the notice of proposed exemption. Delta's comments and the Department's modifications are discussed below.

### **Discussion of the Comments**

Delta noted that section II(e) of the proposed exemption includes a requirement that Delta not be a fiduciary with respect to any plan which participates in the system and, if Delta is a party in interest with respect to any plan which participates in the system, it is such solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code. In order to preserve flexibility in conducting its business, Delta requests that section II(e) be modified to permit Delta to take advantage of the exemption except in those circumstances where either Delta or any of its affiliates have discretionary authority or control with respect to the investment of the plan assets involved in the transactions, or render investment advice with respect to those assets. The Department concurs with this comment and has modified section II(e) accordingly.

Delta further notes that section II(c) of the proposed exemption imposes a requirement that each plan which participates in the System, when combined with other plans maintained by members of the same control group, have total plan assets with a value in excess of \$300 million. Delta indicates that the condition in section II(c) of the proposed exemption should be satisfied if: (1) A plan acquires an equity interest in an entity whose underlying assets are considered to include plan assets under the Department's regulation at 29 CFR 2510.101; (2) the entity consists of assets with a value in excess of \$300 million; and (3) the person with investment discretion over assets held in the entity has exclusive authority to determine whether or not and to what extent to participate in the System.

The Department notes that the proposed exemption was conditioned on the premise that the decision to participate in the System is made on behalf of a plan by a person or persons who are sophisticated investors. It appears to the Department that this safeguard would not be diminished where a person with investment authority over a pooled investment arrangement which holds plan assets with a value in excess of \$300 million

makes the decision to participate in the System. Accordingly, the Department has revised section II(c) in this regard.

Delta requested that the Department modify the final exemption to provide Delta with the flexibility to expand or change a provider of credit enhancement. Delta notes that in view of the inevitable changes which take place in the relative credit-worthiness of all financial institutions and systems, it would be needlessly inflexible and contrary to the best interests of plans and other Participants in the System to tie the applicability of the exemption to the continued use of one or two specified providers of credit enhancement. Delta notes that it is obligated to maintain the Credit Enhancement Facility (the CEF) at all times at an amount equal to not less than three times the Maximum Potential System Exposure (the MPSE). Since the amount of the CEF will remain no less than three times MPSE, the CEF will be in all other material respects as protective to Participants as on "day one". Delta represents that a decision to change a provider of credit enhancement under the facility will not be made if such change would cause plans to pay Delta or RMJ Options Trading Corp. (RMJ) or Security Pacific National Trust Company (SPNTC) a greater fee.

The Department concurs with this comment and has incorporated the following new language at the end of section I(4).

References herein to the Letter of Credit Agreement and the Insurance Agreement, to the letter of credit and surety bond issued by Security Pacific National Bank (SPNB) and Capital Markets Assurance Corporation (CapMAC), and to SPNB and CapMAC, include any other letters of credit and/or surety bonds and/or similar third-party instruments of credit enhancement issued to Delta in connection with the operation of the System, and to any issuers of such additional or replacement instruments, as appropriate, provided that: (i) Under the CEF taken as a whole, the combined amount of the protection provided to Delta with regard to Participant defaults is no less than three times the MPSE; (ii) the CEF remains in all material respects, other than the amount of protection, at least as protective of the interests of Participants as under the original CEF; (iii) any replacement or additional provider of credit enhancement under the CEF must receive from a nationally recognized credit rating agency a claims paying ability rating, in the case of an insurer, or a commercial paper rating, in



the case of any other credit provider, which is no less favorable than that assigned to CapMAC, in the case of an insurer, or SPNB, in the case of any other credit provider, as of the date this exemption is published in the *Federal Register*; and (iv) the decision by Delta to include additional or replacement third-party instruments of credit enhancement in the CEF does not result in Participants paying greater fees to Delta, RMJ or SPNTC.

Delta notes the following clarification of the information contained in item 8 of the Summary of Facts and Representations regarding the operation of the System.

Delta establishes a separate account for each Participant in which each Participant's transactions are tracked by bookkeeping entries; this account is not an account at SPNTC. Delta also establishes a separate account for each Participant which tracks, by bookkeeping entries, each Participant's margin deposits. Actual margin deposits are received by SPNTC and held in one account at SPNTC in Delta's name. SPNTC also maintains on its books and records such accounts for Delta as necessary: (a) To receive the payment of premiums from Participants, and (b) to facilitate the settlement of transactions upon the exercise of Option Contracts. SPNTC accepts and assigns exercise notices and receives and delivers funds and securities necessary for exercise settlement. SPNTC does not itself prepare, but does arrange for the distribution of, the Daily Margin, Position, and Exercise Reports to Participants.

Delta notes that the General Conditions in section II of the proposed exemption include, in condition (h)(1), a requirement that each participating plan receive audited annual financial statements of Delta, RMJ, SPNTC and SPNB prepared by independent public accountants. Delta states that, with regard to SPNTC and SPNB, such financial statements are only prepared on a consolidated basis with their ultimate parent corporation and requests confirmation that timely distribution of such consolidated statements will satisfy condition (h)(1). The Department concludes that the condition in section II(h)(1) will be satisfied with regard to SPNTC and SPNB by their timely distribution of consolidated audited annual financial statements.

Section II(h)(3) includes a requirement that each participating plan receive copies of "all reports which Delta is required to file with the Securities and Exchange Commission not later than 30 days after such report has been so

filed". In the interest of preserving confidential treatment which may be accorded by the Security and Exchange Commission (the SEC) to some information which Delta may be called upon to file with the SEC, and in the interest of avoiding confusion for plan Participants and unnecessary cost to Delta through the furnishing of extraneous and potentially voluminous information, Delta requests that condition (h)(3) be modified to require that plans receive within 30 days copies of:

all reports filed by Delta with the SEC, as required by section 13(a) of the Securities Exchange Act of 1934 (the '34 Act), and Regulation 13A promulgated by the SEC thereunder, exclusive of exhibits thereto, exclusive of such reports (or portions of such reports) which, at Delta's request, have been granted confidential treatment by the SEC (or with respect to which Delta has requested and has not been denied such treatment), and exclusive of any other information filed with the SEC which constitutes nonpublic records within the scope of 17 CFR 200.80(b).

Delta represents that the reports referred to as required by section 13(a) of the '34 Act and the SEC regulations thereunder are: Current Reports on Form 8-K, which are reports of certain material developments concerning a reporting entity, including change in control, disposition of assets, bankruptcy or change of accountants; Quarterly Reports on Form 10-Q, which consist of, among other things, quarterly financial statements and management's discussion of analysis thereof, disclosure of material legal proceedings, and disclosure of material changes in rights of holders of registered securities issued by the reporting entity; and Annual Reports on Form 10-K, which consist of, among other things, current information regarding the reporting entity's business, properties, and material legal proceedings, annual audited financial statements and management's discussion and analysis thereof, information regarding directors and executive officers of the reporting entity, and transactions with management and certain affiliates during the reporting year. Delta believes that no reports which might be required to be filed by Delta with the SEC under the Securities Act of 1933 (the '33 Act) or provisions of the '34 Act other than section 13(a) would be sufficiently relevant to plan Participants in the System to justify routine copying and mailing of these materials to such parties, especially (but not merely) because any such materials are generally available through the public disclosure room at the SEC. Similarly, exhibits to reports pursuant to section

13(a) of the '34 Act would rarely be of interest to plan Participants, would be referred to in the copies of the reports, and would generally be available through the SEC. The Department generally concurs with the applicant's comment and will modify section II(h)(3) accordingly. However, the Department will require that exhibits to reports filed pursuant to the '33 Act, or the '34 Act be made available by Delta upon request.

Finally, Delta notes that the definition of "Book-entry system" in section III D, refers to a computerized record-keeping system maintained by Delta "at SPNTC". Delta represents that, in fact this system is not maintained by Delta at SPNTC and, accordingly, the definition would be more accurate if the sentence ended with a period after the phrase "maintained by Delta". The Department has adopted this comment and modified the definition in the final exemption.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties with respect to 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) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of proposed exemption, the Department makes the following determinations:

(a) The exemption set forth herein is administratively feasible;

(b) It is in the interests of the plans investing in the System and their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plans.

(3) This exemption is supplemental to, and not in derogation of, any other



provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption. **Exemption**

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

#### *I. Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions in connection with the operation of the Over-the-Counter Options Trading System (System):

(1) The issuance of put or call Options by Delta to an employee benefit plan;

(2) The acquisition of Matching Put or Matching Call Options by Delta from an employee benefit plan;

(3) The issuance of an irrevocable letter of credit by Security Pacific National Bank (SPNB) to Delta on behalf of an employee benefit plan and the honoring of drafts drawn by Delta on such letter of credit in the event of a default by an employee benefit plan, and the recovery of such amounts by SPNB from any such plan.

(4) The issuance of a surety bond by Capital Market Assurance Corporation (CapMAC) to Delta on behalf of an employee benefit plan and the honoring of drafts drawn by Delta on such surety bond in the event of a default by an employee benefit plan, and the recovery of such amounts by CapMAC from any such plan.

Reference herein to the Letter of Credit Agreement and Insurance Agreement, to the letter of credit and surety bond issued by SPNB and CapMAC, and to SPNB and CapMAC, include any other letters of credit and/or surety bonds and/or similar thirdparty instruments of credit enhancement issued to Delta in connection with the operation of the System, and to any issuers of such additional or replacement instruments,

as appropriate, provided that: (i) Under the CEF taken as a whole, the combined amount of the protections provided to Delta with regard to Participant defaults is no less than three times the MPSE, (ii) the CEF remains in all material respects, other than the amount of protection, at least as protective of the interests of Participants as under the original CEF; (iii) any replacement or additional provider of credit enhancement under the CEF must receive from a nationally recognized credit rating agency a claims paying ability rating, in the case of an insurer, or a commercial paper rating, in the case of any other credit provider, which is no less favorable than that assigned to CAPMAC, in the case of an insurer, or SPNB, in the case of any other credit provider, as of the date this exemption is published in the **Federal Register**; and (iv) the decision by Delta to include additional or replacement third-party instruments of credit enhancement in the CEF does not result in Participants paying greater fees to Delta, RMJ Options Trading Corp. (RMJ) or Security Pacific National Trust Company (SPNTC).

#### *II. General Conditions*

The relief provided under part I is available only if the following conditions are met:

(a) The decision to participate in the System and to execute Option transactions therein will be made by a plan fiduciary [or by a fiduciary of a pooled investment fund described in section II(c) of the exemption] who is independent of Delta, RMJ, SPNTC, SPNB; or any affiliate of such entities;

(b) Prior to a plan's participation in the System, a fiduciary for such plan receives offering materials which disclose all material facts concerning the purpose, structure and operation of the System, and also receives copies of the proposed and final exemption as published in the **Federal Register**;

(c) Each plan which participates in the System, when combined with other plans maintained by the same control group (as defined in section 1563(a) of the Code) or with other plans in a pooled investment fund whose assets include plan assets by reason of a plan's investment in the entity, has total plan assets with a value in excess of \$300 million;

(d) The employee benefit plan engaging in a Option transaction under the System does not negotiate such Option transaction under the System does not negotiate such Option transaction directly with another Participant in the System who is a party in interest with respect to such plan.

(e) Neither Delta nor any of its affiliates have discretionary authority or control with respect to the investment of the plan assets involved in the transaction or render investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets.

(f) All fees paid to Delta, RMJ, and SPNTC are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) Neither Delta, RMJ, SPNTC, SPNB nor any affiliate of such entities is or will be a Participant in the System.

(h) Each participating plan shall receive the following:

(1) Audited financial statements of Delta, RMJ, SPNTC and SPNB prepared by independent public accountants, not later than 90 days after the end of their respective fiscal years.

(2) Quarterly reports prepared by Delta relating to the overall operating results of the System, not later than 30 days after the end of each quarter.

(3) Copies of all reports filed by Delta with the Securities and Exchange Commission (the SEC), as required by section 13(a) of the Securities Exchange Act of 1934, and Regulation 13A promulgated by the SEC thereunder not later than 30 days after such report has been so filed, exclusive of exhibits thereto, exclusive of such reports (or portions of such reports) which, at Delta's request, have been granted confidential treatment by the SEC (or with respect to which Delta has requested and has not been denied such treatment), and exclusive of any other information filed with the SEC which constitutes nonpublic records within the scope of 17 CFR 200.80(b). Exhibits to reports filed by Delta with the SEC as required by section 13(a) of the Securities Exchange Act of 1934 shall be made available by Delta to participants upon request.

(i) Delta maintains or causes to be maintained for a period of six years from the date of such transaction:

(1) Such records as are necessary to enable the Department, the Internal Revenue Service, a fiduciary of a plan, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plans to determine whether the conditions of this exemption have been met;

(2) With respect to Participant to Participant trades which include at least one Participant which is a plan, Delta records: the option's strike price, expiration date, number of contracts and premium, and the price of the U.S. Treasury security underlying an option



at the time a trade report is submitted for clearance, and in addition, calculates and maintains a record of the Implied Volatility of each such trade in conjunction with maintaining a record, on a daily basis, of the general market's Implied Volatility, except that;

(j) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Delta or its agents, such records are lost or destroyed prior to the end of such six-year period and no fiduciary of a plan which is a Participant in the System shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (j) below.

(j) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department, (2) the Internal Revenue Service, (3) a fiduciary of a plan, (4) plan participants and beneficiaries, (5) any employer of plan participants and beneficiaries, and (6) any employee organization any of whose members are covered by such plan.

### III. Definitions

For purposes of this exemption:

A. *Account* means an account established for a Participant for the trading and clearance of Options.

B. *Adjusted Exercise Price* means, with respect to a U.S. Treasury Bond Option or a U.S. Treasury Note Option, the exercise price increased by an amount equal to the interest accrued from, but not including, the day as of which the underlying U.S. Treasury securities were issued or on which the last preceding interest payment became due (whichever was later) through and including the exercise settlement date (regardless of the date on which settlement was made). In respect to a U.S. Treasury Bill Option, the term Adjusted exercise Price shall have the same meaning as the exercise price.

C. *Affiliate* of another person includes:

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(b) Any officer, director, employee, relative of, or partner in any such person; and

(c) Any corporation or partnership of which such person is an officer, director, partner or employee.

(d) The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. *Book-entry System* refers to an arrangement whereby the issuance of Options and other Participant transactions in the System are evidenced by entries in a computerized record-keeping system maintained by Delta.

E. *Business Day* means any day other than a Saturday, Sunday or a day on which banking institutions in either the City of New York or the City of Los Angeles are authorized by law to close.

F. *Correspondent Bank* means a bank which has been designated by a Participant in the System to transfer and receive funds and/or U.S. Treasury securities on behalf of the Participant in connection with the settlement and exercise of Options.

G. *Credit Enhancement Facility* (CEF) refers to the combination of the protection provided by the letter of credit which is issued by SPNB and payable to Delta in the event of a Participant default, and surety bond issued by CapMAC which is payable to Delta in the event of a Participant default.

H. *Daily Margin Report* means a report issued on each Business Day to each Participant which reflects the margin required or owed on the Participant's Option positions.

I. *Daily Position Report* means a report issued on each Business Day to each Participant, which reflects the status of the Participant's Account.

J. *Federal Reserve Funds* are non-interest bearing deposits held by member banks at the Federal Reserve that are immediately available funds.

K. *Implied Volatility* means the marketplace's expectation of the potential change in price, stated in percentage terms, for the security underlying an Option. The number is quoted on an annualized basis. For example, the Implied Volatility of 10 year Treasury Notes may be 8%. The market expects the 10 year Treasury Notes to be either 92 or 108 based on a starting price of 100 in one year.

L. *Matching Call* refers to an Option purchased by Delta from a writing or a selling Participant contemporaneously with and as a condition to the issuance by Delta of a call to a Participant with identical terms.

M. *Matching Put* refers to an Option purchased by Delta from a writing or selling Participant contemporaneously with and as a condition to the issuance

by Delta of a put to a Participant with identical terms.

N. *Maximum Potential System Exposure* (MPSE) is the net liability of Delta on all Options, reflecting a hypothetical adverse market movement calculated using a mathematical formula.

O. *Operating Agreements* are, collectively, the Participation Agreement, the System Procedures, the Letter of Credit Agreement, and the Insurance Agreement, which collectively govern the operation of the System.

P. *Participant* means a person admitted to trade and settle Options on any U.S. Treasury security through the System.

Q. *Premium* means the price of an Option agreed upon between the purchasing Participant and the writing or selling Participant; *Net Daily Premium* means the net amount payable to Delta at any settlement time or by Delta within six hours after the settlement time in respect of the Options purchased and written by a Participant on the prior Business Day.

R. *Purchasing Participant* means a Participant who is a purchaser of an option issued by Delta.

S. *Settlement Time* means a 11 a.m. Eastern Standard Time (ET) or, in the event the Federal Reserve wire has not opened by 11 a.m. ET, the earliest time practicable following the opening of the Federal Reserve wire on the first Business Day immediately following the day on which the clearing bank receives matching trade reports.

T. *System* means the Over-The-Counter Options Trading System. It is a proprietary automated communications network which is used to facilitate trading, clearance and settlement by Participants in the over-the-counter market for Options on U.S. Treasury securities.

U. *U.S. Treasury security* means a Treasury Bill, Note or Bond issued by the United States Department of the Treasury.

V. *Writing Participant* means a Participant who has written an Option and thereby undertaken to either sell the underlying U.S. Treasury securities to Delta or purchase the underlying U.S. Treasury securities from Delta.

**FOR FURTHER INFORMATION CONTACT:** S. John Ryan, Office of Regulations and Interpretations, (202) 523-8671 or Lyssa Hall, Office of Exemption Determinations, (202) 523-8971, U.S. Department of Labor, respectively. [These are not toll-free numbers.]



Signed at Washington, DC, this 15th day of March 1991.

Ivan L. Strasfeld,

Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.

[FR Doc. 91-6926 Filed 3-22-91; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of Nixon White House Tapes and related recordings which were acquired by the Watergate Special Prosecution Force (WSPF) during its investigations. Included in this opening are tape transcripts which have been located among the Records of the Watergate Special Prosecution Force (Record Group 460) in the custody of the National Archives. The transcripts were prepared for use by officials during the Watergate investigations; the National Archives and Records Administration did not prepare these transcripts.

Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR part 1275), the agency has prepared for public access in integral segment of Nixon Presidential recordings and associated transcriptions.

**DATES:** The National Archives and Records Administration intends to make the materials described in this notice available to the public on or after June 3, 1991. The date of release will be made public through a press advisory to be issued prior to June 3, 1991.

Any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials, in accordance with 36 CFR 1275.44, should notify the Archivist of the United States in writing of the claimed right or privilege before May 1, 1991.

**ADDRESSES:** The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning a claim of legal right or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

### FOR FURTHER INFORMATION CONTACT:

Clarence F. Lyons, Jr., Acting Director,  
Nixon Presidential Materials Staff, 703-756-6498.

**SUPPLEMENTARY INFORMATION:** The materials to be opened consist of approximately 60 hours of sound recordings which were acquired by the Watergate Special Prosecution Force as relating to its investigations. Except for two recordings made on separate equipment, the recordings being released are a part of a larger body of sound recordings known as the White House tapes, which were recorded at locations in the White House, the Old Executive Office Building, and Camp David during the Presidency of Richard Nixon. The two other recordings were made independently of the White House taping system. All of the recordings now being opened to the public were delivered to the Special Prosecutor as a result of subpoena or other legal process.

Approximately 12½ hours of these conversations were introduced as evidence and played in court during the so-called Watergate trials, *United States v. Mitchell, et al.* and *United States v. Connally*. These court tapes have been open for public listening at a National Archives facility since 1980.

The present opening includes tapes and related transcripts of 47½ additional hours of conversations furnished to the Special Prosecutor, but not used in trials. Although none of the conversations have been released previously in recorded form, many of them have been released in transcribed form during various official proceedings.

One conversation once in the possession of the WSPF was of such poor audio quality that it could not be identified. This conversation will not be released. Another conversation has been withheld from public release in its entirety because it was of very poor audio quality and contained classified national security information.

The approximately 60 hours of recording are comprised of 88 separate conversations. The WSPF records include transcripts for 85 of the entries. No transcripts have been located among the records of the WSPF for three conversations.

The transcripts are offered for public access in association with the tapes as aids to the listener. The transcripts were prepared during the time of the Watergate investigations by the officials involved in those investigations. National Archives staff have not attempted to correct or improve the transcripts and the National Archives makes no claim in regard to the accuracy of the transcriptions.

Public access to some portions of the conversations will be restricted as outlined in the Public Access Regulations (36 CFR 1275.50 or 1275.52).

The sound recordings will be made available to the general public in the research room at 845 S. Pickett Street, Alexandria, Virginia, Monday through Friday between 9 a.m. and 4 p.m. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the sound recordings will be sold or otherwise provided. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the transcripts will be available for purchase.

Dated: March 18, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-7017 Filed 3-22-91; 8:45 am]

BILLING CODE 7515-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412]

### Duquesne Light Co.; et al.; Beaver Valley Power Station, Unit No. 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR 55.45(b)(2)(iii) and 10 CFR 55.45(b)(2)(iv) to Duquesne Light Company (the licensee), for the Beaver Valley Power Station, Unit 2, located in Beaver County, Pennsylvania.

### Environmental Assessment

#### Identification of Proposed Action

The proposed action would exempt the licensee from the requirement of 10 CFR 55.45(b)(2)(iii) to submit Form NRC 474, "Simulation Facility Certification," not later than 46 months after the effective date of the rule. The revision to 10 CFR part 55 became effective on May 26, 1987. Therefore, the exemptions would allow for filing of Form NRC-474, "Simulation Facility Certification," after March 26, 1991, but not later than January 31, 1992. Additionally, the exemptions allow the licensee to continue to use the existing Beaver Valley Power Station, Unit 1 simulator for the administration of the simulation portion of operating tests until the Unit 2 simulator is certified, but not later than January 31, 1992.



The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated September 21, 1990, as clarified by letter dated January 7, 1991.

#### *The Need for the Proposed Action*

The proposed exemptions are needed because of unavoidable delays in the completion and delivery of the simulator and to avoid interruption of the operator requalification training cycle for Unit 2 operators.

#### *Environmental Impacts of the Proposed Action*

The proposed action will have no incremental impact relative to current practice because the exemption will permit the continued but temporary use of the Unit 1 simulator for conducting the Unit 2 requalification training.

#### *Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts attributed to this facility and would result in disruption of operator requalification training.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Beaver Valley Power Station, Unit 2.

#### *Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

#### *Finding of No significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemptions dated September 21, 1990, as clarified and supplemented by letter dated January 7, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street,

NW., Washington, DC and at the B.F. Jones Memorial Library, 663 Franklin Street, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 19th day of March 1991.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I-4, Division of Reactor Projects-1/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-6982 Filed 3-22-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

#### **GPU Nuclear Corp., et al.; Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR 55.45(b)(2) (iii) and (iv) to GPU Nuclear Corporation (GPUN/the licensee), for the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

#### **Environmental Assessment**

##### *Identification of Proposed Action*

The proposed action would exempt the licensee from the requirements of 10 CFR 55.45(b)(2)(ii) to submit Form NRC-474, "Simulation Facility Certification," not later than 46 months after the effective date of the rule. The revision to 10 CFR part 55 became effective on May 26, 1987. Therefore, the exemptions would allow for filing of Form NRC-474, Simulation Facility Certification, after March 26, 1991, but not later than December 31, 1991. The proposed action would also exempt the licensee from the requirement of 10 CFR 55.45(b)(2)(iv) to allow them to continue to administer the simulation facility portion of the operating tests on the Nine Mile Point Unit 1 (NMP-1) simulator until the Oyster Creek simulator is certified, but not later than December 31, 1991.

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated September 5, 1990, as supplemented by letter dated February 6, 1991.

#### *The Need for the Proposed Action*

The proposed exemptions are needed because of unavoidable delays in the completion and delivery of the simulator and to allow GPUN to administer the

simulation facility portions of the operating tests on the NMP-1 simulator.

#### *Environmental Impacts of the Proposed Action*

The proposed action will have no incremental impact relative to current practice because the exemptions will permit the continued but temporary use of the NMP-1 simulator to allow GPUN to continue to administer the simulation portion of the operating tests.

#### *Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts attributed to this facility and would result in not permitting GPUN to continue administering the simulator portion of the operator tests.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station dated December 1974.

#### *Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

#### *Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemptions dated September 5, 1990, as supplemented by letter dated February 6, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 19th day of March 1991.



For the Nuclear Regulatory Commission.  
**John F. Stolz,**  
*Director, Project Directorate 1-4, Division of  
 Reactor Projects—1/II, Office of Nuclear  
 Reactor Regulation.*  
 [FR Doc. 91-6983 Filed 3-22-91; 8:45 am]  
 BILLING CODE 7590-01-M

[Docket No. 50-346]

**Toledo Edison Co., et al.; Davis-Besse  
 Nuclear Power Station; Exemption**

**I**

Toledo Edison Company (Toledo Edison), Centerior Service Company and Cleveland Electric Illuminating Company (the licensee) are the holders of Facility Operating License No. NPF-3 which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS). The license provides, among other things, that the licensees are subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility is a pressurized water reactor located on the licensees' site located in Ottawa County, Ohio.

The revision to 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated November 5, 1990, Toledo Edison requested an exemption from the scheduler requirements for certification of a plant-referenced simulator.

**II**

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator submit Form NRC-474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. On November 5, 1990, Toledo Edison requested an exemption from this filing requirement to allow for the submittal of Form NRC-474 after March 26, 1991, but no later than September 1, 1991.

On September 5, 1986, Toledo Edison's purchase order for a plant-referenced simulator was accepted by

the simulator vendor. It was expected that the simulator would be operational by December 1988. On July 13, 1988, Toledo Edison advised the NRC that the simulator installation would be delayed until December 31, 1989, because manpower was diverted from the simulator project to support operations during the 18-month outage and restart effort following the June 9, 1985, DBNPS Loss-of-Feedwater Event and the 1986 bargaining unit strike. Following this notification, additional delays on the simulator occurred due to problems the vendor encountered during software development and integration. These delays resulted in the further postponement of the simulator installation until after the fifth refueling outage.

Toledo Edison decided to upgrade the simulator to reflect the fifth refueling outage modifications before making it available for training. These modifications required both simulator hardware and software changes. These changes were necessary due to 93 plant modifications and the resulting modifications made to the DBNPS Control Room. They included extensive changes made to the Auxiliary Feedwater System, the Steam and Feedwater Rupture Control System, Feed and Bleed Cooling, and resolutions of numerous human engineering deficiencies identified from the Detailed Control Room Design Review. This upgrade was planned to be complete by December 1990 and the simulator was planned to be delivered by January 10, 1991.

After reassembly and on-site testing, Toledo Edison plans to install selected sixth refueling outage upgrades before releasing the simulator for training. The selected changes include the rearrangement of a major percentage of control room annunciators, relocation of several important switches, and the addition of an alternate makeup system injection line to the reactor coolant system. These changes are considered necessary to avoid a negative impact on training. Installation of these modifications is precluded by post simulator delivery reassembly and on-site testing until May 1991. Toledo Edison proposes to submit Form NRC-474 after the sixth refueling outage upgrades are installed and tested.

Toledo Edison proposes to comply with 10 CFR 55.45(b) for DBNPS by certifying a plant referenced simulator by September 1, 1991. During the proposed exemption period, from May 26, 1991 until certification of the simulator, no initial or requalification operating tests are scheduled.

**III**

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission, has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of 5 months from the March 1991 date for submittal of the DBNPS simulation facility certification. Good faith efforts to comply with the regulation were made as follows:

(1) On September 5, 1986, Toledo Edison entered into contract for the procurement of a plant-referenced simulator by December 1988.

(2) On November 24, 1987, Toledo Edison requested clarifications of the simulator requirements via a conference call with the NRC.

(3) In letters dated June 1, 1988 and July 13, 1988, Toledo Edison advised the NRC of a delay to December 31, 1989, for simulator installation.

(4) On September 1, 1989, Toledo Edison submitted an operator examination schedule including a planned simulator certification date of March 26, 1991.

(5) During a conference call on June 7, 1990, Toledo Edison informed the NRC that they were considering installing the sixth refueling outage upgrades prior to certifying the DBNPS simulator and that this would delay the submittal of Form NRC-474 until after March 26, 1991.

(6) Toledo Edison plans to certify the DBNPS simulator before conducting any operating tests after May 26, 1991.

**IV**

The Commission hereby grants an exemption from the scheduler requirements of 10 CFR 55.45(b)(2)(iii) for submittal of Form NRC-474, "Simulation Facility Certification." This exemption is effective until September 1, 1991.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the *Federal Register* on March 13, 1991 (56 FR 10579). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this amendment will not have a significant effect on the quality of the human environment.

The licensee's exemption request dated November 5, 1990 is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the



University of Toledo Library, Document Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 19th day of March 1991.

For the Nuclear Regulator Commission.

Bruce A. Boger,

*Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-6964 Filed 3-22-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

### Wisconsin Electric Power Co.; Denial of Exemption Request

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Wisconsin Electric Power Company (WEPCO) for an exemption to the Commission's regulations for fire protection requirements at the Point Beach Nuclear Plant. Specifically, WEPCO requested an exemption from 10 CFR 50.48(d)(4) which requires that "(t)hose fire protection features involving dedicated shutdown capability requiring new buildings and systems shall be implemented within 30 months of NRC approval." By application for exemption dated December 21, 1990, WEPCO advised the Commission that they would not complete the implementation of their dedicated shutdown capability by the end of the 30-month period on January 27, 1991. They requested an exemption to June 1, 1991. Their argument for an exemption hinged on their having made good faith efforts to comply with the regulation as provided for in 10 CFR 50.12(a)(2)(v).

The NRC staff has concluded that the WEPCO application cannot be approved and has, therefore, denied it. The basis for the staff's denial is that the implementation actions were not pursued in a manner reflective of a good faith effort. In particular, we are unable to find that WEPCO proceeded expeditiously to meet the Commission's requirements or that the causes for the delay were beyond WEPCO's control. The requirement for the dedicated shutdown capability was known to WEPCO well before the start of the 30-month implementation period.

The arguments made by WEPCO did not include identification of any activity unique to Point Beach which could not reasonably have been performed in the 30-month period. Rather, the prolonged implementation period at the Point Beach Nuclear Plant seems to have been the consequence of poor planning and

poor control of construction activities. If WEPCO were exempted from the provisions of 10 CFR 50.48(d)(4), there would be no logical basis not to exempt all licensees who have initiated but have not completed actions falling under 10 CFR 50.48.

For further details with respect to this action, see the licensee's application for an exemption dated December 21, 1990, and the Commission's letter to the licensee dated March 14, 1991. Both documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 14th day of March 1991.

For the Nuclear Regulatory Commission.

Robert B. Samworth, Sr.,

*Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 91-6965 Filed 3-22-91; 8:45 am]

BILLING CODE 7590-01-M

### OFFICE OF SCIENCE AND TECHNOLOGY POLICY

#### President's Council of Advisors on Sciences and Technology (PCAST); Meetings

The President's Council of Advisors on Science and Technology will meet on April 4-5, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

#### Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy and of the private sector.
2. Briefing of the Council on current federal activities and policies in science and technology.
3. Discussion of progress of working group panels.
4. Discussion of composition of future working groups.

Portion of the April 4-5 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel

procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate discussion of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395-3902, prior to 3 p.m. on April 3, 1991. Ms. Sherman is also available to provide specific information regarding time, place and agenda.

Dated: March 18, 1991.

Damar W. Hawkins,

*Executive Assistant, Office of Science and Technology Policy.*

[FR Doc. 91-6996 Filed 3-22-91; 8:45 am]

BILLING CODE 3170-01-M

### PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

#### Columbia River Basin Fish and Wildlife Program: Power Plant Amendments

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (Yakima River Basin, Dryden Dam, and Enloe Dam fish passage facilities), and opportunity for public comment.

**SUMMARY:** On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

The Council is hereby initiating a process to consider amendments to the program concerning fish passage facilities at irrigation diversions in the Yakima River Basin, Washington, at Dryden Dam, Washington, and at Enloe



Dam, Washington. Specifically, the Council proposes to: (1) Authorize construction of certain high priority fish passage facilities in the Yakima River Basin; (2) authorize planning, construction, and evaluation of improvements to fish screens and bypass facilities at the water diversion at Dryden Dam; and (3) delete provisions calling for the installation of fish passage facilities at Enloe Dam.

**Public Comment:** Written comment on the proposed amendments is invited, and will be received through April 19, 1991. All written comments must be received in the Council's central office, 851 SW Sixth Avenue, suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on April 19, 1991. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Yakima/Dryden/Enloe Comments."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comment.

**Hearings:** Public hearings will be held in Idaho, Montana, Oregon, and Washington, in March and/or April 1991. If you wish to obtain a schedule of the hearings, contact the Council's Public Involvement Division, 851 SW Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon. To reserve a time period for presenting oral comments at a hearing, contact Judi Hertz in the Public Involvement Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

**Final Action:** The Council expects to take final action on the proposed amendments at its May 1991 meeting. Notice will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

**FOR FURTHER INFORMATION:** A fuller version of this notice, including a paper entitled "Northwest Power Planning Council Proposed Yakima, Dryden, and Enloe Amendments, Background and Text of Proposed Amendments," has been prepared that explains the reasons for the rulemaking, the process to date, summarizes the proposals, and sets out the text of the proposed amendments. Those wishing to receive a copy of this paper should contact the Council's Public Involvement Division at the

address or telephone numbers listed above.

Bobbe Fendall,  
Liaison Officer.

[FR Doc. 91-6935 Filed 3-22-91; 8:45 am]

BILLING CODE 0000-00-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28986; File No. SR-MSE-91-04]

### Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Odd-lot Pricing Procedures

On January 10, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend MSE Article XXXI, rule 9(c) (iv) and (v) relating to the execution of odd-lot orders. The proposed amendments revise the Exchange's pricing procedures for buy and sell odd-lot limit orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 28868 (February 7, 1991), 56 FR 5855 (February 13, 1991). No comments were received on the proposal.

Current Article XXXI, rule 9(c) (iv) and (v) provides that odd-lot limit orders shall be executed at the limit price after there has been a full lot transaction in the primary market below the limit price for buy transactions and above the limit price for sell transactions.<sup>3</sup> The Exchange proposes to amend this Rule to require that buy and sell odd-lot limit orders be executed at the limit price after there has been a full lot transaction in the primary market at or below the limit price for buy limit orders and at or above the limit price for sell limit orders.

The Exchange states that the proposed rule change is based on similar odd-lot order pricing procedures adopted by the New York Stock Exchange ("NYSE").<sup>4</sup> The Exchange

states that its purpose for instituting the proposed rule change is to enhance the MSE's competitive position by improving the quality of execution of odd-lot limit orders and thereby attracting additional odd-lot order flow. The Exchange believes that the proposal is designed to promote just and equitable principles of trade.

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.<sup>5</sup> Section 6(b)(5) requires, among other things, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

The Commission believes that the proposal should further the objectives of section 6(b)(5) because the revised odd-lot pricing procedures should increase the quality and speed of execution of odd-lot limit orders. As a result of the proposal, customers should receive a more timely execution of their odd-lot limit orders because the orders will be executed at the limit price after there has been a full lot transaction in the primary market either at or below the limit price for buy limits orders or at or above the limit price for sell limit orders, rather than when the limit price is passed.<sup>6</sup> The proposal, therefore, should simplify pricing and facilitate the execution of odd-lot limit orders on the Exchange.

For the reasons noted above, the Commission believes that the proposed rule change should facilitate the execution of odd-lot orders and should help to ensure that customers receive the best execution of such orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

pilot program procedures on a permanent basis. See Securities Exchange Act Release No. 28837 (January 29, 1991), 56 FR 4660 (February 5, 1991) (File No. SR-NYSE-91-03).

<sup>5</sup> 15 U.S.C. 78f (1988).

<sup>6</sup> The MSE's current rule provides that odd-lot limit orders shall be executed at the limit price after there has been a full lot transaction in the primary market below the limit price for buy transactions and above the limit price for sell transactions. See MSE Article XXXI, Rule 9(c) (iv) and (v).

<sup>7</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1990).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1990).

<sup>3</sup> No differential is charged for such transactions. See Securities Exchange Act Release No. 25966 (August 4, 1988), 53 FR 30362 (August 11, 1988) (File No. SR-MSE-88-3).

<sup>4</sup> The NYSE's revised odd-lot limit order pricing procedures are the result of a pilot program which was conducted by the NYSE. See Securities Exchange Act Release Nos. 28040 (May 22, 1990), 55 FR 21999 (May 30, 1990) (File No. SR-NYSE-90-22) and 28635 (October 15, 1990), 55 FR 42668 (October 22, 1990) (File No. SR-NYSE-90-50). The Commission recently approved the NYSE's odd-lot



Dated: March 18, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7006 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28984; File Nos. SR-NSCC-90-18; SR-MSTC-90-07; SR-Philadep-90-04]

**Self-Regulatory Organizations;  
National Securities Clearing  
Corporation; Midwest Securities Trust  
Company; Philadelphia Depository  
Trust Company; Filing of Proposed  
Rule Changes Relating to  
Telecommunications Systems**

March 18, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that the National Securities Clearing Corporation ("NSCC"), the Midwest Securities Trust Company ("MSTC") and the Philadelphia Depository Trust Company ("Philadep") have filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which items have been prepared by the self-regulatory organizations.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organizations'  
Statement of the Terms of Substance of  
the Proposed Rule Changes**

The proposed rule changes consist of descriptions of NSCC's, MSTC's and Philadep's telecommunications systems. NSCC's filing describes the telecommunications links that NSCC offers its members. NSCC's offers its clearing members a main frame-to-main frame linkage, or a personnel computer ("PC")-to-main frame linkage through NSCC's PC Access System. MSTC's filing contains the procedures for the addition of the Depository Delivery Instruction ("DDI") to the File Transmission Service ("FTS") for MSTC's telecommunications system. Philadep's filing requests the Commission to authorize Philadep to make certain enhancements to its Philanet Terminal Communication System ("PTCS") and to operate the system on a permanent basis. The complete descriptions contained in the

filings may be examined at the places specified in Item IV below.

**II. Self-Regulatory Organizations'  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In their filings with the Commission, NSCC, MSTC and Philadep included statements concerning the purposes of the bases for the proposed rule changes and discussed any comments that were received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NSCC, MSTC and Philadep have prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organizations'  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

**1. NSCC**

NSCC's Data Communications Services facilitates the automated transmission of data between members and the computer system operated by Securities Industry Automation Corporation ("SIAC"), NSCC's facilities manager. As stated above, members can access NSCC services through either private lines or dial-up lines. At this time, 25% of NSCC's 290 member connections are private lines, and 75% are dial-up lines.

The physical connection for the transmission of data is established by a communications link between the member's main frame computer or PC and SIAC's main frame computer. When members use main frame computers, each member develops its own application software that delivers data to (or receives data from) SIAC for a particular service in an NSCC prescribed standard manner. That is, NSCC prescribes the input and output formats, but the member collects, edits and prepares data and transmits it to (or receives it from) SIAC using the prescribed formats.

Members preferring to use a PC may also access SIAC's main frame computer using NSCC's PC Access System or the IBM Information Exchange ("Information Exchange") communications system, for input and output of bond data. NSCC also develops and provides the PC edit application software programs to simplify the member's entry of data. Using the Information Exchange, data is sent by the member (or SIAC) to a central IBM service bureau where it is

collected and then routed to SIAC (or the member).

Members can utilize most types of main frame computers. The PCs must be either IBM or IBM clones (perform the functions of an IBM PC). For both PC's and main frame computers, the member may connect to the SIAC computer through private line, a dial-up line connected to the SIAC computer through a private line, a dial-up line connected to a dedicated port, or a dial-up line connected to a hunt group. A private line is installed directly between the member's system and a SIAC port and provides direct communications without use of a dial-up telephone line. A dial-up connected to a dedicated port, or a dial-up line connected to a hunt group. A private line is installed directly between the member's system and a SIAC port and provides direct communications without use of a dial-up telephone line.

A dial-up connected to a dedicated port allows the member to dial a telephone line directly to a SIAC port dedicated to that member at SIAC. Each private line and dedicated port which are unique to the member, so that one member's line will not work in another's port.

A dial-up line connected to a hunt group allows the member to dial a telephone line into a SIAC sharing device called a hunt group. The hunt group is comprised of five ports that are allocated to users assigned to that group. As many as twenty-five members may be assigned to the same hunt group even though only five of the twenty-five members may be connected at any point in time. In the unlikely event that a member is unable to connect with one of the ports in the hunt group because all ports are being utilized, the member may redial at a later time or the member may call the SIAC Help Desk and SIAC staff will provide temporary access to a different port.

NSCC has developed a system of intruder blocks for dial-up lines which prevent unauthorized access into NSCC's system. If a member fails to connect at any level in the process after an appropriate number of attempts, his access to the system will be blocked and can only be re-activated by SIAC security staff.

Private lines are secure by virtue of the fact that there is a direct line installed between the member's system and a port at the SIAC computer. That line is used only by the member and can only be rearranged (connected to another port) by SIAC. Even if the line is rearranged, it would not work on another member's port unless the port were reprogrammed. Once the physical

<sup>1</sup> NSCC's proposed rule change (file no. SR-NSCC-90-18) was filed on September 12, 1990; MSTC's proposed rule change (file no. SR-MSTC-90-07) was filed on September 25, 1990; and Philadep's proposed rule change (file no. SR-Philadep-90-04) was filed on September 14, 1990.



connection is established, the various levels of intruder blocks are the same for private lines as for dial-up lines. Specific conversion procedures for either main frame computers or PCs have been established for access by a member.

The proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions consistent with section 17A of the Act by providing members with automated, secure and cost effective access to NSCC services. Therefore, it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.

## 2. MSTC

MSTC currently operates the DDI service on a pilot basis. The DDI service has been designed to allow firms to create automatically delivery instructions (Inter-participant and Inter-depository) or segregation instructions (Intra-participant) from in-house systems, avoiding re-entry of DDI information into the system. To use the DDI instruction, participants will write a computer program which extracts DDI information from their internal files and creates a new file of DDI information to be submitted to MSTC through FTS. The service is equipped with a security feature which prevents unauthorized users from submitting DDIs via FTS.

Currently, participants may manually enter DDIs into their terminals or deliver computer tapes to MSTC. MSTC will only accept DDIs on computer tape when the participant cannot access MSTC's FTS or the participant's communications line is unavailable or the participant must submit batch DDIs in order to meet a settlement deadline.

Firms that currently participate in MSTC's FTS have found processing to be smoother and more efficient through the computer-to-computer ("CPU-to-CPU") transmissions by eliminating tape handling and decreasing the time needed for data receipt and processing.

The proposed rule change is consistent with section 17A of the Act in that it provides for the prompt and accurate clearance and settlement of securities transactions and fosters cooperation among persons engaged in such activities by providing an efficient mechanism with which to do so.

## 3. Philadep

On December 30, 1983, the Commission approved file number SR-Philadep-83-03 establishing Philadep's PTCS on a pilot basis.<sup>2</sup> PTCS is an

electronic communication system linking Philadep to its participants. The basic functions offered through this system as well as those offered through similar systems operated by the Depository Trust Company ("DTC") and MSTC are well documented in the 1983 Order approving the pilot program. In particular, the Commission stated in that Order that it "expects DTC, MSTC/MCC and Philadep to continue to adapt their systems to meet participant demand for additional uses, including interfaced clearing agency services." Consistent with this mandate, Philadep has implemented a number of system enhancements to PTCS.

The 1983 Order recognized DTC and MCC/MSTC's systems as permanent systems whereas Philadep's system was approved on a pilot basis due to its more recent implementation. At the time of the Order, the Commission noted that the permanently implemented systems both required participants usage on dedicated lines for access while Philadep's pilot system would permit access through dial-up lines.<sup>3</sup> In this regard, while noting that PTCS employs many safeguards, the Commission requested Philadep's management to continue to evaluate the efficacy of access to PTCS through dial-up lines.

Philadep believes that system access through dial-up lines, with appropriate safeguards, provides an economical alternative to the use of dedicated telephone lines and thereby promotes system access to a greater number of clearing participants, particularly those having smaller volume. Philadep notes that this position is consistent with the Commission's approval of dial-up line access to MCC/MSTC's system<sup>4</sup> and to The Options Clearing Corporation's ("OCC") on-line communication system.<sup>5</sup>

Philadep believes that dial-up access to PTCS currently provides sufficient safeguards to ensure system integrity against unauthorized access. One enhancement to the system is an "automated password expiration" procedure that requires users to change their passwords on a periodic basis.

The six year experience under the pilot and the recent system enhancements reflect the maturing of PTCS into a full service system. With the current security safeguards in place, Philadep has not experienced any

problems or instance of unauthorized system access. In light of the above, Philadep believes that it is appropriate for the Commission to authorize PTCS to be implemented on a permanent basis at this time.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances Philadep's "capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible." The proposal is also consistent with the Congressional objectives of facilitating the development of a national system for clearance and settlement of securities transactions. In particular, the proposal represents "[n]ew data processing and communications techniques [that] create the opportunity for more efficient, effective and safe procedures for clearance and settlement."

## B. Self-Regulatory Organizations' Statement on Burden on Competition

NSCC, MSTC and Philadep do not believe that any burdens will be placed on competition as a result of the proposed rule changes.

## C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC, MSTC and Philadep have not solicited or received any comments.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

<sup>2</sup> Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966.

<sup>3</sup> Dial-up access is an option offered to Philadep participants. Philadep permits any user to access the system through dedicated lines as well.

<sup>4</sup> Securities Exchange Act Release No. 21227 (August 9, 1984), 49 FR 32698.

<sup>5</sup> Securities Exchange Act Release No. 22939 (February 24, 1986), 51 FR 7172.



the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle offices of NSCC, MSTC and Philadep. All submissions should refer to file numbers SR-NSCC-90-18, SR-MSTC-90-07 and SR-Philadep-90-04 and should be submitted by April 15, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 91-7007 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18051; International Series Rel. No. 243; 812-7691]

#### **Banco Bilbao Vizcaya, S.A.; Application**

March 18, 1991.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Banco Bilbao Vizcaya, S.A.

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of section 17(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order exempting applicant, any investment company registered under the Act other than an investment company registered under section 7(d) of the Act (a "United States Investment Company"), and any custodian for a United States Investment Company from section 17(f) of the Act to permit BBV, United States Investment Companies and custodians for such companies to deposit foreign securities and assets with Banco Bilbao Vizcaya (Portugal), S.A.

**FILING DATE:** The Application was filed on February 27, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued the SEC orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing

requests should be received by the SEC by 5:30 p.m. on April 15, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Banco Bilbao Vizcaya, S.A., Plaza San Nicolas 4, 48005 Bilbao, Spain.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### *Applicant's Representations*

1. Applicant is a banking institution organized and existing under the laws of Spain and regulated by the Bank of Spain. At December 31, 1989, applicant had shareholders' equity of Ptas. 420.6 billion (\$3.84 billion, based on the then current exchange rate).

2. Applicant has entered into an agreement, pursuant to which it has agreed to acquire a Portuguese branch of Lloyds Bank Plc (the "Branch"). The Branch will be incorporated as a banking institution under the laws of Portugal under the name Banco Bilbao Vizcaya (Portugal), S.A. ("BBV Portugal") and will be regulated by the Bank of Portugal. Upon closing on the transaction, BBV Portugal will become applicant's indirect, wholly-owned subsidiary. The transaction is subject to approval by the Central Bank of Portugal.

#### *Applicant's Legal Conclusions*

1. Section 17(f) requires that every registered management company deposit its securities and similar investments in the custody of certain specified entities, including "banks" having at all times an aggregate capital, surplus and undivided profits of at least \$500,000. Section 2(a)(5) defines "bank" to include (a) banking institutions organized under the laws of the United States, (b) member banks of the Federal Reserve System and (c) certain other banking institutions or trust companies doing business under the laws of any

State or of the United States. Therefore, foreign custodians of registered management companies are limited under section 17(f) to foreign branches of United States banks.

2. Rule 17f-5 expands the entities permitted to act as custodians ("Eligible Foreign Custodians") under section 17(f) to include a foreign bank that is regulated as such by the government (or an agency thereof) of the country where the bank is organized, which bank has shareholders' equity in excess of \$200 million or its equivalent, provided certain conditions are observed.

3. Applicant satisfies all of the requirements of rule 17f-5 to serve as an Eligible Foreign Custodian of investment company securities because it has shareholders' equity in excess of \$200 million, is organized and existing under the laws of Spain and is regulated in Spain by the Bank of Spain.

4. BBV Portugal, when organized, and after the closing on the purchase of the Branch by applicant, will satisfy all of the requirements of rule 17f-5 to serve as an Eligible Foreign Custodian of investment company securities in all respects other than with regard to the requisite minimum shareholders' equity.

5. Applicant seeks an order under section 6(c) exempting applicant, United States Investment Companies and custodians for United States Investment Companies from section 17(f) to permit applicant, United States Investment Companies and custodians of such companies to deposit foreign securities and assets in the custody of BBV Portugal.

6. Applicant believes that the terms of proposed foreign custody arrangements will adequately protect United States Investment Companies and their shareholders against loss. Applicant will remain liable for the performance of the duties and obligations delegated to BBV Portugal as well as for losses relating to the bankruptcy or insolvency of BBV Portugal.

#### *Applicant's Conditions*

Applicant agrees that any order granting the requested relief will be conditioned upon:

1. The foreign custody arrangements proposed with respect to BBV Portugal will satisfy the requirements of rule 17f-5 in all respects, other than with regard to minimum shareholders' equity.

2. Securities of a United States Investment Company will be maintained with BBV Portugal only in accordance with an agreement, required to remain in effect at all times during which BBV Portugal fails to satisfy all the requirements of rule 17f-5 relating to



minimum shareholders' equity, among BBV Portugal, applicant and the United States Investment Company or custodian for such company pursuant to the terms of which applicant would undertake to provide specified custodial or sub-custodial services for the United States Investment Company or custodian for such company and would delegate to BBV Portugal such of applicant's duties and obligations as would be necessary to permit BBV Portugal to hold securities of the United States Investment Company or custodian for such company in custody in Portugal. The agreement would further provide that applicant's delegation of duties to BBV Portugal would not relieve applicant of any responsibility to the United States Investment Company or custodian for such company for any loss due to such delegation except such loss as may result from (a) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency or BBV Portugal) for which neither applicant nor BBV Portugal would be liable under rule 17f-5 (e.g., despite the exercise of reasonable care, loss due to acts of God, nuclear incident and the like).

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 91-7002 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18049; 812-7577]

### Capstead Securities Corporation III; Application for an Order

March 18, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Capstead Securities Corporation III.

**RELEVANT SECTION OF THE ACT:** Exemption requested under section 6(c) from all provisions of the Act.

**SUMMARY OF APPLICATION:** Applicant seeks a conditional order exempting it from all provisions of the Act in connection with the proposed issuance and sale of one or more series of collateralized mortgage obligations and residual interests relating thereto, and to elect to treat the issuance of any series

as a real estate mortgage investment conduit ("REMIC") under the Internal Revenue Code.

**FILING DATE:** The application was filed on August 14, 1990 and amended on March 6, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 15, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Capstead Securities Corporation III, 2001 Bryan Tower, suite 3600, Dallas, Texas 75201.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Warren, Staff Attorney, at (202) 727-3026, or Jeremy Rubenstein, Branch Chief, at (202) 727-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant, a Delaware corporation, is a direct wholly-owned limited purpose financing subsidiary of Capstead Mortgage Corporation ("CMC"), formerly Lomas Mortgage Corporation. The applicant was formed for the purpose of engaging in mortgage-backed financing, including issuing and selling one or more series of collateralized mortgage obligations ("Bonds", as further defined below). Applicant will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will issue one or more series of Bonds under the terms of an indenture ("Indenture") between an independent trustee ("Indenture Trustee") and applicant as supplemented by one or more series supplements. The Indentures with respect to each series of Bonds that are publicly offered will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

3. With respect to any series of Bonds, the applicant may sell its right (the "Residual Rights") under the Indenture to receive (a) the excess cash flow from the collateral after the payment of principal and interest on such series of Bonds and of expenses from the administration of the Bonds, plus (b) any remaining value in the collateral after the payment in full of the principal and interest on such series of Bonds. If a REMIC election is made with respect to a series of Bonds, applicant may issue certain certificates ("REMIC certificates") representing the right to receive cash flow from the collateral included in such REMIC in excess of the expenses of such REMIC and the amounts required to be paid on the Bonds issued by such REMIC in accordance with their terms, or may issue a single class of residual bonds ("Residual Bonds") representing the residual interest in such REMIC. (The Residual Rights, REMIC Certificates, and Residual Bonds are referred to herein as the "Residual Interests.") All other classes of Bonds (other than Residual Bonds) with respect to such REMIC will represent the "regular interests" in the REMIC. Regular interests, together with all classes of Bonds of a series for which no REMIC election is made are referred to as "Regular Bonds." (Unless otherwise referred to below, all references to "Bonds" shall mean only the Regular Bonds.)

4. Applicant may sell the Residual Interests through a private placement exempt from registration under the Securities Act of 1933 Act ("1933 Act") or through a public offering subject to registration under the 1933 Act, provided that in either case applicant satisfies the conditions set forth below under "C. Conditions Relating to Sale of Residual Interests."

5. The term "Bond" means: (a) A debt instrument which entitles the holder or owner only to (1) a specified principal amount, provided that interest (determined as provided below) that is not paid currently may be accrued and added to the principal of a Bond, and (2) either (A) interest based on such principal amount calculated by reference to (i) a fixed rate, (ii) a floating rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, or (iii) a rate or rates determined through periodic auctions among holders and prospective holders or through periodic remarketing of the instrument, or (B) an amount equal to specified portions of the interest received on the Mortgage



Collateral (as defined below) held by the issuer, provided that the portion of the interest payable to the Bond holder or owner must be expected to provide a rate of return on the specified principal amount which bears a reasonable relationship to a market rate of interest; or (b) a zero coupon debt instrument which does not have a stated interest rate but on which interest effectively accrues from its issuance at a discount and which entitles the holder or owner only to a stated principal amount payable on or before a stated maturity date.

6. The Bonds of each series shall consist of one or more classes of Bonds, which may include one or more classes of (a) Bonds paying interest on a current basis, (b) compound interest Bonds or zero coupon Bonds, (c) reduced volatility Bonds which may be planned amortization class Bonds or targeted amortization class Bonds, and (d) increased volatility Bonds which are also known as support Bonds. Each class of Bonds may have a separate interest rate and stated maturity date as indicated in the related prospectus for such series of Bonds. Principal payments may be allocated to more than one class of Bonds, but such allocation will be consistent with the retirement of each class not later than its stated maturity date. A compound interest Bond is one on which interest is not paid currently but instead is accrued and added to the principal balance of the Bond on each payment date until all classes of Bonds with an earlier stated maturity date have been paid in full. A zero coupon Bond does not have a stated interest rate but interest effectively accrues from the issuance of such Bond at a discount with the stated principal amount being payable on or before the stated maturity date.

7. The mortgage collateral ("Mortgage Collateral") securing each series of Bonds which is owned by the applicant will consist of Agency Certificates<sup>1</sup> or Non-Agency Certificates.<sup>2</sup>

<sup>1</sup> Agency certificates are defined as (a) fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), (b) mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), or (c) mortgage participation certificates ("FHLMC Certificates") guaranteed as to timely payment of interest and either timely or ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC").

<sup>2</sup> Non-agency certificates are defined as "whole pool" pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in

8. In the case of each series of Bonds: (a) Applicant will hold no substantial assets other than the Mortgage Collateral and a limited amount of other collateral securing such Bonds; (b) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) scheduled distributions of principal and interest received on the Mortgage Collateral securing the Bonds (together with cash available to be withdrawn from any reserve funds, debt service funds, overcollateralization funds or other funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

9. Neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. Without the consent of each bondholder to be affected, neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to (a) change the stated maturity on any Bond; (b) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bond; (c) change the priority of payment on any class or any series of Bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the collateral; or (f) otherwise deprive the bondholders of the security afforded by the lien of the related Indenture.

10. The interests of the bondholders will not be compromised or impaired by the sale of Residual Interests. The sale of Residual Interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

11. Except to the extent permitted by the limited right to substitute collateral as permitted by the conditions to relief, it will not be possible for the Residual Interest holders to alter the collateral initially pledged to the Indenture

whole mortgage loans secured by first liens on single family (one to four unit) residential properties ("Mortgage Loans").

Trustee, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any Mortgage Collateral substituted for Mortgage Collateral initially pledged to the Indenture Trustee may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because the prepayment experience of any Mortgage Collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payment terms and maturities in a similar fashion.

#### Applicant's Legal Conclusions

The requested order is necessary and appropriate in the public interest because: (a) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to apply; (b) applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the activities of applicant are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors.

#### Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following (unless otherwise indicated all references to "Bonds" shall mean only the "Regular Bonds"):

##### A. Conditions Relating to the Regular Bonds

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

1. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral securing the Bonds will be limited to Agency Certificates and Non-Agency Certificates.



3. If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (a) Be of equal or better quality than the Mortgage Collateral replaced; (b) have similar payment terms and cash flow as the Mortgage Collateral replaced; (c) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (d) meet the conditions set forth in paragraphs 2. and 4. of this section A. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments or defect in such Non-Agency Certificates being replaced. In addition, new Mortgage Collateral will not be substituted for any substitute Mortgage Collateral.

4. All Mortgage Collateral, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture by an independent custodian. Neither the custodian nor the Indenture Trustee will be an "affiliate" (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of applicant or the master servicer or originating lender of any Mortgage Loan underlying Non-Agency Certificates securing a series of Bonds. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or custodian. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with applicant. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. No less often than annually, an independent public accountant will audit the books and records of applicant and, in addition, with respect to each series of Bonds, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. The master servicer of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Indenture Trustee or custodian. If there is no master servicer for such Mortgage Loans securing a series of Bonds, no servicer of those Mortgage Loans may be an

affiliate of the Indenture Trustee or custodian. In addition, any master servicer and any other servicer of the Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. Each agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to such Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

#### *B. Additional Conditions Relating to Variable Rate Regular Bonds*

1. The interest rate for each class of variable-rate Bonds will be subject to maximum interest rates ("interest rate caps") which may vary from period to period, and will always be specified in the related prospectus supplement for a series of Bonds.

2. The collateral deposited with the Indenture Trustee to secure a series of Bonds will at all times be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such series under the assumption that the interest rate of all Bonds of such series (including any class thereof) is the maximum rate for each specific period.<sup>3</sup>

3. No Mortgage Collateral may be released from the lien of the Indenture prior to retirement in full of all Bonds of such series, except to the extent permitted by the limited right to substitute collateral as described in the application.

#### *C. Conditions Relating to the Sale of Residual Interests*

1. Residual Interests will be sold or assigned only to a limited number, in no event more than one hundred, of institutional investors or non-institutional investors that are

<sup>3</sup> In addition to those mechanisms referred to in the application, applicant may utilize additional mechanisms to ensure the adequacy of the collateral notwithstanding the issuance of Bonds bearing interest at variable rates. Applicant will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories.

"accredited investors" as defined in Rule 501(a) of the 1933 Act. Residual Interests will be sold or assigned only with respect to a series of Bonds in which the Mortgage Collateral is limited to Agency Certificates. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors, who may include individuals, will be limited to not more than fifteen, will be required to purchase at least \$200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds \$1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutions or non-institutional investors as described above that customarily engage in the purchase or origination of mortgages and other types of mortgage related securities.

2. Each purchaser of a Residual Interest will be required to represent that it is purchasing such Residual Interest for investment purposes and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell such interest unless (a) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from applicant under the terms of Condition C.1, (b) after the sale there would be no more than one hundred Residual Interest holders, and (c) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more



than one hundred Residual Interest holders with respect to the series of Bonds at any time.

3. No holder of a controlling interest in applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either the custodian or any Rating Agency rating the Bonds.

4. No holder of a Residual Interest will be affiliated with the Indenture Trustee, the custodian or any rating agency rating the Bonds.

5. If the sale of Residual Interests were to result in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of applicant, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by the applicant.

#### *D. Conditions Relating to REMICs*

1. The election of applicant to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred relating to such series. If such REMIC election is made with respect to a series of Bonds, applicant will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to each rating agency rating the Bonds.

2. In addition, applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which method or combination of methods described in the application is selected to provide for the payment of such fees and expenses.

#### *E. Special Condition*

1. If any of the equity interests in applicant are sold and such sale results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of the applicant (except with respect to a transfer of control to an affiliate of CMC), the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by the applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 91-7004 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18050; 812-7615]

#### **Centerland Fund, et al.; Application**

March 18, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Centerland Fund (the "Fund") and Goldman, Sachs & Co. ("Goldman Sachs").

#### **RELEVANT 1940 ACT SECTIONS:**

Exemption requested under section 6(c) from sections 18(f), 18(g) and 18(i).

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit existing and future portfolios of the Fund to issue and sell separate classes of units representing interests in the same portfolio. These classes would be identical in all respects, except that (a) certain classes would bear expenses attributable to a Rule 12b-1 plan or a shareholder services plan, (b) the classes would have different voting rights, exchange, privileges and class designations, and (c) units of certain classes could be sold subject to a front-end sales load.

**FILING DATES:** The application was filed on October 30, 1990, and amended on February 8, 1991.

#### **HEARING OR NOTIFICATION OF HEARING:**

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 15, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 4900 Sears Tower, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Max Berueff, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch.

#### **Applicants' Representations**

1. The Fund is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company, and has an effective registration statement under the Securities Act of 1933. Currently, the Fund offers units in two money market portfolios, the Short-Term Diversified Assets Portfolio and the Short-Term U.S. Treasury Portfolio (such portfolios, together with all Portfolios created subsequently, are referred to herein as the "Portfolios"). The Fund will not assess any sales or redemption charge with respect to units of existing or future money market Portfolios. Units of any non-money market Portfolio created by the Fund might be sold subject to a front-end sales load ranging from 0.5% to 4.5% of the public offering price per unit (depending on the size of the purchase).

2. The existing Portfolios are sold only to customers of Boatmen's Trust Company ("Boatmen's") and trust departments of banks affiliated with Boatmen's, acting on behalf of their respective customers. Applicants will not sell their proposed new units to individuals, but rather would sell such units only to institutions acting on behalf of customers.

3. Goldman Sachs acts as the Fund's investment adviser and distributor. Boatmen's acts as administrator with respect to investments by its and its affiliates' customers in units of the Fund. State Street Bank and Trust Company ("State Street") serves as the Fund's custodian.

4. Under Applicants' proposal, the Fund would issue and sell three basic classes of units (the "Units") with respect to each Portfolio. The Fund's existing class of Units is not subject to a Rule 12b-1 plan or a shareholder services plan (the "No Plan Units"). The Fund may offer No Plan Units in connection with future Portfolios. The second class of Units ("Administration Units") would be offered in connection with a shareholder services plan adopted and operated in accordance with paragraph (b) through (f) of Rule 12b-1 (except for that rule's shareholder approval requirement) (the "Administration Plan"). The third class of Units ("Service Units") would be charged a fee pursuant to a Rule 12b-1 Plan (the "Service Plan"). The Administration Plan and Service Plan are referred to collectively as the "Plans", and the Administration Units and Service Units are referred to collectively as the "New Units".



Applicants also may offer classes of Administration Units and Service Units that differ as to the amount paid under the Plan covering each class.

5. The Fund believes that creating the New Units would enhance its marketing efforts, in that the unique services associated with each class of New Units would appeal to a wide variety of investors. Thus, the Fund argues, an investor will be more likely to find a class of Units the attributes of which cater to the investor's specific needs.

6. Under each type of Plan, the Fund would enter into servicing agreements ("Service Agreements") with banks or other institutions ("Service Organizations"), under which the Service Organization would provide certain account administration services to its customers ("Customers") who from time to time beneficially own Units offered in connection with a Plan.

7. The services to be provided by Service Organizations to their Customers under an Administration Plan would include: (a) Acting as the sole unitholder of record and nominee for all Customers; (b) maintaining account records for each Customer; (c) answering questions and handling correspondence from Customers; (d) processing Customer orders to purchase, redeem or exchange Administration Units; (e) transferring funds used to purchase or sell Administration Units; (f) issuing transaction confirmations; and (g) providing other account administration services (collectively, the "Account Administration Services").

8. The services to be provided by Service Organizations to their Customers under a Service Plan would include: (a) Account Administration Services; (b) answering questions posed by prospective investors about the Fund; (c) providing prospectuses and statements of additional information on request; (d) assisting prospective Customers in completing application forms, selecting dividend and other options, and opening custody accounts with the Service Organization; and (e) generally acting as liaison between investors and the Fund (collectively, the "Unitholder Liaison Services").

9. The provision of Account Administration Services and Unitholder Liaison Services under the Plans would augment (and not be duplicative of) the services to be provided to the Fund by Goldman Sachs and State Street.

10. Under each type of Plan, the Fund would make "Service Payments" to a Service Organization for Account Administration and Unitholder Liaison Services. Service Payments would not exceed .75% per annum of the average daily net asset value of those Service

Units beneficially owned by Customers of the Service Organization, and Service Payments made under an Administration Plan would not exceed .50% per annum of such amount.

11. In addition to expenses incurred under a Service Plan or an Administration Plan, each class of Units would bear certain other expenses specifically attributable to it ("Class Expenses"). Under the terms of the requested order, the only expense that may be charged as a Class Expense is the cost of preparing, printing, and mailing proxy materials relating to a particular Plan. The determination of which expenses would be allocated to a particular class as a Class Expense would be made by the Board of Trustees of the Fund in the manner described in condition 3 below.

12. Each New Unit or No Plan Unit in a particular Portfolio, regardless of class, would represent an equal pro rata interest in the Portfolio, and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) Each class of Units would have a different class designation; (b) each class of New Units offered in connection with a Plan would bear its particular Service Payments; (c) each class of New Units would bear certain Class Expenses; (d) holders of New Units of a particular class would have exclusive voting rights with respect to matters pertaining to their Plan; (e) each class would have different exchange privileges; and (f) each class of Units of non-money market Portfolios might be sold subject to a front-end sales load.

13. The net asset value of all outstanding Units representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Portfolio, subtracting the liabilities charged to the Portfolio, and dividing the result by the number of Portfolio's outstanding Units. The gross income of a Portfolio and Portfolio expenses not attributable to a particular class would be allocated on a pro rata basis to each outstanding Unit in the Portfolio regardless of class.

14. Because the Service Payments and Class Expenses borne by each class of Units may differ, the net income of (and dividends payable to) each class may be different from those of the other classes of Units in the same Portfolio. However, dividends paid by a Portfolio with respect to each class of its Units would be calculated in the same manner, and would be in the same amount, except

that Service Payments may by a class under its Plan and any Class Expenses would be borne exclusively by that class.

15. The representations in the application and the conditions imposed by any other order will apply to both existing and future Portfolios relying on the order.

#### Applicants' Legal Analysis

1. Applicants request an exemptive order because the different expenses and dividends of the Fund's No Plan Units, Administration Units and Service Units might be regarded as creating a class of stock with "priority over any other class as to distribution of assets or payment of dividends" within the meaning of section 18(g) of the 1940 Act. Section 18(f)(1) of the 1940 Act generally prohibits a registered open-end company, such as the Fund, from issuing or selling any class of senior security. Moreover, the fact that unitholders would enjoy exclusive voting rights with respect to matters affecting their class is not consistent with the requirement in section 18(i) that shares of a registered management company have equal voting rights. The Fund asserts that the proposed allocation of expenses and voting rights is equitable, and would not unfairly discriminate against any group of unitholders. Unitholders receiving the services provided under a Plan would bear the costs of such services, but also would enjoy exclusive voting rights with respect to matters affecting the Plan. Conversely, investors purchasing No Plan Units would not bear those expenses, receive the service benefits of such Plan, or enjoy those voting rights.

2. Applicants believe that it would be inefficient and economically infeasible to organize a separate investment portfolio for each class of units created. Not only might the Fund incur duplicative costs in organizing and operating such new portfolios, but the Fund's management of its portfolios might be hampered. For those reasons, the Fund seeks to create new classes of units, rather than new portfolios.

3. Applicants maintain that the proposed arrangement does not involve borrowing, and does not affect the Fund's existing assets or reserves. Nor would the proposed arrangement increase the speculative character of the Units in a Portfolio, since all Units—No Plan, Administration or Service—would participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the Service Payments and other expenses attributable to a particular class). Accordingly, the Fund submits



that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Each class of Units of a Portfolio will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of Units of a Portfolio will relate solely to: (a) The impact of the disproportionate Service Payments made under the Administration Plan and the Service Plan, the cost of preparing, printing and mailing proxy materials relating to only a particular class, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to the Portfolio's Administration Plan and Service Plan; (c) the different exchange privileges of the classes of Units; (d) the designation of each class of Units of a Portfolio; and (e) in the case of non-money market Portfolios, the sales load that classes of Units will carry due to differing distribution methods.

2. The Trustees of the Fund, including a majority of the independent Trustees, will approve the offering of different classes of Units (the "Multi-Class System"). The minutes of the meetings of the Trustees of the Fund regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Fund and its unitholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Fund including a majority of the Trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and

the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Fund, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of Units. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Goldman Sachs will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Goldman Sachs, at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any Service Plan adopted or amended to permit the assessment of a Rule 12b-1 fee on any class of Units which has not had its Rule 12b-1 plan approved by the public unitholders of that class will be submitted to the public unitholders of such class for approval at the next meeting of unitholders after the initial issuance of the class of Units. Such meeting is to be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

6. The Administration Plans will be adopted and operated in accordance with the procedures set forth in Rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b-1, except that unitholders need not enjoy the voting rights specified in Rule 12b-1. In evaluating the Administration Plans, the Trustees will specifically consider whether (a) such Plans are in the best interest of the applicable classes and their respective unitholders, (b) the services to be performed pursuant to the Administration Plans are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

7. Each Service Agreement entered into pursuant to an Administration Plan will contain a representation by the Service Organization that any compensation payable to the Service

Organization in connection with the investment of its Customers' assets in the Fund (a) will be disclosed by it to its Customers, (b) will be authorized by its Customers, and (c) will not result in an excessive fee to the Service Organization.

8. Each Service Agreement entered into pursuant to an Administration Plan will provide that, in the event an issue pertaining to the Administration Plan is submitted for unitholder approval, the Service Organization will vote any Units held for its own account in the proportion as the vote of those Units held for its Customers' accounts.

9. The Trustees of the Fund will receive quarterly and annual statements concerning the amounts expended under the Administration Plans and Service Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of Rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Units will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

10. Dividends paid by a Portfolio with respect to each class of its Units, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments made by a class under its Plan and any Class Expenses will be borne exclusively by that class.

11. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly.



The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

12. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of Units and the proper allocation of expenses among the classes of Units and this representation will be concurred with by the Expert in the initial report referred to in condition (11) above and will be concurred with by the Expert, or an appropriate substitute Expert, on ongoing basis at least annually in the ongoing reports referred to in condition (11) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

13. The prospectuses of each class of Units will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund Units may receive different compensation with respect to one particular class of Units over another in the Fund.

14. Goldman Sachs will adopt compliance standards, substantially in the form of Exhibit E to the application, as to when each class of Units may appropriately be sold to particular investors. Applicants will require all persons selling Units of the Fund to agree to conform to such standards.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Fund with respect to the Multi-Class System will be set forth in

guidelines which will be furnished to the Trustees.

16. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of Units in every prospectus, regardless of whether all classes of Units are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of Units in every unitholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of Units, it will also disclose the respective expenses and/or performance data applicable to all classes of Units. The information provided by Applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of Units separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make to Service Organizations pursuant to any Plan in reliance of the exemptive order.

18. A Portfolio of the Fund will have more than one class of Units outstanding only when and for so long as it declares its dividends on a daily basis, accrues its Service Payments and payments of Class Expenses daily, and has received undertakings from the persons that are entitled to receive Service Payments and payments of Class Expenses waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any class of Units on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per Unit for all Units in a Portfolio will remain the same.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7005 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-849]

#### Application and Opportunity for Hearing: Lexington Holding Corporation

March 20, 1991.

Notice is hereby given that Lexington Holding Corporation ("Applicant") has

filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than April 15, 1991 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7003 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18048; File No. 812-7654]

#### Principal Mutual Life Insurance Company, et al.

March 18, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Principal Mutual Life Insurance Company ("PMLIC"), Principal Government Securities Fund, Inc. (the "Fund"), and Princor Management Corporation (the "Adviser") (collectively, the "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under sections 6(c) and 17(b)



exempting Applicants from the provisions of section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Fund, subject to certain conditions, to purchase mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMA certificates") from PMLIC at prices which will be  $\frac{1}{4}$  of a dollar less than the prices at which PMLIC would sell such securities to dealers.

**FILING DATE:** The Application was filed on December 18, 1990 and amended on February 19, 1991.

**HEARING OR NOTIFICATION OF HEARING:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o The Principal Financial Group, Des Moines, Iowa 50392-0250.

**FOR FURTHER INFORMATION CONTACT:** Wendy B. Finck, Staff Attorney at (202) 272-3045 or Barry D. Miller, Senior Attorney at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

#### Applicant's Representations

1. PMLIC is a mutual life insurance company originally incorporated under the laws of the State of Iowa in 1879. The Fund is a corporation organized under the laws of Maryland on June 7, 1985, and is registered under the Act as an open-end diversified management investment company. The Adviser is the Fund's investment manager and is an indirect wholly-owned subsidiary of PMLIC.

2. The investment objective of the fund is to obtain a high level of current income consistent with liquidity and safety of principal. It seeks to achieve its objective through purchase of certain types of securities issued or guaranteed

by the United States Government or its agencies. It emphasizes the purchase of pass-through GNMA certificates.

3. PMLIC is an approved issuer or GNMA certificates. In connection with its residential mortgage loan operation, PMLIC routinely forms pools of such mortgages and applies to GNMA for approval of issuance of GNMA certificates for such pools. In the past PMLIC has sold GNMA certificates to buyers in the open market. These buyers, normally securities dealers, in turn sell the GNMA certificate to investors with a mark-up generally of .20% to .50%.

4. The Fund has, since its inception, purchased GNMA certificates only from a limited group of creditworthy dealers which maintain inventories of that type of security. The Fund now seeks to be able to buy GNMA certificates from PMLIC under conditions designed to assure that the Fund receives prices more favorable than it would otherwise receive from dealers in GNMA Certificates.

5. Applicants propose that in managing the portfolio of the Fund, the Adviser may, where deemed appropriate for the Fund, purchase original issue GNMA certificates with underlying pools of recently closed loans for the Fund directly from PMLIC rather than in the market, subject to compliance with the conditions listed below. The Fund will purchase no GNMA certificates from PMLIC which knowingly represent an interest in a pool of mortgage loans that includes a loan to any affiliated person of PMLIC, the Fund, the Adviser, or any affiliated person of those persons. All GNMA certificates sold to the Fund by PMLIC will be issued directly to the Fund by PMLIC during the initial distribution period and no secondary trading in GNMA certificates will transpire between PMLIC and the Fund.

6. PMLIC will sell certificates to the Fund at a price  $\frac{1}{4}$  of a dollar better (for the Fund) than the price at which it would sell to a dealer in the open market. Thus, any mark-up in the price of the certificates will be eliminated. In fact, the Fund will purchase GNMA certificates from PMLIC at an even better rate than would otherwise be paid for those GNMA certificates by dealers who would expect to resell them at a mark-up. Thus, the Fund will receive a higher yield on those GNMA certificates than if it were to purchase them from dealers.

7. The Fund will effect purchasers and deliveries in the same manner as it currently does with any broker-dealer. It will give PMLIC delivery instructions and those instructions will be given to

the Fund's custodian, Norwest Bank, for receipt of the purchased securities versus payment. PMLIC will give notice to its custodian, Bankers Trust, for delivery to the Fund versus payment. Everything will transfer as regular business for both the Fund and PMLIC.

8. Exemption from section 17(a) of the Act is requested to the extent necessary to permit the transactions with respect to GNMA certificates issued by PMLIC described above.

9. Applicants submit that the terms of the proposed transactions are reasonable and fair and do not involve over-reaching on the part of any person concerned. Applicants submit that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. PMLIC will offer its GNMA certificates to the Fund at a price  $\frac{1}{4}$  of a dollar better (for the Fund) than the price at which PMLIC could sell them to unaffiliated dealers in the open market. These purchases would enable the Fund to purchase GNMA certificates with no dealer mark-up. To determine that the price to the Fund will always be no more than the price obtainable by PMLIC in the market, PMLIC will obtain current (up to the minute) quotes from two or three dealers (selected on a rotating basis from those dealers to whom PMLIC regularly sells GNMA certificates) before setting the price. The Fund's purchases from PMLIC will be reviewed no less frequently than quarterly by the Board of Directors of the Fund, which has a majority of disinterested directors.

10. Applicants assert that the proposed transactions are consistent with the general purposes of the Act. Section 1(b)(2) of the Act declares that the public interest and interest of investors are adversely affected when investment companies are organized and managed in the interest of affiliated persons thereof, rather than in the interest of the companies' securities holders. PMLIC will be offering to the Fund only GNMA certificates which it could otherwise sell in the market at the higher price than that paid by the Fund. On the other hand, the Fund and its shareholders will benefit through purchases at a price which does not include a dealer's mark-up, and, in fact, is a lower price than would be paid by a dealer.

11. Applicants further asserts that proposed transactions also are necessary or appropriate in the public interest and consistent with the protection of investors. Failure to obtain



the relief requested would result in the Fund's foregoing the opportunity of obtaining an enhanced return from purchasing GNMA certificates at a price that more than eliminates dealer mark-up. Applicants know of no other way for the Fund to purchase GNMA certificates at such a favorable price. As noted above, issuers of GNMA certificates do not maintain inventories of those securities as do dealers. Moreover, issuers are of unknown and widely varying creditworthiness as compared to dealers ordinarily used by PMLIC. The Commission has cautioned investment companies and their advisers to limit repurchase transactions to ones with creditworthy dealers. Applicants believe that purchases of GNMA certificates should be subject to no less caution.

**Applicants' Conditions:** Applicants agree that the order granting the application may be expressly conditioned on the following:

12. Before any purchase is effected from PMLIC, PMLIC personnel responsible for executing orders for the Fund will check with at least two dealers in GNMA certificates to obtain competitive quotations to insure that the prices to be paid by the Fund to PMLIC will be better than the price available from independent dealers. To satisfy this test, the PMLIC price offered to the Fund must be at least  $\frac{1}{4}$  of a dollar better than the lowest bid prices of the independent dealers. The dealers selected will be rotated among those dealers to whom PMLIC ordinarily sells GNMA certificates.

13. No more than 20% of the Fund's GNMA certificate purchases in a given fiscal year (measured by dollar amount) may be from PMLIC. No more than 20% of PMLIC's sales of GNMA certificates in a given fiscal year (measured by dollar amount) may be to the Fund or to the Princi Government Securities Income Fund, Inc.

14. The Fund will maintain and preserve pursuant to the requirements of rule 31a-2(a)(2) under the Act records with respect to its purchases from PMLIC, including documentation as to the competitive quotations obtained from dealers, and those records will be available to SEC representatives upon request. In addition, the Fund will file a schedule of its transactions with PMLIC as an Exhibit to each Form N-SAR.

15. PMLIC's law department will prepare and draft guidelines and submit them to the Board of Directors of the Fund for approval, including approval by a majority of the directors who are not interested persons of the Fund. The law department will then circulate to the Adviser and PMLIC personnel whose

responsibilities may relate to the transactions described in this application the guidelines in the form so approved and information relating to the appropriate implementation thereof to insure that such personnel are thoroughly familiar with the constraints imposed in respect of such transactions. The law department also will periodically monitor the Fund's transactions with PMLIC to make certain that the requirements of these guidelines are strictly adhered to.

16. The Fund's independent auditors will annually review transactions and activities relating of the exemptive order and guidelines. The auditors will issue a special report in accordance with Generally Accepted Auditing Standards consistent with SAS No. 14 and SAS No. 35, as appropriate, reporting on compliance with the guidelines. That special report will be filed by the Fund as an Exhibit to the Form N-SAR filed after the end of the Fund's fiscal year. The procedures to be employed by the Fund's independent auditors in connection with the preparation of the special report will include the following: (a) Review of the application; (b) obtaining a schedule of purchases of GNMA Certificates for the applicable year; (c) agreeing (*i.e.*, comparing) the pool number, interest rate, maturity date, principal amount and purchase price of each listed certificate with the Fund's owned, sold and acquired listing; (d) examining the documentation from the security file supporting the price and dealer identity for each competitive bid; (e) comparing the purchase price to the lowest competitive bid to determine whether the purchase is at least  $\frac{1}{4}$  of a dollar lower than this competitive bid; and (f) tracing each purchase to approval in the minutes of the meetings of the Fund's Board of Directors on the date indicated.

17. The Board of Directors of the Fund or a committee thereof (including a majority of the directors who are not interested persons of the Fund or PMLIC) at least quarterly will review all transactions between the Fund and PMLIC to insure compliance with the exemptive order and that all requirements of the guidelines of the Fund with respect to such transactions have been observed and, at least annually, will review the special report prepared by the Fund's independent auditors and the appropriateness of continuing the policy of purchasing GNMA certificates from PMLIC.

18. The proposed transactions will only be effected provided PMLIC has maintained a claims-paying rating in one of the top two categories of at least

one nationally recognized rating organization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 91-6939 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25276]

### Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 18, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 11, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Opinac Energy Corp. (31-846)

Opinac Energy Corporation ("Opinac"), 1000,530—8th Avenue S.W., Calgary, Alberta, Canada T2P 3S8, a Canadian public-utility holding company subsidiary of Niagara Mohawk Power Corporation ("Niagara Mohawk"), a holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, has filed an application pursuant to section 3(a)(5) of the Act for an order exempting it from all provisions of the Act except section 9(a)(2).



Opinac's wholly-owned subsidiary, Canadian Niagara Power Company, Limited ("CNP"), is engaged, exclusively in Canada, in the production and sale of electric energy, and is an "electric utility company", as defined in section 2(a)(3) of the Act. CNP operates a hydro-electric generating station at Niagara Falls, Ontario and distributes and sells electrical power in its franchise area in and around Fort Erie, Ontario. It also sells power to the City of Cornwall in eastern Ontario and sells power at wholesale to Niagara Mohawk at the Canadian border in Niagara Falls, Ontario.

Niagara Mohawk was formerly a subsidiary of Niagara Hudson Power Corporation ("Niagara Hudson"). Prior to 1935, Niagara Hudson was a public-utility holding company that owned interests in two Canadian public-utility subsidiaries. It, in turn, was a subsidiary of The United Corporation ("United"), a public-utility holding company.<sup>1</sup> On January 5, 1950, Niagara Hudson consolidated its three principal subsidiaries to form a new operating company, Niagara Mohawk.<sup>2</sup> Niagara Mohawk achieved its present structure when United sold its holdings in Niagara Mohawk pursuant to a plan of reorganization filed with the Commission under section 11(e) of the Act<sup>3</sup> and when Niagara Hudson was dissolved on December 21, 1950.<sup>4</sup> Thus, Niagara Mohawk's ownership interests in its Canadian public-utility subsidiary existed prior to 1935.

Opinac represents that neither it nor any of its subsidiaries is a company the principal business of which within the United States is that of a public-utility company, and that, therefore, it does not derive any part of its income from such a subsidiary company.

**The Kansas Power and Light Co. (70-7791)**

The Kansas Power and Light Company ("KPL"), 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas combination electric and gas utility, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

KPL proposes to acquire all of the outstanding capital stock of Kansas Gas and Electric Company ("KG&E"), a Kansas electric utility company and a holding company exempt from registration under section 3(a)(2) of the

Act pursuant to rule 2. The acquisition would be affected through the merger of KG&E into KCA Corporation ("KCA"), a Kansas corporation and a wholly owned subsidiary of KPL formed for the purpose of the merger ("Merger"). Through such acquisition, KPL would indirectly acquire KG&E's 47% interest in the Wolf Creek Nuclear Operating Corporation ("WCNOC"), a Kansas electric utility company.

Following the Merger, KPL would be a public utility holding company as defined in section 2(a)(7) of the Act. KPL has also requested an order of exemption under section 3(a)(1) from all provisions of the Act except section 9(a)(2).

As an electric utility, KPL is involved in the generation, transmission, distribution and sale of electric power in the central and eastern portions of Kansas. Currently, KPL provides retail electric service to approximately 300,000 industrial, commercial and residential customers in 323 Kansas communities. KPL also provides wholesale electric generation and transmission services to numerous municipal customers and electric cooperatives located in Kansas, and, through interchange agreements, to surrounding integrated systems.

As a natural gas public-utility, KPL distributes gas in Kansas, western Missouri and northeastern Oklahoma. KPL provides natural gas service to approximately 1,100,000 retail customers.

As of September 30, 1990, KPL had outstanding capital stock consisting of 34,566,170 shares of common stock, \$5.00 par value ("KPL Common Stock"); 74,000 shares of 8.70% Preference Stock, no par value; 138,576 shares of 4½% Series Preferred Stock, \$100 par value; 60,000 shares of 4¼% Series Preferred Stock, \$100 par value; and 50,000 shares of 5% Series Preferred Stock, \$100 par value. No shares of KPL Preferred Stock, without par value, were outstanding at such date.

KG&E generates, transmits, distributes and sells electricity in the southeastern quarter of Kansas. KG&E sells electricity at retail to approximately 229,000 residential customers, more than 20,000 commercial customers and more than 4,000 industrial customers. KG&E also provides wholesale electric generation and transmission services to several municipal customers and electric cooperatives located in Kansas and, through interchange agreements, to surrounding integrated systems.

As of September 30, 1990, KG&E had outstanding capital stock consisting of 30,992,042 shares of common stock, no par value ("KG&E Common Stock");

82,011 shares of 4½% Preferred Stock, \$100 par value; 60,000 shares of Serial Preferred Stock, \$100 par value, 4.32% Series; and 45,000 shares of Serial Preferred Stock, \$100 par value, 4.28% Series.

Pursuant to an agreement and plan of merger, KPL proposes to acquire all of KG&E's capital stock for cash and/or KPL stock. Each share of KG&E Common Stock will be converted into either \$32 in cash or shares of KPL Common Stock, having a market value of approximately \$32, subject to certain limitations. KPL will pay the following amounts for other classes of KG&E stock: \$110.00 per share for all shares of 4½% Preferred Stock, \$100 par value; \$101.64 per share for all shares of Serial Preferred Stock, \$100 par value, 4.32% Series; and \$101.00 per share for all shares of Serial Preferred Stock, \$100 par value, 4.28% Series. In the case of KG&E preferred stock, KPL will also pay an amount equal to unpaid accumulated dividends to the effective date of the Merger, without interest from the effective date of the Merger.

KG&E will be merged into KCA, with KCA as the surviving corporation. Because the surviving corporation, to be renamed the Kansas Gas and Electric Company, will retain KG&E's 47% interest in WCNOC, it will be a holding company and will claim an exemption from registration under section 3(a)(2) of the Act pursuant to rule 2.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7008 Filed 3-22-91; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Fitness Redetermination of Coastal Air Transport, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Redetermination—Order 91-3-34, Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find that Coastal Air Transport, Inc., continues to be fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their

<sup>1</sup> The United Corp., 13 S.E.C. 854, 862 (1943); Niagara Hudson Power Corp., 16 S.E.C. 139, 152-53 (1944).

<sup>2</sup> See The United Corp., 32 S.E.C. 376, 396 (1951).

<sup>3</sup> Id. at 396.

<sup>4</sup> Id.; Niagara Hudson Power Corp., 29 S.E.C. 773 (1949); Niagara Hudson Power Corp., HCAR No. 10083 (Sept. 7, 1950).



responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: March 18, 1991.

Patrick V. Murphy, Jr.,  
Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-7014 Filed 3-22-91; 8:45 am]

BILLING CODE 4910-62-M

### **Fitness Redetermination of SFO Helicopter Airlines, Inc.**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Redetermination—Order 91-3-33, Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find that SFO Helicopter Airlines, Inc., continues to be fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: March 18, 1991.

Patrick V. Murphy, Jr.,  
Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-7015 Filed 3-22-91; 8:45 am]

BILLING CODE 4910-62-M

### **Federal Highway Administration**

#### **Environmental Impact Statement: Clark and Marathon Counties, WI**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed highway project on STH 29 in Clark and Marathon Counties, Wisconsin.

#### **FOR FURTHER INFORMATION CONTACT:**

Ms. Jaclyn D. Lawton, P.E.,  
Environmental Coordinator, Wisconsin Division, FHWA 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905; telephone (608) 264-5967.

Carol Cutshall, Wisconsin Department of Transportation, Office of Environmental Analysis, 4802 Sheboygan Avenue, Madison, Wisconsin 53705; telephone (608) 266-9626.

William Nicholson, Wisconsin Department of Transportation, Highway 29 Project Management Team, 1681 Second Avenue South, P.O. Box 8021, Wisconsin Rapids, Wisconsin 54495; telephone (715) 421-8365.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Wisconsin Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve State Trunk Highway 29 (STH 29) in Clark and Marathon Counties, Wisconsin. The proposed improvement would involve a portion of the existing route from 3 miles east of Abbotsford to 1.5 miles west of Marathon City, a distance of approximately 25 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is a bypass route around the City of Abbotsford. Alternatives under consideration include: (1) Taking no action; (2) constructing a multi-lane facility on existing location; (3) construction a multi-lane facility on new location; (4) constructing a multi-lane facility using a combination of existing and new alignments. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meeting will be held in Clark and Marathon Counties between March 1991 and December 1993. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will

be held at a date and place to be determined.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be direct to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 8, 1991.

Robert W. Cooper,  
District Engineer.

[FR Doc. 91-6932 Filed 3-22-91; 8:45 am]

BILLING CODE 4910-22-M

### **DEPARTMENT OF THE TREASURY**

#### **Customs Service**

[T.D. 91-24]

#### **Cancellation "with Prejudice" of individual broker's license No. 5793; Craig Pemberton**

**AGENCY:** U.S. Customs Service, Department of Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the Secretary of the Treasury on March 6, 1991, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) and 111.74 of the Customs Regulations, as amended (19 CFR 111.51(b), 111.74), cancelled with prejudice the individual broker's license No. 5793 issued to Craig Pemberton.

Dated: March 18, 1991.

Victor G. Weeren,  
Director, Office of Trade Operations.

[FR Doc. 91-7011 Filed 3-22-91; 8:45 am]

BILLING CODE 4820-02-M

#### **Fiscal Service**

[Dept. Circ. 570, 1990 Rev., Supp. No. 9]

#### **Surety Companies Acceptable on Federal Bonds, Universal Bonding Insurance Co.**

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31 of the United States Code. Federal bond-



approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27369 to reflect this addition:

Company Name: Universal Bonding Insurance Company. Business Address: 518 Stuyvesant Avenue, Lyndhurst, New Jersey 07071. Underwriting Limitation\*: \$297,000. Surety Licenses\*: NJ. Incorporated in: New Jersey.

Certificates of Authority expire on June 30 each year, unless revoked prior

to that date. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial

Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3918.

Dated: March 18, 1991.

Charles F. Schwan, III,  
Director, Funds Management Division,  
Financial Management Service.

[FR Doc. 91-6948 Filed 3-22-91; 8:45 am]

BILLING CODE 4810-35-M



# Sunshine Act Meetings

Federal Register

Vol. 56, No. 57

Monday, March 25, 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).

## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Executive Committee Meeting

### DATE AND TIME:

April 17 and 18, 1991

9:00 a.m. to 4:30 p.m.

9:00 a.m. to 3:00 p.m., respectively

**PLACE:** NCLIS Headquarters, 1111 18th Street NW., Suite 310, Washington, D.C. 20036.

### MATTERS TO BE DISCUSSED:

NCLIS Unfinished Business

White House Conference on Library and Information Services (WHCLIS), Unfinished Business

NCLIS New Business

WHCLIS New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather, (202) 254-3100, no later than one week in advance of the meeting.

For further information contact: Barbara Whiteleather, Special Assistant to the Executive Director, 1111 18th Street NW., Suite 310, Washington, D.C. 20036. (202) 254-3100.

Dated: March 19, 1991.

Jane Williams,

Research Associate.

[FR Doc. 91-7057 Filed 3-21-91; 10:48 am]

BILLING CODE 7527-01-M

## POSTAL SERVICE BOARD OF GOVERNORS

### Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, April 1, 1991, and at 8:30 a.m. on Tuesday, April 2, 1991, in Chicago, Illinois. By telephone vote, March 8-12, 1991, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for April 1, which will involve consideration of: (1) A proposed contract for a study into the ratemaking process and (2) funding for cargo vans, semi-trailers and mail hauling tractors. The Board determined that pursuant to

section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of the Code of Federal Regulations, discussion of these matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate implementation of the proposed procurement actions.

The April 2 meeting is open to the public and will be held in the LaSalle Room of the Four Seasons Hotel, 120 East Delaware Place. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

### Agenda

#### Monday Session

##### April 1—1:00 p.m. (Closed)

1. Consideration of Proposed Study into Rate Process.
2. Capital Investments. (Arthur Porwick, Assistant Postmaster General, Operations Systems and Performance Department)
  - a. Cargo Vans.
  - b. Semi-Trailers.
  - c. Mail Hauling Tractors.

#### Tuesday Session

##### April 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 4-5, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Report on the Central Region. (John G. Mulligan, Regional Postmaster General)
4. Report on the Chicago Division. (Norman L. Miller, Field Division General Manager/Postmaster)
5. Capital Investment. (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department)
  - a. Postage Validation Imprinters.
6. Tentative Agenda for April 29-30, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 91-7138 Filed 3-21-91; 2:52 pm]

BILLING CODE 7710-12-M

## UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

### Notice of Vote to Close Meeting

At its meeting on March 4, 1991, the Board of Governors of the United States

Postal Service voted unanimously to consider issuing a Request for Proposal (RFP) for a study analyzing the ratemaking procedures in place since passage of the Postal Reorganization Act in 1970 and recommending changes.

The Board determined that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion of the matter was exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], on the grounds that the public interest did not require otherwise and discussion was likely to disclose information, the premature disclosure of which would significantly frustrate the proposed procurement action.

Prior to the March 4-5 meeting, the Board of Governors gave due notice of its intention to hold the meeting, the notice and the proposed agenda for the meeting having been published in the *Federal Register* on February 21, 1991 (56 FR 7063).

On March 4, the Board determined by a unanimous vote that no earlier announcement was possible. In accordance with 5 U.S.C. 552b(f)(1), the General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting closed might properly be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

The persons who attended this portion of the meeting were Board members Alvarado, Daniels, del Junco, Griesemer, Hall, Nevin, Pace, Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary of the Board Harris; and General Counsel Hughes.

David F. Harris,

Secretary.

[FR Doc. 91-7139 Filed 3-21-91; 2:52 pm]

BILLING CODE 7710-12-M

## TENNESSEE VALLEY AUTHORITY

[Meeting No. 1438]

**TIME AND DATE:** 10 a.m. (CST), March 27, 1991.

**PLACE:** Gallatin Power Plant Assembly Room, Gallatin, Tennessee.

**STATUS:** Open.

**AGENDA:** Approval of minutes of meeting held on February 13, 1991.



**ACTION ITEMS:***Old Business*

1. Sale of 10-year Term Easement Affecting Approximately 10.38 Acres of Pickwick Reservoir Land in Tishomingo County, Mississippi.

*New Business***B—Purchase Awards**

- B1. Contract with AT&T for Automatic Data Processing Equipment Support Services for U.S. Army Information Systems Command-Missile Command at Redstone Arsenal, Alabama (Request for Proposal YE-95406C).

- B2. Negotiated Purchase Contract with HOLTEC International for Spent Fuel Racks for Sequoyah Nuclear Plant (Request for Proposal MA-44855C).

**E—Real Property Transactions**

- E1. Grant of Permanent Easement Affecting Approximately 1.2 Acres of Watts Bar Reservoir Land in Roane County, Tennessee.

- E2. Deed Modification Affecting Approximately 0.003 Acre of Cherokee Reservoir Land in Hamblen County, Tennessee.

**F—Unclassified**

- F1. Amendment to the Rules and Regulations of the TVA Retirement System.
- F2. Filing of Condemnation Cases.

F3. Supplement to Personal Services Contract No. TV-80880V with MICAH Systems, Incorporated, for Systems Analysis and Programming Support.

**INFORMATION ITEMS:**

1. Revised Pay Rates for the International Brotherhood of Electrical Workers Resulting from Decision of the Secretary of Labor.
2. Renewal Power Contract with Lenoir City, Tennessee.
3. Arrangements to Revise Service Schedules with Nantahala Power and Light Company.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 479-4412.

Dated: March 20, 1991.

Edward S. Christenbury,  
General Counsel and Secretary.

[FR Doc. 91-7052 Filed 3-21-91; 10:16 am]

BILLING CODE 8120-08-M

**UNITED STATES INSTITUTE OF PEACE****Notice of Meeting**

**DATE:** March 28, 1991.

**TIME:** 9:00 a.m. to 5:30 p.m.

**PLACE:** 1550 M Street NW., Washington, D.C. (ground floor, Board Room).

**STATUS:** Open session. (Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, (Pub. L. 93-525).

**AGENDA:** (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President Report. Committee Reports. Consideration of the Minutes of the Forty-Fifth meeting of the Board of Directors. Consideration of grant application matters.

**CONTACT:** Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457-1700.

Dated: March 15, 1991.

Bernice J. Carney,  
Director of Administration, the United States Institute of Peace.

[FR Doc. 91-7099 Filed 3-21-91; 12:27 pm]

BILLING CODE 3155-01-M



# Corrections

Federal Register

Vol. 56, No. 57

Monday, March 25, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No. 910104-1004]

RIN 0693-AA87

### Proposed Federal Information Processing Standard (FIPS) for Key Management Using ANSI X9.17

#### Correction

In notice document 91-3350 beginning on page 5800 in the issue of Wednesday, February 13, 1991, make the following correction:

On page 5801, in the second column, in paragraph 10, in the 7th line, "not" should be removed.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TA91-1-16-005]

### National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

#### Correction

In notice document 91-3894 appearing on page 6849 in the issue of Wednesday, February 20, 1991, make the following correction:

In the first column, in the heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## FEDERAL TRADE COMMISSION

[File No. 911 0036]

### Alleghany Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

#### Correction

In notice document 91-5159 beginning on page 9219 in the issue of Tuesday, March 5, 1991, make the following correction:

On page 9219, in the second column, under the **DATES** caption, in the second line, "April 8, 1991" should read "May 6, 1991".

BILLING CODE 1505-01-D

## FEDERAL TRADE COMMISSION

[Dkt. No. 9224]

### TK-7 Corp., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

#### Correction

In notice document 91-5161 beginning on page 9224 in the issue of Tuesday, March 5, 1991, make the following correction:

On page 9224, in the second column, under the **DATES** caption, in the second line, "April 8, 1991" should read "May 6, 1991".

BILLING CODE 1505-01-D

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3]

RIN 3090-AE19

### Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

#### Correction

In the issue of Friday, March 15, 1991, on page 11304, in the second column, a correction to rule document 91-5295 appeared. A portion of the text that appeared is inaccurate and is corrected as follows:

#### § 304-1.7 [Corrected]

1. Under amendatory instruction 6., in the next to last line, "eighth should read

"seventh" and in the last line, "allowance" should read "JFTR".

2. Under amendatory instruction 8., in the next to last line, after "6 FAM" insert "100".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 514

[Docket No. 76N-0358]

### New Animal Drug Applications; Approval of Supplemental Applications

#### Correction

In rule document 90-25830 beginning on page 46045 in the issue of Thursday, November 1, 1990, make the following corrections:

#### § 514.106 [Corrected]

On page 46052, in § 514.106

a. In the first column, in paragraph (a), in the first line "With" should read "Within".

b. In the same column, in the same paragraph, in the eighth line "application" was misspelled.

c. In the second column, in paragraph (b)(1)(ii), in the first line "sales" should read "sale".

d. In the same column, in paragraph (b)(1)(iii) "of" should read "or".

e. In the same column, in paragraph (b)(1)(v), in the third line "or" should read "of".

f. In the same column, in paragraph (b)(1)(vii), in the third line "of change in the" should read "or change the".

g. In the same column, in paragraph (b)(1)(xiii), in the second line "of" was repeated.

h. In the same column, in paragraph (b)(1)(xiv), in the fourth line "application" should read "applications".

i. In the same column, in paragraph (b)(2)(iii), in the first line "does" should read "dose".

j. In the same column, in paragraph (b)(2)(iv), in the second line "schedule" was misspelled.

k. In the same column, in paragraph (b)(2)(ix), in the sixth line ":" at the end should read ".".



1. In the third column, in paragraph (b)(2)(xiii), in the first line "of" should read "or".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-930-01-4214-10; COC-52453]

#### Proposed Withdrawal; Opportunity for Public Meeting; Colorado

##### Correction

In notice document 91-3280 beginning on page 5702 in the issue of Tuesday, February 12, 1991, make the following corrections:

1. On page 5703, in the first column, under Estin/Hut Lodge, in the first line, "Latitude 30'" should read "Latitude 39'"

2. In the same column, under Schuss/Zesiger Hut/Lodge, in the first line, "Latitude 39° 26' 18.10'." should read "Latitude 39° 26' 18.10"N."

3. On the same page, in the third column, in the file line, the Federal Register document number should read "91-3280".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 250

RIN 1010-AB21

#### Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Training

In rule document 91-1552, beginning on page 2678 in the issue of Thursday, January 24, 1991, make the following correction:

##### § 250.214 [Corrected]

On page 2698, in the second column, in § 250.214(c)(3), in the second line "need to be" should read "need not be".

BILLING CODE 1505-01-D

## INTERSTATE COMMERCE

### COMMISSION

#### 49 CFR Part 1177

[Ex Parte No. 382 (Sub-No. 7)]

#### Revision of Rules for the Recordation of Documents Under 49 U.S.C. 11303- Documents Executed With a Declaration, Made Under Penalty of Perjury

##### Correction

In rule document 91-5931 beginning on page 10519 in the issue of Wednesday, March 13, 1991, make the following correction:

##### § 1177.3 [Corrected]

On page 10520, in § 1177.3(a)(3), in the seventh line "to be known" should read "to me known".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

#### 29 CFR Part 541

#### Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

##### Correction

In the issue of Tuesday, March 5, 1991, on page 9252, beginning in the first column, in the correction of rule document 91-4704, the page cites were incorrect. "Page 5250" should read "page 8250" and "page 5251" should read "page 8251".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

#### 29 CFR Part 778

RIN 1215-AA54

#### Records To Be Kept by Employers; Overtime Compension

##### Correction

In proposed rule document 91-5061 beginning on page 9183 in the issue of Tuesday, March 5, 1991, make the following corrections:

##### § 778.603 [Corrected]

On page 9185, in the first column, in § 778.603, in the fifth line from the bottom, "of" should read "and". In the second column, in the sixth line from the end of the section, insert "j" after "Compilation".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Office of Commercial Space Transportation

#### 14 CFR Parts 413, and 415

[OST Docket No. 47425; Notice 91-4]

RIN 2105-AB77

#### Commercial Space Transportation; User Fees

##### Correction

In proposed rule document 91-4596 beginning on page 8301 in the issue of Thursday, February 28, 1991, make the following corrections:

1. On page 8301, in the 2d column, in the 11th line, "pre-launch" should read "per-launch".

2. On page 8303, in the first column, in the sixth line from the bottom, "risks" should read "risk".

3. On page 8305, in the second column, under "Department Regulatory Policies and Procedures", in the first line, "proposed" was misspelled.

##### § 415.4 [Corrected]

4. On page 8306, in the first column, in § 415.4(b), in the third line, "life" should read "lift".

5. In the same column, in § 415.4(c), in the second line, "\$2.05" should read "\$2.50".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

#### Debt Instruments With Original Issue Discount; Contingent Payments

##### Correction

In proposed rule document 91-4676 beginning on page 8308 in the issue of Thursday, February 28, 1991, make the following corrections:



## § 1.1275-4 [Corrected]

1. On page 8311, in the second column, in § 1.1275-4, in paragraph (g)(4)(ii)(B)(2) in the fifth line, delete "payment".

2. In the same column, in § 1.1275-4, in paragraph (g)(5), in example (i), in the second line, delete "payment".

BILLING CODE 1505-01-D



# **REGISTERED**

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**Monday  
March 25, 1991**

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**Part II**

**Department of  
Housing and Urban  
Development**

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**Office of the Assistant Secretary for  
Public and Indian Housing**

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**Public Housing Resident Management  
Program Technical Assistance; Notice of  
Funding Availability**



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3235; FR-2988-N-01]

### NOFA for the Public Housing Resident Management Program Technical Assistance

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability for FY 1991.

**DATES:** Applications are due no later than May 17, 1991.

**SUMMARY:** HUD is announcing the availability of \$5 million for Fiscal Year 1991 under the Public Housing Resident Management program. This program provides assistance to Resident Councils (RCs)/Resident Management Corporations (RMCs) to fund training and other activities for the resident management of public housing. Also, Resident Organizations (ROs)/Resident Councils (RCs)/Resident Management Corporations (RMCs) of Indian Housing may be eligible for funding under this program.

**EFFECTIVE DATE:** March 25, 1991.

#### FOR FURTHER INFORMATION AND A COPY OF THE REQUEST FOR GRANT APPLICATION (RFGA) (APPLICATION KIT):

This NOFA cannot be used as the application. (The Application Kit will be available 15 days from the date of publication.) Please contact the Resident Initiatives Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1-800-955-2232 to obtain a copy of the Application Kit. For information on the program, contact Dorothy Walker, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone Number (202) 708-3611. (This is not a toll-free number.) Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by calling 1-800-877-TDDY or 1-800-877-8339 or 202-708-9300 (this is not a toll-free number) for information on the program.

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0127. Public reporting burden for each of these collections of information is

estimated to include the time for reviewing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### Other Information

RCs/RMCs/ROs of public/Indian housing that are selected to receive funding will be invited to participate in a national training workshop scheduled for late July 1991. Many resident organizations may not have the funds available to attend the workshop. This NOFA authorizes Public Housing Agencies (PHAs)/Indian Housing Authorities (IHAs) which are in a position to do so, to advance travel funds to the grantees who are selected to receive funding to attend the workshop. PHAs/IHAs will be reimbursed by the grantees selected for funding upon execution of the Technical Assistance Grant (TAG). Each grantee may send up to three persons to attend the workshop utilizing the TAG grant funds. (The advance and the reimbursement should occur within the same PHA/IHA fiscal year.) All parties are reminded that expenditures for travel are subject to OMB Circular A-122 (Cost Principles for Non-Profits). Grantees may contact their local Resident Initiative Coordinator (RIC) in the HUD Regional and Field Offices for further information on travel regulations.

#### Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-42, February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20. In part, section 20 states as its purpose, the encouragement of "increased resident management of public housing projects [and the provision of funding] \* \* \* to promote formation and development of resident management entities" (Section 20(a).) Under section (20)(f)(1):

The Secretary shall provide financial assistance to resident management corporations or resident councils that obtain,

by contract or otherwise, technical assistance for the development of resident management entities, including the information of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Under section 20(f)(2), such financial assistance may not exceed \$100,000 with respect to any public housing project, and subsection (f)(3) limits the assistance, to the extent funds are available under section 14 of the 1937 Act (Comprehensive Improvement Assistance Program). In Fiscal Years 1988, 1989, and 1990 a total of \$7.4 million was set aside for the development of resident management entities. In FY 1988, \$2.5 million was awarded to 27 resident organizations; in FY 1989, \$2.5 was awarded to 35 resident organizations; and in FY 1990, \$2.4 million was awarded to 37 resident organizations. In FY 1991, the Secretary is making available \$5 million for technical assistance and training for resident management.

On September 7, 1988, HUD published a final rule (24 CFR part 964) implementing section 20 of the 1937 Act. That rule sets forth, among other things, the policies, procedures, and requirements of resident participation and management of public housing. See 53 FR 34876. In an "Overview" of the rule, HUD explained that

Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects may approve the information of a resident management corporation. A qualifying resident management corporation may enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program provides PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

Resident management corporations may retain any income that they generate in excess of estimated revenues for the project. Retained amounts may be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions governing HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain nonstatutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the



feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project.

#### *I. Funding*

As noted above, \$5 million is being made available in FY 1991 on a competitive basis to RMCs/RCs/ROs that submit timely applications and are selected in response to this NOFA. Funding will be provided to support technical assistance for the development of resident management entities, including the formation of such entities; the development of the management capability of newly formed or existing entities; the identification of the social support needs of residents of public housing projects; and the securing of such support. Section 20 provides that not more than \$100,000 may be approved with respect to any housing project.

In this year's NOFA, the Department will be providing minigrants for start-up activities for RCs/RMCs/ROs that have fewer than 3 years of experience in community organization and participation in public housing community affairs. HUD will provide up to \$40,000 to RCs/RMCs/ROs for start-up purposes. Based on HUD's experience with the RCs/RMCs funded in previous years, the Department believes that \$40,000 is a reasonable amount for newly emerging groups to begin to build and strengthen their capacity as an organization (e.g., maintain democratically elected officers of the organization, establish operating/planning committees and block/building captains to carry out specific organizational tasks, develop by-laws, etc.); to develop a cohesive relationship between the residents and the local community; to build a partnership with the PHA/IHA; and to begin participating in training activities associated with property management in public/Indian housing. (See Section IX on Training Requirements for Grantees, and Section X Eligible Activities for specific training activities associated with property management.)

RCs/RMCs/ROs that have over 3 years of experience in community organizing and participation in public housing and community affairs may apply and be eligible to receive up to \$100,000. The actual amount of funding approved by HUD will be determined after a detailed review by HUD of the Work Plan and Budget, as part of the application review process, to determine eligibility and cost reasonableness of activities/tasks being proposed by the RC/RMC/RO.

RCs/RMCs/ROs awarded a mini-grant for start-up activities in FY 1991

may apply for additional funding in a subsequent year up to the total maximum limitation of \$100,000 per project, only after the resident organizations have accomplished the following activities:

- (a) Developed an active community organization which consists of democratically elected officers;
- (b) Issued by-laws governing the operation of the organization;
- (c) Developed an organizational structure which consists of floor/block captains or residential community groups and program committees to carry out specific tasks;
- (d) Obtained a Memorandum of Understanding (MOU) between the RC/RMC/RO and PHA/IHA which states the elements of their relationship and delineates what support the PHA/IHA will provide to the resident organization, (e.g., on-the-job training, technical assistance, equipment, space, etc.) and the activities to be provided by the RCs/RMCs/ROs;
- (e) Identified community needs and interests for resident management, skills level, community participation, etc.;
- (f) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function;
- (g) Completed Board and Leadership Training for the resident organization; and
- (h) Has formal recognition from the PHA/IHA to represent residents in meetings with the PHA/IHA or other entities.

#### *II. Additional Funding*

RCs/RMCs selected for funding in FYs 1988, 1989, and 1990 that received less than the statutory maximum of \$100,000 per project may apply for an additional grant not to exceed (including previous grants) the total statutory maximum. However, these RCs/RMCs may be considered for additional funding *only* if there is evidence of reasonable progress on their resident management program previously approved by HUD. (See Selection Factor in Section XIV(c)(2)).

#### *III. Technical Assistance Grant (TAG)*

Grant awards will be made through a Technical Assistance Grant (TAG) which defines the legal framework for the relationship between HUD and a RMC/RC/RO for the proposed activities approved for funding. The TAG will contain all applicable requirements, including administrative requirements such as progress reports, a final report, and a final audit. All necessary materials regarding the TAG will be

furnished at a later date to applicants who are selected to receive funding.

#### *IV. Eligibility of RMCs/RCs/ROs of Indian housing*

The Department will consider, on a case-by-case basis, requests by RMCs/RCs/ROs of Indian housing to participate under this NOFA, as specified below.

HUD regulations at 24 CFR part 964 exclude Indian Housing Authorities (IHAs) from the definition of Public Housing Agency (§ 964.7). This exclusion precludes participation of resident organizations of IHAs under part 964 and this NOFA, unless a waiver of this restriction is granted.

However, the Department will consider, on a case-by-case basis, requests for waivers of the exclusion of IHAs from the definition of PHA (24 CFR 964.7). Requests for waivers must (1) Be in writing, state good cause, and conform with the regulatory requirement for waivers contained in 24 CFR part 999; (2) be limited to instances involving resident organizations of IHAs; and (3) establish that the entity created by residents of the IHA meets the definition and requirements of a RC/RMC/RO under 24 CFR part 964 and 24 CFR 905.355, and this NOFA.

Where waivers are granted, RMCs/RCs/ROs of Indian housing shall be subject to the same requirements applicable to RMCs/RCs of public housing. Requests for waivers should be addressed to: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing, 451 7th Street, SW., Washington, DC 20410. The waiver request should be signed by an authorized officer of the RC/RMC/RO and included in the application submission.

#### *V. Changes This Year in Certain Features of the Resident Management Program*

Below is a listing of the new requirements being instituted in this year's NOFA:

(a) An Application kit will be required as the formal submission to apply for funding. The kit also will include information on the preparation of a Work Plan and Budget for activities proposed by the applicant. This process will eliminate the two-stage application and Work Plan/Budget requirement imposed in previous years, and will facilitate the expeditious execution of a Technical Assistance Grant (TAG) for those applicants who are selected to receive funding.

(b) RCs/RMCs/ROs that have fewer than three (3) years' experience in community organizing and participation



in public housing and community affairs may receive up to \$40,000 for start-up activities.

(c) RCs/RMCs/ROs that received less than the statutory limitation of \$100,000 per project in FYs 1988, 1989, and 1990 must make substantive progress or have completed the resident management program previously approved by HUD prior to being approved for additional funding.

(d) RCs/RMCs/ROs of Indian housing are eligible to apply for technical assistance funding under this NOFA, if a waiver is granted.

(e) Applications submitted jointly by RCs/RMCs/ROs, or by city-wide/tribal-wide organizations (i.e., organizations consisting of members from RCs/RMCs/ROs who reside in Public/Indian Housing projects which are owned and operated by a PHA/IHA (the city-wide/tribal-wide organization may represent one or all of the RCs/RMCs/ROs within a PHA/IHA) may receive an additional five (5) points.

(f) The Evaluation Panel will be established at the Headquarters level in Washington, DC, to review the technical merits of the applications and will be comprised of members from various HUD Headquarters Office; Regional and Field Offices; and Field Offices and Headquarters Offices of Indian programs.

(g) Applicants will have an opportunity to correct technical deficiencies in their application submission.

#### VI. This NOFA

This NOFA contains definitions of a "Project", "Resident Council (RC)", "Resident Management", "Resident Management Corporation (RMC)", and "Resident Organization (RO)" that are drawn from 24 CFR 964.7 and 24 CFR 905.355. Also detailed in this NOFA (Sections 8 and 9, respectively) are those organizations that are eligible for funding, and the training requirements for all grantees. Section 10 sets forth the activities that are eligible for funding under this NOFA. This NOFA also gives examples in Section 11 of activities that are not eligible for funding. The application process and the factors that HUD will use in evaluating all applications for the three categories of funding, i.e., Mini-grants, Basic Grants, and Additional Funding, are spelled out in sections 13 and 14, respectively.

Section 15 describes OMB's procurement requirements. Section 16 states that a checklist of all application submission requirements will be contained in the RFGA. Section 17 describes the selection and approval procedures, along with the role that

HUD Headquarters and Regional and Field Offices, and the Field Offices and Headquarters Offices of Indian programs will play in the process, and section 18 states that an applicant will be provided an opportunity to correct technical deficiencies in the application submission. Section 19 states that an application must be based on a plan that will spend the funds received within two years of the execution of the TAG contract. Sections 20 and 21 indicate that HUD Headquarters will notify Congress and the PHAs/IHAs, respectively, of action taken on a RMC's/RC's/RO's application.

#### VII. Definition

In accordance with 24 CFR 964.7 and 24 CFR 905.355, the following definitions apply:

a. *Project (Development)*. Includes any of the following that meet the requirements of part 964:

- (1) One or more contiguous buildings.
- (2) An area of contiguous row houses.
- (3) Scattered site buildings.

b. *Resident Council (RC)/Resident Organization (RO)*. An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

- (1) It must be representative of the tenants it purports to represent.
- (2) It may represent tenants in more than one project or in all of the projects of a PHA/IHA, but it must fairly represent tenants from each project that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

c. *Resident Management*. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the PHA/IHA.

d. *Resident Management Corporation (RMC)*. The entity that proposes to enter into, or enters into, a management contract with a PHA/IHA that meets the requirements of subpart C of 24 CFR part 964 (for Public Housing) and 24 CFR 905.355 (for Indian Housing). The corporation must have each of the following characteristics:

- (1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian Tribe in which it is located.

(2) It may be established by more than one tenant/resident organization or resident council, so long as each such organization or council (i) approves the establishment of the corporation and (ii) has representation of the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(5) Its voting members must be tenants of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of a resident council, as defined in paragraph (b) of this section.

#### VIII. Eligibility

Only organizations that meet the definition of an RC/RMC/RO set forth in paragraphs (b) and (d) of section (VII) will be eligible for funding under this NOFA, as follows:

a. RCs/RMCs selected for funding in FYs 1988, 1989, and 1990 that received less than the statutory maximum of \$100,000 per project may apply for an additional grant not to exceed the statutory maximum; they may receive consideration for up to the additional amount based on the evaluation factors applied to other applicants. No special considerations will be given.

b. Projects which were awarded the maximum amount of \$100,000 in FYs 1988, 1989, and 1990 are not eligible to apply.

c. A RC/RO which represents more than one project may apply on behalf of some or all of the projects it represents. In such a case, an individual project represented by that council may not apply for technical assistance funding for the same activities that are included in the application submitted by the larger organization.

d. A city-wide/tribal-wide organization (i.e., an organization consisting of members from RCs/RMCs/ROs who reside in Public/Indian housing projects which are owned and operated by PHAs/IHAs) (the city-wide/tribal-wide organization may represent one or all of the RCs/RMCs/



ROs within a PHA/IHA). In such a case, an individual project represented by the city-wide/tribal-wide organization that has received technical assistance funding in a previous year may not receive additional funding in the application submitted by the organization.

**Note:** HUD encourages the submission of joint applications from neighboring (within the same PHA/IHA) RCs/RMCs/ROs or city-wide/tribal-wide resident organizations that have similar objectives for the program by jointly sharing basic training, and exploring such areas as feasibility of resident management, economic development, or homeownership. Applications of this nature can obtain an additional five (5) points

#### IX. Training Requirements for Grantees

Grantees are required to have training in the following areas:

- a. HUD regulations and policies governing the operating of low-income public housing, including 24 CFR part 900 and the Fair Housing regulations.
- b. HUD regulations and requirements with respect to the Public/Indian housing programs.
- c. Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A-110 and A-122 which contain Federal administrative requirements for grants, OMB Circular A-133 relating to audit requirements for non-profit organizations, and the RMC Financial Management Guide.
- d. Capacity building to develop the necessary skills to assume management responsibilities at the project.
- e. Property management. (Excludes grantees applying for a mini grant.)

Each grantee must ensure that this training is provided by a qualified housing management specialist, the PHA/IHA, or other sources.

#### X. Eligible Activities

Activities which may be funded and carried out by an eligible RC/RMC/RO include any combination of, but are not limited to, the following:

- a. Determining the feasibility of resident management for a specific project or projects.
- b. Training of residents in skills directly related to the operations and management of a project(s) for potential employees of a RMC.

**Note:** By law, a RC must hire a qualified public housing management specialist (Consultant/Trainer) who can provide needed training and other support to assist in developing a RC's capabilities for resident management and who can perform related technical assistance duties, as may be agreed to in connection with property management functions. This requirement is also applicable

to newly formed RCs/ROs/RMCs of Indian housing.

The Consultant/Trainer may be a private consultant, a non-profit community agency or university, the PHA/IHA, or other qualified entities. The RC/RMC/RO may select one Consultant/Trainer or one for different areas, as long as there is continuity and movement toward the resident management program.

- c. Training of Board members in community organization, Board development, and leadership training.
- d. Training of residents with respect to fair housing requirements.

e. Funds may be used to assist in the actual creation of a RMC, such as:

- (1) Consulting and legal assistance to incorporate the RMC;
  - (2) Preparing by-laws and drafting a corporate charter;
  - (3) Developing performance standards and assessment procedures to measure the success of the RMC;
  - (4) Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance; and
  - (5) Assessing potential management functions or tasks that the RMC might undertake.
- f. Implementation of activities by a RC/RMC capable of performing functions associated with the operation and maintenance of the public/Indian housing project(s). Examples of eligible activities, in addition to those cited in paragraphs (a) through (d) of this section, are—

- (1) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;
- (2) Assistance in developing and negotiating management contracts and related contract monitoring and management procedures;
- (3) Designing and implementing a long-range planning system;
- (4) Designing and implementing: Personnel policies; performance standards for measuring staff productivity; policies and procedures covering organization structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management in general and public housing management in particular;
- (5) Identifying the social support needs of residents and securing of such support, e.g., health clinics, day care, security, etc., and
- (6) Assessing potential homeownership opportunities;
- g. Development of economic initiatives to further increase the self-sufficiency of a resident management

corporation and of residents. Such activities may include:

- (1) Preparation of market studies, management plans, or plans for a proposed economic development activity;
- (2) Legal assistance in establishing a business entity; and
- (3) Development of co-op food stores, janitorial and maintenance services firms, etc.

h. Administrative costs necessary for the implementation of activities outlined in paragraphs (a) through (g) of this section are eligible costs and must clearly support activities related to the goal of resident management. Eligible items or activities include, but are not limited to, the following:

- (1) Consulting fees related to the eligible activities above;
- (2) Telephone, telegraph, printing, and sundry and nondwelling equipment such as office supplies and furniture. In addition, a reasonable portion of funds may be applied to the acquisition of hardware equipment such as computers, copying machines, etc., unless purchase of such equipment can be made from an RMC's operating budget. A RMC must justify the need for such equipment in relationship to its management capability and the level of management responsibilities.

(3) Approved travel specifically related to activities for the development/training and implementation of resident management, including conference fees, related per diem for meals, and miscellaneous travel expenses for individual RC/RMC/RO staff or Board members.

(4) Child care expenses for individual RC/RMC/RO staff and Board members, in cases where residents or Board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than one half of one percent (.005 percent) of the total grant amount may be used for expenses to support babysitting needs.

(5) Officers and members of the newly created resident organizations should not receive stipends for participating or receiving resident management training. Such stipends can be approved when the officers and members of the resident organization are close to (within 3-6 months) a dual management with the PHA/IHA, and the RC/RMC/RO has obtained matching funds from a source other than HUD technical assistance grant funds. Generally, no more than 10% of the grant funds should be used for this purpose.



### *XI. Ineligible Activities*

Ineligible items or activities include, but are not limited to, the following:

- a. Entertainment, including associated costs such as food and beverages, except normal per diem for meals;
- b. Purchase of land or buildings or any improvements to land or buildings;
- c. Activities not directly related to resident management, e.g., lead-based paint testing and abatement, operating capital for economic development activities; and
- d. Purchase of any vehicle (car, van, etc.) or any other property having a useful life of more than one year and an acquisition cost of \$300 or more per item, other than hardware equipment described in Section X.(i)(2), unless approved by HUD.
- e. Architectural and engineering fees;
- f. Payment of salaries for routine project operations such as security, maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the resident management grant activities; and
- g. Payment of fees for lobbying services.

Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD's programs or directives will be considered ineligible expenditures upon appropriate determination by audit or HUD Field Office staff.

### *XII. Actions Preceding Application Submission*

Consistent with this NOFA, HUD may direct a PHA/IHA to notify its existing RC(s)/RMC(s)/RO(s) of this funding opportunity. It is important that residents be advised that, even in the absence of an RC/RMC/RO, the opportunity exists to establish an RC/RO. If no RC/RMC/RO exists for any of the projects, HUD encourages a PHA/IHA to post this NOFA in a prominent location within the PHA's/IHA's main office as well as in each project office.

### *XIII. Application Development and Submission*

An RC/RMC/RO shall prepare and submit the application(s) directly to HUD.

a. *Preparation.* The application must contain the following information:

- (1) *Name and address of the RC/RMC/RO.* Name and title of the members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents, i.e., charter, articles of incorporation (if incorporated), and by-laws. Name and phone number of contact person (in the

event further information or clarification is needed during the application review process).

(2) Name, address and phone number of the Public Housing Agency (PHA)/Indian Housing Authority (IHA) responsible for the project(s) to which inquiries may be addressed concerning the application.

(3) A narrative statement of the proposed activities, addressing the following issues:

(i) A discussion of the need for the project(s) and overall group objectives for resident management, and how the proposed activities will meet the needs of the RC/RMC/RO.

(ii) Amount of funds requested, and an explanation of how the funds will be used, if approved, to determine feasibility of resident management and to promote the formation and development or implementation and operation of resident management entities. Timeframes for completion of proposed activities must be included.

(iii) A discussion of the experience of the RC/RMC/RO and/or individual board members in community activities and actions taken in meeting the needs of the project residents.

(iv) A description of the project financial accounting procedures that are available to ensure funds are properly spent, or plans to develop such procedures.

(v) An explanation of how the proposed activities will enhance the management effectiveness or the scope of functions managed by an RMC, if applicable, along with a description of staffing plans.

(vi) An explanation of the RC's/RMC's progress in carrying the Work Plan previously approved by HUD (applicable to RCs/RMCs funded in FYs 88, 89, and 90).

(vii) A description of other funding sources the RC/RMC/RO has received for activities related to resident management, and, if appropriate, how will funding being requested complement ongoing activities.

(viii) A discussion of the extent to which the State/local government, PHA/IHA, community organizations, and/or the private sector support the activities outlined in the proposal, including support with respect to financial resources, technical assistance, or other support.

(ix) A description of the extent to which the residents of a project support the proposed activities.

(x) A discussion of how the proposal specifically meets the factors listed in Section XIV of this NOFA.

(4) The name of the project(s) for which the funds are proposed to be

used, the number of units, a brief description of the project occupancy type (family or elderly), the number of buildings, housing type (high-rise, low-rise, walk-up, etc), and the physical condition of the project (interior/exterior).

(5) A budget with supporting justification and documentation, Work Plan, and Implementation Schedule.

(6) The application must be signed by an individual who is authorized to act for the RC/RMC/RO and must include a resolution from the RC/RMC/RO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR part 964 (for Public Housing) and 24 CFR 905.355 (for Indian Housing).

(7) Assurances that the RMC/RC/RO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

In addition to the above information, a RC/RMC/RO is encouraged to obtain a letter of support from the PHA/IHA indicating to what extent it supports the proposed activities. Also, an applicant may receive the maximum point value under evaluation factor a.(5), b.(5), or c.(5), as appropriate, in Section XIV, where there is evidence of a strong partnership between the RC/RMC/RO and PHA/IHA, and a commitment by the PHA to provide technical assistance, on-the-job training, or in-kind services to the resident organization. Also, an RC/RMC/RO is encouraged to include an indication of support by project residents (e.g., RC/RMC/RO Board resolution, copies of minutes, letters, petition, etc.), the neighboring community, local public or private organizations, including State and local government entities responsible for activities relating to resident management or economic development initiatives, and evidence of the extent of support committed to the program. HUD will give the maximum point value under evaluation factor XIV.a.(4), b.(4), or c.(4), as appropriate, to applicants that obtain commitments of support from such organizations, e.g., financial assistance, technical assistance, or other tangible support. Copies of letters of support or other evidence of such support should be included with the application.

b. *Submission.* The Request for Grant Application (RFGA) (Application Kit) must be submitted in an original plus two copies to HUD Headquarters, Eloise Gantt, Grants Specialist, Office of Procurement and Contracts, room 5256, 451 7th Street, SW., Washington, DC



20410. The RFGA must be physically received by HUD at the above address by May 17, 1991, no later than 5 p.m., EST, in order to be considered timely. Hand-delivered RFGAs must be in Room 5256 of HUD Headquarters by the deadline specified in the RFGA or they will not be considered. RFGAs mailed via registered, certified or Post Office Express Mail must be physically received in HUD, room 5256 by the due date and time specified in the RFGA. RFGAs delivered by private courier services, such as Federal Express, DHL, Purolator, etc., will be considered hand-delivered and must be in HUD, room 5256 by the date and time specified above. HUD will date-stamp incoming RFGAs to evidence (timely or late) receipt, and, upon request, provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and shall not be considered. (RFGA is approved by the Office of Management and Budget under control number 2506-0104.)

#### XIV. Evaluation Factors.

There will be three categories of funding for applicants and each category will have separate selection criteria: (1) Mini-Grant; (2) Basic Grant; and (3) Additional Funding. Also, each category of applicants may receive an additional five (5) points if the following criterion is met:

Applications submitted jointly by RCs/RMCs/ROs, or by city-wide/tribal-wide organizations (i.e., an organization consisting of members from RCs/RMCs/ROs who reside in public/Indian housing projects which are owned and operated by a PHA/IHA). (The city-wide/tribal-wide organization may represent one or all of the RCs/RMCs/ROs within a PHA/IHA.)

The applications will be reviewed by HUD Headquarters based on the three Selection Criteria described below:

##### a. Criteria for RCs/RMCs/ROs Applying for a Mini-Grant:

- (1) The probable effectiveness of the proposal in meeting the needs of the RC/RMC/RO and accomplishing its overall objectives for resident management. (0-30 points)
- (2) The extent and quality of the past experience of the RC/RMC/RO in community organization and tenant participation in meeting the needs of the project residents. In the case of newly formed organizations, the experience and success of individual board members will be evaluated. (0-30 points)
- (3) Evidence of support by residents of the project(s) for the activities being proposed (e.g., RC/RMC/RO Board resolution). (0-15 points)

(4) Evidence that the RC/RMC/RO has the support of the State/local/county/tribal government, community organizations, and/or other public/private sector groups. (0-10 points)

(5) Evidence that the RC/RMC/RO has a strong partnership with the PHA/IHA and obtained a commitment to provide technical assistance, on-the-job training, or in-kind services to the resident organization. (0-5 points)

(6) Capability of handling financial resources (demonstrated through previous experience, adequate financial control procedures, etc.) or an explanation of how such capability will be obtained. (0-10 points)

##### b. Criteria for RCs/RMCs/ROs Applying for a Basic Grant

(1) The probable effectiveness of the proposal in meeting the needs of the RC/RMC/RO and accomplishing its overall objectives for resident management. (0-30 points)

(2) The amount of experience in community organization and the success of the RC/RMC/RO in promoting tenant participation in meeting the social services and other needs of the project residents. (0-30 points)

(3) Evidence of support by residents of the project(s) for the activities being proposed (e.g., RC/RMC/RO Board resolution). (0-15 points)

(4) Evidence that the RC/RMC/RO has the support of the State/local/county/tribal government, community organizations, and/or public/private sector groups. (0-10 points)

(5) Evidence that the RC/RMC/RO has a strong partnership with the PHA/IHA and obtained a commitment to provide technical assistance, on-the-job training, or in-kind services to the resident organization. (0-5 points)

(6) Capability of handling financial resources (demonstrated through previous experience, adequate financial control procedures, etc.) or an explanation of how such capability will be obtained. (0-10 points)

##### c. Criteria for RCs/RMCs Applying for Additional Funding

(1) The probable effectiveness of the proposal in meeting the needs of the RC/RMC and accomplishing its overall objectives for resident management. (0-30 points)

(2) Record of demonstrated measurable achievements in specified activities of the General Work Plan Guidance. (General Work Plan Guidance is provided in Attachment D of the Application Kit.) (0-30 points)

(3) Evidence of support by residents of the project(s) for the activities being

proposed (e.g., RC/RMC Board resolution). (0-15 points)

(4) Evidence that the RC/RMC has the support of the State/local/county government, community organizations, and private sector groups. (0-10 points)

(5) Evidence that the RC/RMC has a strong partnership with the PHA and obtained a commitment to provide technical assistance, on-the-job training, or in-kind services to the resident organization. (0-5 points)

(6) Capability of handling financial resources (demonstrated through previous experience, adequate financial control procedures, etc.) or an explanation of how such capability will be obtained. (0-10 points)

#### XV. OMB Procurement Requirements

The RC/RMC/RO must follow Circular A-110, Uniform Administrative Requirements for Grants, and other agreements with recipients of Federal funds. Attachment O of OMB Circular A-110 prescribes standards and policies essential to the proper execution of procurement transactions, including standards of conduct for RC/RMC/RO employees, officers, or agents engaged in procurement actions to avoid any conflict of interest. OMB requirements prohibit sole source, non-competitive contracts with consultants. A RC/RMC/RO may use two methods in obtaining consultant services: (1) A "full service" approach may be used where the RC/RMC/RO solicits competitive proposals for assisting in the preparation of the application/Work Plan and Budget, with inclusion of the consultant work if the RC/RMC/RO is selected to receive a grant. The evaluation criteria in the solicitation must address the qualifications and experience of prospective consultants for all tasks. (The contract may stipulate that in the event that the application is not approved, the consultant is not entitled to any payment.); and (2) Separation of Application Preparation from Consultant Work After Grant Award. This approach allows a RC/RMC/RO to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management Specialist for the development of an application for technical assistance funding. If the RC/RMC/RO is selected for funding, the Consultant-Trainer/Housing Management Specialist must compete along with other prospective Consultant-Trainer/Housing Management Specialists through an open and free procurement process for a training and technical assistance contract. This will eliminate any unfair competitive advantage attained by the Consultant-



Trainer/Housing Management Specialist who was awarded a contract for the development of the application/Work Plan and Budget.

#### *XVI. Checklist of Application Submission Requirements*

The RFGA will contain a checklist of all application submission requirements to complete the application process.

#### *XVII. Selection and Approval Procedures*

The procedures to be used will involve the review and evaluation of applications in all three categories by a HUD Headquarters-based Evaluation Panel in accordance with the evaluation factors contained in Section XIV of this NOFA, and providing a statement indicating the strengths or weaknesses for each evaluation factor. The Evaluation Panel will consist of members from the HUD Headquarters, Regional/Field Offices, and Field Offices/Headquarters Offices of Indian Programs. Additionally, the Regional Office and Field Office will jointly provide comments to Headquarters on their recommendations on all of the applications submitted for funding, addressing (a) known experience and qualifications of the resident organization, and community involvement; (b) statement on progress made to date by the RC/RMC that received grant funds in previous years with respect to the specified activities of the General Work Plan Guidance; (c) project number where the proposed activities of the RC/RMC/RO are being undertaken (for example (MS

26P095016)); and (d) other pertinent information on the resident organization and project(s) where activities are being proposed.

The combined HUD Headquarters Evaluation Panel will collectively rank applications from all three categories, and will fund in order of their ranking until the funds have been exhausted. An Evaluation Board will also be established at the Headquarters level to oversee the evaluation process and make recommendations to the Assistant Secretary. Upon determination of good cause, the Assistant Secretary will grant waivers to RCs/RMCs/ROs of Indian housing for participation in the technical assistance grant program. No special set-asides or funding preferences will be used by HUD in making final funding decisions. HUD will retain copies of the applications that are not selected for funding.

#### *XVIII. Corrections to Deficient Applications*

Applicants will not be disqualified from being considered for funding because of technical deficiencies in the Application submission, e.g., an omission of information such as regulatory/program certifications, inadequate budget data, or signatory requirements for application submission.

Applicants will not have an opportunity to submit information omitted from the Application Kit which directly relates to the evaluation factors contained in Section XIV of this NOFA so as to enhance the technical merits of the application.

HUD will notify an applicant in writing of any technical deficiencies. The applicant must submit information to correct technical deficiencies in the Application submission within 14 days from the date of HUD's letter notifying the applicant of any such deficiencies.

#### *XIX. Deadline for Using Funds*

A RC/RMC/RO selected to participate in the program must expend all funds within two years from the date a technical assistance grant is executed.

#### *XX. Congressional Notification and Transmittal of Approval or Disapproval Letters*

HUD Headquarters will be responsible for preparing the Congressional Notifications as well as the RC's/RMC's/RO's approval or disapproval letters.

#### *XXI. PHA/IHA Notification*

HUD Headquarters will send a notification to PHAs/IHAs listing the applications selected for funding.

#### *Other Matters*

The collection of information requirements contained in this NOFA have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0127. Sections XIII and XIV of this NOFA have been determined by the Department to contain collection of information requirements.

Information on these requirements is provided as follows:

**TABULATION OF ANNUAL REPORTING BURDEN—APPLICATION FOR FISCAL YEAR 1991 FUNDS FOR PUBLIC HOUSING RESIDENT MANAGEMENT TECHNICAL ASSISTANCE**

Description of information collection	Sections of NOFA affected	No. of respondents per response	No. of responses	Total annual responses	Hours per response	Total hours
Application development and submission.....	JXIII and XIV .....	150	1	150	16	2,400

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, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

#### *Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA will not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the order. The NOFA's impact on families will be a salutary one, insofar as it enables them to manage their own housing projects.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will fund technical assistance to tenant groups. It will have



no meaningful impact on States or their political subdivisions.

#### **Lobbying Activities—Prohibition and Disclosure**

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in

connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The certification and full text of the clause will be contained in the application kit.

#### **Drug-Free Workplace Certification**

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to

certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. The Drug-Free Workplace certification and clause will be contained in the application kit.

**Authority:** Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 19, 1991.

**Joseph G. Schiff,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 91-6994 Filed 3-22-91; 8:45 am]

BILLING CODE 4210-33-M







# Federal Register

Monday  
March 25, 1991

## Part III

## Department of the Interior

### Bureau of Indian Affairs

25 CFR Part 286

Grants: Indian Business Development  
Program; Rule



## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 286

## Indian Business Development Program

RIN 1076-AA55

February 22, 1991.

**AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule will require applicants for Indian business development grants to provide matching funds not less than 75 percent of the cost of an economic enterprise funded with the grant. A 75 percent match for grants has been required since 1983. Requiring 75 percent matching funds rather than the minimum amount of 60 percent permitted by the authorizing statute (25 U.S.C. 1522) will provide greater leverage of grant funds and allow a larger number of individual grants to be made.

**EFFECTIVE DATE:** March 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian

Affairs, Department of the Interior, telephone (202) 208-4796.

**SUPPLEMENTARY INFORMATION:** This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The proposed rule was published in the **Federal Register** on September 14, 1990 (55 FR 37887), and public comment was invited. No comments were received.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department has also determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969. The information collection requirements contained in § 286.17 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0093.

The primary author of this document is Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20240.

**List of Subjects in 25 CFR Part 286**

Grant programs—business, Indians—business and finance.

For the reasons set out in the preamble, part 286 of title 25, chapter I of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 286 continues to read as follows:

Authority: 25 U.S.C. 1524.

2. Section 286.17(b) is revised to read as follows:

**§ 286.17 Grant limitations and requirements.**

\* \* \* \* \*

(b) A grant may be made only to an applicant who is able to obtain at least 75 percent of the necessary financing from other sources.

\* \* \* \* \*

Stan Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-6920 Filed 3-22-91; 8:45 am]

BILLING CODE 4310-02-M



# President's Report

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**Monday  
March 25, 1991**

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## **Part IV**

## **The President**

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**Presidential Certification—Prince William  
Sound Regional Citizens Advisory  
Committee**



March 22, 1951

Part IV

The President

Presidential Commission on Foreign Relations  
South Regional Citizens Advisory Committee



# Presidential Documents

**Title 3—****The President****Presidential Certification of March 21, 1991**

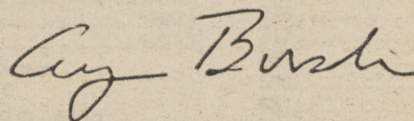
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5002(o)(1) of the Oil Pollution Act of 1990 (Public Law 101-380, 104 Stat. 552), I hereby certify for the year 1991 the following:

(1) that the Prince William Sound Regional Citizens Advisory Committee fosters the general goals and purposes of section 5002 of the Oil Pollution Act of 1990 for the year 1991; and

(2) that the Prince William Sound Regional Citizens Advisory Committee is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

This certification shall be published in the **Federal Register**.

THE WHITE HOUSE,  
March 21, 1991.



[FR Doc. 91-7236

Filed 3-22-91; 12:38 pm]

Billing code 3195-01-M



# Presidential Documents

Executive Order 11651, February 17, 1972

Whereas the National Aeronautics and Space Administration (NASA) is an independent agency of the Executive Branch of the Government of the United States of America, and

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Monday, March 25, 1991

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**H.J. Res. 104/Pub. L. 102-14**

To designate March 26, 1991, as "Education Day, U.S.A." (Mar. 20, 1991; 105 Stat. 44; 2 pages) Price: \$1.00



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<sup>2</sup> No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

<sup>3</sup> No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

<sup>4</sup> No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

<sup>5</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>6</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

1649

BOOK THE FIRST

THE FIRST PART OF THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

FROM HIS MARRIAGE TO HIS DEATH

IN THE YEAR 1649

BY SAMUEL JOHNSON

IN TWO VOLUMES

LONDON: Printed by A. MILLAR, in Strand, 1765

MDCCCLXV



