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

WHO: The Office of the Federal Register.

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

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

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

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WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

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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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule moving the survey order month of the McLennan, Texas, Nonappropriated Fund (NAF) Federal Wage System (FWS) wage survey from April to May. In addition, the rule permanently changes the schedule for the McLennan wage area's full-scale surveys, which are conducted once every 2 years, from even to odd numbered fiscal years. This change better aligns the McLennan survey with the timing of another FWS survey conducted in a nearby wage area.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Allan Summers (202) 606–2848.

SUPPLEMENTARY INFORMATION: On February 14, 1991, the Office of Personnel Management (OPM) published a proposed rule (56 FR 5959) to move the survey order month of the McLennan, Texas, Nonappropriated Fund (NAF) Federal Wage System (FWS) wage survey from April to May. In addition, it proposed to permanently change the schedule for full-scale surveys at McLennan, which are conducted once every 2 years, from even to odd numbered fiscal years. The proposed regulations provided a 30-day period for public comment. OPM received no comments during this period. The proposed rule is being adopted as a final rule.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately because of the need to conduct a full scale salary survey in May 1991 at McLennan, Texas.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees and Federal agencies.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; Section 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Appendix B to subpart B is amended by revising the wage area listing for McLennan, Texas, to read as follows:

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

* * * * *

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
*	*	*	*
Texas	McLennan	May	Odd.
*	*	*	*

[FR Doc. 91–11221 Filed 5–10–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–90–203]

Fresh Tomatoes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the voluntary United States Standards for Grades of Fresh Tomatoes. When the voluntary U.S. standards are used, the size of the tomatoes in any standard type shipping container must be marked with one of four mandatory size designations (small, medium, large and extra large), each with a 1/32 inch overlap. This will eliminate the commingling of different sizes within a container. The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association, representing a major part of the fresh market tomato growers, packers, and wholesalers, had jointly requested that the United States Department of Agriculture update the size section of the U.S. Grade Standards for Fresh Tomatoes. The groups recommending this action indicated that these changes will promote uniform trading practices. The Agricultural Marketing Service (AMS), has the responsibility to develop and improve standards of quality, condition, quantity, grade, size, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leanne L. Skelton, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090–6456, (202) 447–5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision of U.S. Standards for Grades of Fresh Tomatoes will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. This action revises the U.S. Standards for Grades of Fresh Tomatoes which will bring the standards into conformity with current marketing and packaging methods. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Fresh Tomatoes were last revised in April 1976. The standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association requested that § 51.1859 of the United States Standards for Grades of Fresh Tomatoes be amended to require that when the voluntary U.S. Standards are used, the size of the tomatoes in any standard type shipping container be marked on the container, establish four mandatory size designations (small, medium, large and extra large), each with a 1/32 inch overlap, and require that only one size be marked on a container. This will eliminate the commingling of different sizes within a container, if the voluntary U.S. standards are utilized. A proposal to revise the U.S. Standards for Grades of Fresh Tomatoes was published in the **Federal Register** on November 1, 1990 [55 FR 46070–46071] and invited interested parties to submit written comments.

The 60-day comment period ended December 31, 1990, during which time 290 comments were received.

Two hundred and thirteen comments, in favor of the proposal as published, were in the form of preprinted postcards signed by a wide variety of interested parties including growers, shippers, brokers, repackers, purveyors, wholesalers, sales personnel, consumers, researchers, consultants, box suppliers, and employees in tomato packinghouses. Although some of the postcards were from other areas of the United States they were primarily from the State of Florida.

Thirty-three additional comments, also in favor of the proposal, were form letters mostly from California signed by growers, shippers, repackers, brokers and a university professor.

Three comments, in form letter style, opposed the revision to the standard. However, none of these indicated a reason for opposition.

Additionally, one comment, from a grower/shipper in California was in favor of the revision if "vine ripe" tomatoes could continue to be place packed. Place packing is the practice of hand placing tomatoes in the package and using larger or smaller tomatoes in the corners of packages to ensure a tightly filled pack. This is done largely to prevent damage to the tomatoes caused by movement within the package. The standard would not prevent place packing as there would continue to be a tolerance of 10 percent allowed for offsize. Therefore, this could be done without actually commingling different sizes. Both Florida and California packers are currently packing tomatoes in place packs as well as in bulk 25-pound cartons and they do not expect to have problems meeting the requirements of the new standards. Furthermore, the use of the U.S. standards is voluntary.

In addition to the form letters and preprinted postcards, thirty-seven individual letters were received. Thirty-one comments were in favor of the revisions, stating that the changes will unify the tomato industry nationwide by providing only one definition for sizing tomatoes. Six comments received were opposed to the revision stating that "vine ripe" tomatoes are necessarily packed in a different manner than "muture/gassed green" tomatoes, and that these are sold by count-size, rather than weight. Four of these comments recommended a phase-in, or trail period, allowing the current and proposed standards to be used. The Agency feels that a phase-in, trial or study period is unnecessary and would cause confusion in the marketplace. One comment suggested that the revision will cause increased production costs, and thereby have a detrimental effect on production, and ultimately the consumers. One comment, from an importer of Mexican tomatoes, said the revision will limit the availability of fresh tomatoes during the winter months if another severe freeze were to happen in Florida. Additionally, he said it will reverse the progress toward the free trade agreement between the United States and Mexico. None of these comments provided data or analysis to support their views. In the absence of such information, and in light of the strong support from large segments of the tomato industry, the Agency has concluded that the proposed revisions in the U.S. Standards for Grades of Fresh Tomatoes would advance the purposes of the Agricultural Marketing Act.

The current standards to not require that the size be specified on the container. However, the current standards do provide that when the size of tomatoes is specified according to the size designations of section 51.1859, the size of the tomatoes must be within the ranges of the diameters specified. Current standards have six size designations with no overlap between size designations in that section, and commingling is allowed.

The revision will require any standard type shipping container to be marked. This means any container weighing 30 pounds or less, except consumer containers, will have to be marked to one of the size designations set forth in Table I if the voluntary U.S. standards are being utilitzed. Since the revision also requires that a container be marked with just one size, it will eliminate commingling of sizes such as medium-large, when tomatoes are certified to the U.S. grade. Consumer packages and their master containers will be exempt. However, if consumer packages or their master containers are marked, they can only be marked with a size listed in Table I, and then the same requirements will apply to this package as any other. If consumer packages or master containers are not marked in accordance with Table I, then size will not be determined unless specifically requested.

In addition, because they are too small to meet the size designations of Table I, cherry tomatoes, pear shaped tomatoes, and other similar types are exempt from marking requirements, but may be specified in terms of minimum diameter or minimum and maximum diameter.

When containers are marked either with a size designation or with a minimum, or a minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

The groups recommending these revisions demonstrated that these changes will promote more uniform trading practices for the industry. They also asserted that by allowing sizes to overlap, the revised standards will eliminate difficulty they now experience in sizing tomatoes to meet existing size requirements. The Agency notes that the existing U.S. Standards for Grades of Fresh Tomatoes were developed prior to the widespread use of characteristically oblong, as opposed to the more traditional spherical-shaped, varieties.

Therefore, it appears that the revisions, as proposed, should be adopted.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Section 51.1859 is revised to read as follows:

§ 51.1859 Size.

(a) The size of tomatoes packed in any standard type shipping container shall be specified and marked according to one of the size designations set forth in Table I. Individual containers shall not be marked with more than one size designation. Consumer packages and their master container are exempt; however, if they are marked, the same requirements would apply.

(1) When containers are marked in accordance with Table I, the markings on at least 85 percent of the containers in a lot must be legible.

(2) In determining compliance with the size designations, the measurement for minimum diameter shall be the largest diameter of the tomato measured at right angles to a line from the stem end to the blossom end. The measurement for maximum diameter shall be the smallest dimension of the tomato determined by passing the tomato through a round opening in any position.

(b) In lieu of markeing containers in accordance with paragraph (a) of this section or specifying size in accordance with the dimensions defined in Table I, for Cerasiforme type tomatoes commonly referred to as cherry tomatoes and Pyriforme type tomatoes commonly referred to as pear shaped tomatoes, and other similar types, size may be specified in terms of minimum diameter or minimum and maximum diameter expressed in whole inches, and not less than thirty-second inch fractions thereof, or millimeters in accordance with the facts.

(1) Tomatoes of these types are exempt from marking requirements. However, when marked to a minimum or minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

(c) For tolerances see § 51.1861.

TABLE I

Size designation	Inches	
	Minimum diameter [1]	Maximum diameter [2]
Small	2 6/32	2 25/32
Medium	2 25/32	2 17/32
Large	2 17/32	2 25/32
Extra large	2 24/32	

[1] Will not pass through a round opening of the designated diameter when tomato is placed with the greatest transverse diameter across the openings.
[2] Will pass through a round opening of the designated diameter in any position.

Dated: May 2, 1991.

Daniel Haley,

Administrator

[FR Doc. 91-11309 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 905

[Docket No. FV-91-274IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes minimum grade and size requirements for domestic and export shipments of Valencia and other late type oranges, and grade requirements for domestic shipments of red and white seedless grapefruit. These relaxations are based on current and prospective crop and market demand conditions and maturity levels and size compositions of the remaining 1990–91 season Valencia and other late type orange and grapefruit crops grown in Florida.

DATES: *Effective* May 6, 1991. Comments which are received by June 12, 1991 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met April 2, 1991, and unanimously recommended the grade and size relaxations. The relaxations are based on the CAC's assessment of current crop conditions and the remaining available supply of marketable Valencia and other late type oranges and grapefruit. The CAC meets

prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings generally are open to the public, and interested persons may express their views at these meetings. The Department reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for Florida citrus. Interim final rules were issued on October 19, 1990 (55 FR 42844, October 24, 1990) and on March 8, 1991 (56 FR 10791, March 14, 1991) that amended § 905.306 (7 CFR 905.306). These interim final rules temporarily relaxed the handling requirements for Florida citrus. Requirements for domestic shipments are specified in § 905.306 in table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This action further amends § 905.306 by temporarily relaxing the handling requirements for Florida citrus as follows:

1. Reduces the minimum grade requirement for domestic and export shipments of Valencia and other late type oranges to U.S. No. 1 Golden from U.S. No. 1 for the period May 6, 1991, through September 22, 1991. The internal quality requirements of the U.S. No. 1 Golden grade are the same as those of the U.S. No. 1 grade. The external requirements of U.S. No. 1 Golden permit more discoloration than allowed under the U.S. No. 1 grade;

2. Reduces the minimum size requirement for domestic and export shipments of Valencia and other late type oranges to 2–4/16 inches in diameter (size 163) from 2–8/16 inches in diameter (size 125) for the period May 6, 1991, through September 22, 1991;

3. Reduces the minimum grade requirement for domestic shipments of white seedless grapefruit to U.S. No. 2 from Improved No. 2 for the period May 6, 1991, through May 19, 1991, and further reduces such requirement to U.S. No. 2 Russet for the period May 20, 1991, through August 18, 1991. The internal quality requirements of the U.S. No. 2 Russet grade are the same as the requirements for the Improved No. 2 and U.S. No. 2 grades. The external requirements of the U.S. No. 2 and U.S. No. 2 Russet grades permit additional amounts of discoloration than allowed under the Improved No. 2 grade; and

4. Reduces the minimum grade requirement for domestic shipments of red seedless grapefruit to U.S. No. 2 Russet from U.S. No. 2 for the period May 6, 1991, through August 18, 1991. The internal quality requirements of the U.S. No. 2 Russet grade are the same as those for the U.S. No. 2 grade. Externally, more discoloration is permitted under the U.S. No. 2 Russet grade than under the U.S. No. 2 grade.

The CAC recommended this action based on analysis of the grade and size composition of this season's remaining Florida Valencia and other late type orange and grapefruit crops. Relaxing the minimum grade requirements for Valencia oranges, and red and white seedless grapefruit as specified is expected to assure that fresh markets are supplied with the best quality fruit available from this season's remaining crops. These relaxations pertain only to the external characteristics of the fruit, not the internal quality, and recognize the fact that the external appearance of these fruits tends to deteriorate during the latter part of the season. Relaxing the minimum size requirement for Valencia and other late type oranges as specified is expected to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. This action is expected to enable handlers to maximize shipments to fresh market channels consistent with the overall size and quality of the remaining crops and anticipated market demand.

The Valencia and other late type orange season normally begins in January and ends with shipment of late-bloom fruit during the following September, while the grapefruit shipping season normally begins in September and continues through the following August.

The minimum grade and size requirements for grapefruit imported into the United States specified in § 944.106 (7 CFR 944.106) were temporarily suspended beginning March 11, 1991, by a final rule published in the **Federal Register** on March 14, 1991. The grapefruit import requirements were issued under section 8e of the Act (7 U.S.C. section 608e–1).

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those specified for Texas oranges in § 906.365 (7 CFR Part 906.365) effective under Marketing Order No. 906. The findings and determinations for imported oranges in Part 944 are not changed by this action. Thus, no change in § 944.312 is necessary, and orange import requirements would continue to be based upon the requirements for Texas oranges.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the CAC's and the Department's appraisal of the need to relax the grade and size requirements as hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes grade and size requirements currently in effect for Valencia and other late type oranges and the grade requirements for red and white seedless grapefruit; (2) Florida orange and grapefruit handlers are aware of this action, which was recommended by the CAC at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1990–91 season Florida orange and

grapefruit crops is currently in progress, and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 [Amended]

2. Section 905.306, as amended by interim final rules published at 56 FR 10791 on March 14, 1991, is amended as follows:

A. In paragraph (a), Table I, the entries for "Valencia and other late type oranges", "seedless, red grapefruit", and "seedless, except red grapefruit" are revised to read as set forth below.

B. In paragraph (b), Table II, the entries for "Valencia and other late type oranges" are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
* * *	* * *	* * *	* * *
Valencia and other late type	05/06/91–09/22/91	U.S. No. 1 Golden	2 4/16
	On and after 09/23/91	U.S. No. 1	2 5/16
* * *	* * *	* * *	* * *
Grapefruit			
* * *	* * *	* * *	* * *
Seedless, red	05/20/91–08/18/91	U.S. No. 2 Russet (External); U.S. No. 1 (Internal)	3 5/16
	08/19/91–10/20/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 5/16
	On and after 10/21/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 5/16
Seedless, except red	05/06/91–05/19/91	U.S. No. 2 (External); U.S. No. 1 (Internal)	3 5/16
	05/20/91–08/18/91	U.S. No. 2 Russet (External); U.S. No. 1 (Internal)	3 5/16
	On and after 08/19/91	Improved No. 2 (External); U.S. No. 1 (Internal)	3 5/16
* * *	* * *	* * *	* * *

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
* * *	* * *	* * *	* * *
Valencia and other late type	05/06/91–09/22/91	U.S. No. 1 Golden	2 4/16
	On and after 09/23/91	U.S. No. 1	2 5/16
* * *	* * *	* * *	* * *

Dated: May 8, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–11301 Filed 5–10–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 286, and 299

[INS No. 1312–91]

RIN 1115–AB78

Establishment of Pilot Programs to Charge a User Fee at Selected Ports of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, by establishing criteria for pilot programs under which user fees may be charged and collected for inspection services provided at one or more land border ports of entry. This rule is necessary to enhance inspection services at land border ports of entry, while still safeguarding our borders.

DATES: This interim rule is effective June 12, 1991. Written comments must be received no later than August 12, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper and timely handling please reference INS number 1312–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Donna Kay Barnes, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, Telephone (202) 514–2725.

SUPPLEMENTARY INFORMATION: Commuter traffic over our land borders has increased significantly each year over the past decade and in fiscal year 1990 accounted for 87 percent of all inspections completed. At certain locations, traffic backups sometimes last several hours during specific times of the day. Such delays are both irritating and costly to the traveling public. Through automation and an increase in the inspection force, the Immigration and Naturalization Service could significantly reduce these delays. In order to speed the inspection of vehicular and pedestrian traffic, without inhibiting the mandate to prevent the illegal entry of both aliens and controlled substances into the United States, Congress has established a means to initiate several pilot projects to study the feasibility of charging fees to enhance services at land border ports of entry.

Revenue from the Inspections User Fee Account, authorized by Congress in 1986 and covering commercial air and sea arrivals at ports of entry, has enabled the Service to more than triple the number of available air and seaport inspectors from approximately 500 to over 1,500 currently. These inspectors are responsible for inspecting the remaining 13 percent of all applicants for entry into the United States. However, revenues from the air and sea account may not, by statute, be utilized to staff land border ports of entry. Since the receipt of additional appropriated inspections positions has not kept pace with the growth in land border traffic, other means must be found to address the growing disparity in staffing.

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. Law 101–515, Congress included language which allows for a test of the user fee concept on the land borders. This law allows the Attorney General to establish pilot projects which include the charging of a user fee and provides that the user fee collected may be utilized only to enhance inspection services. Pursuant to Pub. Law 101–515, such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. The Immigration and Naturalization Service is required to provide a report to both Committees on Appropriations identifying each pilot project no less than 30 days prior to implementation. All such pilot projects will terminate on September 30, 1993, unless extended by Congress. In addition, the Attorney General is required to provide the Committees on Appropriations with quarterly reports on the status of any pilot project implemented. Pilot projects authorized by Pub. Law 101–515 may be established on both the northern and southern land borders of the United States.

There are a variety of ways in which such a user fee may be designed. In this rule, the Service seeks to use dedicated commuter lanes in order to enhance services to those border crossers who most frequently enter the United States over the land borders. Other proposals may be designed to serve specific locations with unique problems or traffic patterns.

Ports of entry may be selected to establish dedicated commuter lanes which are implemented pursuant to the land border user fee program based on the following criteria:

1. The location where the port of entry is located has an identifiable group of low risk frequent border crossers;
2. The establishment of the dedicated commuter lane will not significantly inhibit normal traffic flow; and
3. Sufficient Service personnel must be present to perform primary and secondary inspection functions.

Participation in the program will depend on the following conditions:

1. Applicants are citizens of the United States or citizens of the country contiguous to the port of entry where the dedicated commuter lane is located;
2. Applicants agree to furnish all information requested in the application and to submit to a full inspection of the registered vehicle and/or all passengers listed on the application prior to initial use of the commuter lane;
3. Applicants pay the required fee upon approval of the application;
4. Applicants agree to abide by all conditions imposed, such as but not limited to, limitations on the number and identity of vehicle passengers, state and federal laws regarding the importation of alcohol, and all other regulations under the jurisdiction of all federal inspection agencies;
5. Participation in the program is voluntary and limited to individuals who cross in regular passenger vehicles other than those owned by taxi companies and/or other transportation lines;
6. Participants understand that a full and complete vehicular and passenger inspection, for compliance purposes, is possible at any time while utilizing the expedited commuter lane;
7. Participants who violate the conditions for use of the dedicated lane may be removed from the program, and in addition, will be subject to the imposition of any applicable fines, penalties, or sanctions, as provided by law; and
8. Applications for participation in the commuter lane project may be denied at the discretion of the District Director with no appeal. Applicants will be notified of such denial.

Dedicated commuter lanes, as envisioned, will require the payment of an annual fee. This will eliminate the need to stop and pay a per use toll as well as the need for extensive new construction at ports of entry. Current technology presents several methods for collection and/or billing. Initially, until fee receipts are adequate to acquire the technology necessary to improve both the collection/billing procedure and rapid vehicle identification, a simple method involving windshield stickers or a similar item will be utilized.

The Service may develop and implement other methods of charging a user fee for inspection services at the land borders before September 30, 1993. At selected locations, a per vehicle user fee may be established as a pilot project. Specific criteria proposed for the designation of such per vehicle sites include:

1. Each port of entry selected must be a class A port located within 25 miles of another class A port of entry;
2. Space must be available to make facility modifications, if needed, for the collection of such a fee;
3. Sufficient Service personnel must be present to perform primary and secondary functions;
4. A memorandum of understanding, concerning the collection of such a fee, between the Service and various other affected federal inspection agencies must be in place; and
5. Site specific consultations must be held, through appropriate channels, with representatives of the government of the contiguous country as well as with

representatives of the affected states and local communities.

Any pilot project involving the charging of a per vehicle fee for all passenger traffic crossing through a specific port of entry would be designed to include a group of vehicles which would be exempt from such a fee. These would include emergency vehicles and various government vehicles used for official business.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exception found at 5 U.S.C. 553(d). The reasons and necessity for immediate implementation of this interim rule are as follows: Because the summer months constitute the months of heaviest traffic across our land borders, it is in the best interest of the travelling public to start the dedicated commuter lane pilot program as soon as possible. Proceeding with interim regulations at this time will allow the affected agencies and the public to gain maximum benefits from the pilot program. Without the statistics and associated information collected during the busy summer months, there will be insufficient data on which to judge the effectiveness of the program.

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

The information collection requirement contained in this regulation has been submitted to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act for review and clearance.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy Act, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

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

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

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

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, the Form I–823 to the list of forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–823. For participation in a dedicated commuter lane program under section 286 of this chapter—$25.00

* * * * *

PART 286—IMMIGRATION USER FEE

3. The authority for part 286 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

4. A new § 286.8 is added to read as follows:

§ 286.8 Establishment of pilot programs for the charging of a land border user fee for inspection services.

(a) *General.* Under the provisions of section 286(q) of the Act, the Service may establish pilot programs at one or more land border ports of entry to charge fees for immigration inspection services to be collected by the Commissioner. Individual ports of entry selected by the Commissioner to participate in such pilot programs may charge a fee to enhance inspection services and to recover the cost of:

(1) Hiring additional immigration inspectors, including all associated personnel costs such as salary, benefits, and overtime;

(2) Expansion, operation and maintenance of information systems for nonimmigrant control;

(3) Minor construction costs of adding new primary traffic lanes (with the concurrence of the General Services Administration);

(4) Procuring detection devices and conducting training to identify fraudulent documents used by applicants for entry to the United States; and

(5) Administration of the Land Border Inspection Fee Account.

(b) *Establishment of dedicated commuter lanes at selected ports of entry.* Dedicated commuter lanes are vehicular traffic lanes through which a group of identified low risk frequent border crossers, who have been prescreened and preauthorized, transit the border. Individual participation in the dedicated commuter lane program by border crossers is voluntary. Individuals whose applications for participation in the program are denied are not precluded from applying for admission to the United States through the regular inspection lanes.

(1) *Designation of participating ports of entry.* The following criteria shall be used in the selection of port of entry locations for the establishment of dedicated commuter lanes under a pilot program:

(i) The location has an identifiable group of low risk frequent border crossers, who cross a minimum of once weekly for a regular definable purpose;

(ii) The institution of a dedicated commuter lane program shall not significantly inhibit normal traffic flow; and

(iii) Sufficient Service personnel must be present to perform primary and secondary inspection functions.

(2) *Eligibility requirements for applicants.* Applicants for participation in the program must meet the following requirements:

(i) The applicant is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program in which the applicant seeks to participate;

(ii) Non-United States citizen applicants must be otherwise admissible to the United States;

(iii) Applicant agrees to furnish all information requested on the application, Form I–823, Application—Dedicated Commuter Lane Program;

(iv) Applicant agrees to a physical inspection of the registered vehicle prior to initial use of the dedicated commuter lane; and

(v) Applicant pays the required fee, upon approval of the application.

(3) *Conditions for use of the dedicated commuter lanes.* Participants in the dedicated commuter lane program must agree to abide by all conditions imposed, including, but not limited to:

(i) Limitations on the number and identity of passengers permitted in a designated vehicle;

(ii) Limitation of participation to individuals who cross in regular passenger vehicles other than taxis and

other vehicles operated for hire by individuals or transportation companies;

(iii) The possibility of a full and complete vehicular and passenger inspection at any time during use of the dedicated commuter lane for entry into the United States;

(iv) State and federal laws regarding the importation of alcohol;

(v) All federal, state and local laws regarding the importation or possession of controlled substances as defined in section 101 of the Controlled Substance Act (21 U.S.C. 802); and

(vi) All other pertinent laws and regulations under the jurisdiction of any other federal inspection agency.

(4) *Approval of application.* (i) Applications for participation in a dedicated commuter lane program may be accepted, at the discretion of the District Director, on either a continuous or periodic basis; and

(ii) At the discretion of the District Director, applications without fee may be accepted from local, state, federal and foreign government agencies for participation by employees of those agencies traveling in specific government vehicles, while engaged in official government business.

(iii) Applications for participation in the dedicated commuter lane program must be submitted annually. Authorization documents, such as decals or authorization letters, shall be valid for one year from date of approval.

(5) *Denial of application.* An application for participation in a dedicated commuter lane program may be denied at the discretion of the District Director with no appeal. Applicants will be notified of such denial.

(6) *Violation of conditions of the program.* A participant who violates any condition for the use of the dedicated commuter lane may be removed from the program at the discretion of the District Director, and shall be subject to the imposition of applicable fines, penalties, and/or sanctions as provided by law.

(7) *Responsibility of participant.* (i) It shall be the responsibility of the participant to notify the Service if an approved vehicle is sold, stolen, or disposed of otherwise. If the vehicle is sold, it is the responsibility of the participant to remove or obliterate any identifying decal or other authorization for participation in the program from the vehicle at the time of such sale. Upon purchase of a replacement vehicle, participants may submit a new properly executed Form I–823 with fee in order to receive a new decal, valid for one year from date of approval.

(ii) If a vehicle is stolen or damaged beyond repair, and an identifying decal authorizing that vehicle to use a dedicated commuter lane is affixed to the windshield, no replacement decal shall be issued. Participants must submit a new properly executed Form I–823 with fee.

(iii) If a windshield becomes broken and must be replaced, and an identifying decal authorizing that vehicle to use a dedicated commuter lane is affixed to the broken windshield, the Service may issue a replacement decal. The decal shall be valid to the date of the original decal. The program participant must submit a properly executed Form I–823, Application—Dedicated Commuter Lane Program, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the purchase of a new windshield.

(c) *Establishment of per vehicle user fees at selected ports of entry.* A pilot program for the collection of a per vehicle fee for the immigration inspection of all travelers within a vehicle may be established.

(1) The following criteria shall be employed in the selection of port of entry locations for the establishment of programs charging a per vehicle user fee:

(i) A participating port of entry shall be a class A port of entry located within 25 miles of another class A port of entry;

(ii) Space shall be available for facility modification, if needed, for the collection of such a per vehicle fee;

(iii) Sufficient Service personnel shall be present to perform primary and secondary inspection functions;

(iv) A memorandum of understanding, concerning the establishment and implementation of the per vehicle user fee, with all other affected federal inspection agencies shall be in effect; and

(v) Site specific consultations shall be conducted, through appropirate channels, with government representatives of the country contiguous to the selected site as well as with representatives of the affected states and local communities.

(2) A per vehicle user fee shall not be charged or collected from passengers who:

(i) Travel in emergency vehicles;

(ii) Travel in United States, Canadian, or Mexican government vehicles on official business;

(iii) Are listed as foreign diplomats on the accreditation list maintained by the United States Department of State or who are in possession of a diplomatic visa (A–1 and A–2, G–1 through G–4), valid for entry into the United States;

(iv) Travel in International Water and Boundary Commission vehicles on official business; or

(v) Are American Indians born in Canada, as defined in 8 CFR 289.1, members of the United States armed forces entering under orders, and/or members of a force of a NATO country signatory to Article III of the Status of Forces Agreement entering under orders.

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended by adding, in proper numerical sequence, Form I–823, to the list of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I–823	(XXX)	Application—Dedicated Commuter Lane Program.

* * * * *

7. Section 299.5 is amended by adding the Form I–823, in proper numerical sequence, to the list of forms, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I–823	Application—Dedicated Commuter Lane Program.	1115–XXXX

* * * * *

Dated: April 22, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–11152 Filed 5–10–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–238–AD; Amendment 39–6993]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes. This amendment is applicable to eight airplanes that were not modified during production. This condition, if not corrected, could result in overpressurization of the vertical stabilizer, which could cause structural failure in the event of a rupture of the fuselage under the dorsal fin.

EFFECTIVE DATE: June 17, 1991.

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

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-18-05, Amendment 39-6713 (55 FR 35576, August 31, 1990), to require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes on eight additional Model 767 series airplanes that had not been modified during production, was published in the Federal Register on December 5, 1990 (55 FR 50189).

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

The Air Transport Association (ATA) of America requested that the proposed rule amend, not supersede, the existing AD. The ATA stated that the supersedure would not serve any useful purpose since no additional work is required for the airplanes that have already been modified in accordance with the existing AD; supersedure will require operators now in compliance with AD 90-18-05 to change their paperwork to reflect the new AD number. The FAA concurs that, in this case, a different approach may be warranted. The FAA's normal policy in this regard is that when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, as proposed, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the eight airplanes that would have been added to the applicability of the existing AD. The final rule has been revised to reflect that this action does not supersede AD 90-18-05, Amendment 39-6713; airplanes listed in the applicability of AD 90-18-05 continue to be required to comply with the requirements of that AD. This new final rule is a separate AD action, and is applicable only to airplane line numbers 300 through 307.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are 306 Model 767 series airplanes of the affected design in the worldwide fleet; of this number, only 8 airplanes are considered in this AD action. It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,080 for the additional airplanes.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 767 series airplanes, line number 300 through 307, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the vertical stabilizer from overpressurization in the event of a rupture of the fuselage under the dorsal fin, accomplish the following:

A. Within the next 18 months after the effective date of this amendment, install a cover plate and a panel assembly over the lightening and access holes in the vertical stabilizer forward closure rib, in accordance with Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989, or Revision 1, dated May 24, 1990.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

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

This amendment becomes effective June 17, 1991.

Issued in Renton, Washington, on May 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11271 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-284-AD; Amendment 39-6994]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T90-26-54, which was previously made effective as to all known U.S. owners and operators of Boeing Model 747-400 series airplanes by individual telegrams. This AD prohibits the dispatch of an airplane with an inoperative thrust reverser. This action is prompted by a recent discovery of an error in the logic diagram of the signals from the thrust reverser to the flap control unit (FCU) computer. This condition, if not corrected, could cause all leading edge flaps between the number 1 and 4 engines to retract, which would compromise the ability to takeoff.

EFFECTIVE DATE: May 29, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T90-26-54, issued December 24, 1990, which contained this amendment.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2671. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On December 24, 1990, the FAA issued telegraphic AD T90-26-54, applicable to Boeing Model 747-400 series airplanes, which prohibits dispatch with an inoperative thrust reverser. That action was prompted by an incident which uncovered the presence of an error in the logic diagram of the signals from the thrust reverser to the Flap Control Unit (FCU) computers. The Model 747-400 Master Minimum Equipment List (MMEL) permits dispatch of airplanes with one thrust reverser inoperative. If a second thrust reverser were to become unstowed or if there were an erroneous thrust reverser signal to the FCU, an uncommanded leading edge flap retraction will occur during the takeoff roll. This condition, if not corrected, could result in retraction of all leading edge flaps between the number 1 and 4 engines. The ability of the airplane to takeoff is compromised when some of the leading edge flaps are not fully deployed.

Since this condition is likely to exist or develop on other airplanes of this same type design, this airworthiness directive (AD) is issued to require that all thrust reversers be operative prior to flight. This AD has the effect of rescinding the authorization to dispatch with one thrust reverser inoperative as presented in the MMEL document. This is considered to be an interim action until the manufacturer develops and the FAA approves a corrective modification, at which time the FAA may consider further rulemaking action.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 24, 1990, to all known U.S. owners and operators of Boeing Model 747-400 series airplanes. These condition still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

90-26-54. **Boeing:** Amendment 39-6994. Docket 90-NM-284-AD.

Applicability: All Model 747-400 series airplanes, certificated in any category.

Compliance: Required within 10 days after the effective date of this AD, unless previously accomplished.

To prevent uncommanded leading edge flap retraction during takeoff roll, accomplish the following:

A. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following statement. This may be accomplished by inserting a copy of this AD in the AFM. "Dispatch with an inoperative thrust reverser is prohibited."

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

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

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

This amendment becomes effective May 29, 1991 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T90–26–54, issued December 24, 1990, which contained this amendment.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–11273 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–09–AD; Amendment 39–6995]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 125–800A series airplanes, which requires torquing the retaining nuts on the location plate on certain nose wheel assemblies. This amendment is prompted by reports of insufficiently torque-tightened retaining nuts on the location plate on certain nose wheel assemblies. This condition, if not corrected, could result in a loose wheel and possible loss of wheel from the axle.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAe 125–800A series airplanes, which requires torquing the retaining nuts on the location plate on certain nose wheel assemblies, was published in the **Federal Register** on February 25, 1991 (56 FR 7612).

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

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor significantly increase the scope of the AD.

It is estimated that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per mahour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,880.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to all Model BAe 125–800A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a wheel loosening from the axle and the possible loss of a wheel, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect all nose wheels for nose wheel serial numbers, listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339–A32–1046, dated July 27, 1990.

B. If the serial number on the nose wheel coincides with any of the serial numbers listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339–A32–1046, dated July 27, 1990, retorque the location plate retaining nuts to 8 foot-pounds in accordance with the service bulletin.

Note: If the airplane maintenance records indicate that the nose wheel assembly has had the wheel halves disassembled and reassembled since the airplane was new, the required retorquing will have been accomplished at that time, and no further action is required.

Warning: Do not adjust the torque tightened main hub tie bolts with the tire inflated.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer

may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective June 18, 1991.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-11272 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-288-AD; Amendment 39-6996]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, which currently requires repetitive inspection of the four bolts connecting the flight controls elevator variable load feel torque tube to the elevator variable load feel mechanism, and correction of all discrepancies. This amendment requires removal of the bolts and self-locking nuts and installation of bolts with castellated nuts as terminating action for the repetitive inspection requirements of that AD. This amendment is prompted by reports of loss of load feel in the elevator control system due to missing or loose bolts. This condition, if not corrected, could result in degraded flight handling qualities of the airplane.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter S. Eierman, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425 telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-20-09, Amendment 39-6746 (55 FR 38543, September 19, 1990), applicable to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, to require removal of the elevator variable load feel torque tube bolts and self locking nuts and installation of bolts with castellated nuts, was published in the **Federal Register** on February 1, 1991 (56 FR 3986).

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

The Air Transport Association of America, on behalf of its members, had no objection to the proposed rule.

Paragraph D of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

The applicability statement has been revised to reduce the number of airplanes affected by limiting the rule to the serial numbers listed in the McDonnell Douglas Service Bulletin. Airplanes on which this modification was incorporated prior to delivery will therefore not be affected by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 732 Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts to accomplish this modification is estimated to be less than $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $121,550.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6746 (55 FR 38543, September 19, 1990), AD 90-20-09, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, serial numbers as listed in McDonnell Douglas MD-80 Service Bulletin A27-313, dated August 3, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent degradation of airplane flight handling qualities, accomplish the following:

A. Within 14 days after October 5, 1990 (the effective date of Amendment 39–6746, AD 90–20–09), and thereafter at intervals not to exceed 60 days, inspect the four bolts of the flight controls which attach the elevator variable load feel torque tube to the elevator variable load feel mechanism for loose or missing bolts and nuts, in accordance with Phase 1 of the Accomplishment Instruction of McDonnell Douglas Alert Service Bulletin A27–313, dated August 3, 1990.

B. Any discrepancies found during the inspections required by paragraph A. of this AD must be covered prior to further flight, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27–313, dated August 3, 1990.

C. Within 6 months after the effective date of this AD, modify the flight controls elevator variable load feel torque tube attachment to the elevator variable load feel mechanism by replacing the three self-locking bolts/nuts and one non-locking bolt with three castellated nut/bolts and one bolt with a drilled head for safety wire, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A27–313, dated August 3, 1990. Such installation constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Services, Mail Code 73–30. These documents may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39–6746, AD 90–20–09.

This amendment becomes effective June 18, 1991.

Issued in Renton, Washington, on May 3, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–11274 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket Number 88–ACE–25]

Alteration of Transition Area—Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Muscatine, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to Runway 23 at the Muscatine, Iowa, Municipal Airport utilizing radio navigation (RNAV) as an approach aid.

EFFECTIVE DATE: 0901 UTC, September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1989, the FAA published a Notice of Proposed Rulemaking, which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Muscatine, Iowa (54 FR 18668). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One objection was received as a result of the Notice of Proposed Rulemaking. The objection was that the standard instrument approach procedure (SIAP) was to utilize the Muscatine VOR rather than the Moline VOR. After further consideration, the SIAP has been changed to utilize the Moline VOR.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the transition area at Muscatine, Iowa. The Muscatine Airport Commission has requested that the VOR approaches to Runway 5 and 30 and the VOR/DME to Runway 12 be canceled. In order to continue to provide the Muscatine Municipal Airport with instrument approach capability, the FAA is developing a new instrument approach procedure utilizing the RNAV on Runway 23 to serve the subject airport. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Muscatine, Iowa, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR). Except for editorial changes, this amendment is the same as that proposed in the Notice.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.18 [Amended]

2. Section 71.181 is amended as follows:

Muscatine, Iowa [Revised]

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Muscatine Municipal Airport (Latitude 41°22'00"N., Longitude 91°08'43"W.).

Issued in Kansas City, Missouri, on April 26, 1991.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 91-11275 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8338]

RIN 1545-AE34

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8338, which was published in the **Federal Register** on March 15, 1991 (56 FR 11062). The final regulations relate to the amendments made to section 907 of the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning, (202) 566-6285 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contain amendments made by TEFRA requiring that foreign oil and gas extraction income (FOGEI) and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income (FORI). The amendments made by TAMRA remove dividends paid by a domestic corporation from inclusion within foreign oil related income.

Need for Correction

As published, T.D. 8338 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8338), which was the subject of FR Doc. 91-5583, is corrected as follows:

§ 1907-0 [Corrected]

1. On page 11064, column 1, § 1.907-0 (table of contents), under the heading *"§ 1.907(b)-1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).",* remove the following language:

"(a) In general.
(b) Amount of income, war profits, or excess profits tax.
(1) Dual capacity taxpayer.
(2) Non-dual capacity taxpayer.
(c) Amount that is not income, war profits, or excess profits tax.
(d) Examples."

§ 1.907(e)-1 [Corrected]

2. On page 11078, column 3, § 1.907(e)-1(c)(4), under Example 4-(i)(A), line 4 from the top of the column, the language "in 1983. On December 31, 1983, X made a pro" is corrected to read "in 1983. On December 31, 1983, Z made a pro".

Dale D. Goode,

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

[FR Doc. 91-11207 Filed 5-10-91; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8350]

RIN 1545-AL81

Requirements For Investments To Qualify Under Section 936(d)(4) As Investments In Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the requirements that must be met for an investment to qualify under section 936(d)(4) as an investment in qualified Caribbean Basin Countries. Subject to such conditions as are prescribed by regulation, funds of possessions corporations that are invested by financial institutions in active business assets or development projects in a qualified Caribbean Basin country are to be treated as used in Puerto Rico for purposes of section 936(d)(2). The regulations prescribe the conditions for such an investment to qualify as for use in Puerto Rico under section 936(d)(4).

DATES: Effective May 13, 1991 except for the removal of § 1.936-10T which is effective June 12, 1991. These regulations are applicable to investments made by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico after September 22, 1989. However, the taxpayer may choose to apply § 1.936-10T(c) for periods before June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Christine Halphen (202-377-9493, not a toll-free call) or W. Edward Williams (202-287-4851, not a toll-free call) of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:CORP:T:R (INTL-955-86)).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget, in accordance with the requirements of the Paper Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1138. The estimated average annual burden per respondent/recordkeeper is 30 hours.

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

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project (1545-1138), Washington, DC 20503.

Background

On September 22, 1989, the **Federal Register** published proposed and temporary Income Tax Regulations (26 CFR part 1) [T.D. 8268, 1989-2 C.B. 134] under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085). Written comments responding to the notice of proposed amendment were received. Also, a request for public hearings was received and hearings were held on March 19, 1990. After consideration of all comments regarding the proposed amendments, many of those amendments are adopted by this Treasury Decision, some with revisions.

The significant comments and suggestions are described below.

Explanation of Provisions

Section 1.936–10(c)(1) is amended to clarify that a loan by a qualified financial institution may be made either directly or through a financial intermediary.

Comments were received regarding the ability of a qualified recipient to issue bonds directly to possessions corporations. In response to this comment, and in view of the statutory requirement that the investment be made by a financial institution, § 1.936–10(c)(3) is amended to expand the definition of a qualified financial institution to include certain single-purpose entities. This concept facilitates the direct borrowing of section 936 funds by qualified recipients, including by way of bond issuance. Also, § 1.936–10(c)(3)(i) is amended to eliminate the private letter ruling process for other institutions, because the concept of single purpose entities is expected to deal adequately with most situations. Rulings issued prior to the publication of these final regulations under the prior version of § 1.936–10(c)(3)(i) are unaffected by this change.

Comments were received regarding the restriction for investments in used business assets. In response to those comments, the five-year rule in § 1.936–10(c)(4)(ii)(B) is reduced to three years, effective for acquisitions after the date of publication of these final regulations. Suggestions to delete the rule were not adopted because of the legislative intent behind section 936(d)(4) to encourage capital formation in the Caribbean region rather than simply providing an opportunity for churning existing assets. For the same reason, suggestions to allow the use of section 936 funds to acquire land and existing real property structures or to refinance existing loans were not adopted.

In response to a comment regarding agribusiness projects, § 1.936–10(c)(4)(ii) is amended by adding a subdivision (E) regarding investments in plants and animals in relation to a farming business. A conforming amendment is made to § 1.936–10(c)(7) regarding temporary periods and refinancing of non-section 936 financing in the case of long term projects.

A number of comments were received suggesting raising or eliminating the 2 percent limit on issuance costs that may be financed out of amounts borrowed. In response to those comments, § 1.936–10(c)(4)(iii)(A) is amended to raise the limit to 3.5 percent. This limit is based upon a similar limit allowed under section 147(g) for certain small tax-exempt issues. The provision is further amended to clarify that the cost base for purposes of computing the limit is determined without regard to the costs of credit enhancement or bond insurance premiums.

Comments were received regarding the 10 percent limit imposed on the use of section 936 funds to finance the cost of inventory and other working capital requirements. Comments were also received to allow the use of section 936 funds to finance export activities. To address these comments the final regulations raise the 10 percent limit to 50 percent where the financing is in connection with an investment in a manufacturing or farming operation.

The earlier published proposed and temporary regulations had reserved on the issue of privatization. The final regulations also reserve on this issue. In the Notice portion of this **Federal Register**, the Internal Revenue Service is issuing proposed regulations relating to the use of section 936 funds to finance an investment that qualifies as a privatization.

Section 1.936–10(c)(7)(i) relating to the replacement of temporary non-qualified financing is amended to clarify that the provisions under the paragraph apply only to: (1) The refinancing of costs incurred in relation to an investment that was a qualified investment when the non-qualified financing was contracted for, or (2) the refinancing of costs incurred in relation to an investment that was not a qualified investment when the financing was contracted for, but in that case, the refinancing can only be to the extent of costs incurred after the investment has become a qualified investment. Also, § 1.936–10(c)(7)(i) is amended to clarify the meaning of non-qualified financing, *i.e.*, financing from sources other than section 936. Further, the requirement in § 1.936–10(c)(7)(i) that approval of the section 936 financing of a long-term project be obtained prior to the commencement of the project has been modified. The final regulations provide that only those eligible costs incurred after the filing of a plan with the Commissioner of Financial Institutions of Puerto Rico may be refinanced under § 1.936–10(c)(7)(i).

Comments were received to allow the use of more than one financial intermediary outside Puerto Rico. This suggestion was not adopted because of the concerns that multiple intermediaries outside Puerto Rico might unduly erode the savings from the use of section 936 funds and complicate the ability of the Commissioner and of the Commissioner of Financial Institutions of Puerto Rico to monitor the use of such funds for authorized purposes. However, the definition of a financial intermediary has been modified to include international organizations whose principal purpose is to foster economic development in developing countries.

A suggestion to allow the use of section 936 funds to fund equity investments was not adopted.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Christine Halphen and W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.931–1 Through 1.936–10T

Guam, Income taxes, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAX; TAXABLE YEARS AFTER DECEMBER 31, 1953

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

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

Par. 2. Section 1.936–10T is removed.

Par. 3. New § 1.936–10 is added to read as follows:

§ 1.936.10 Qualified investments.

(a) *In general.* [Reserved]

(b) *Qualified investments in Puerto Rico.* [Reserved]

(c) *Qualified investment in certain Caribbean Basin countries*—(1) *General rule.* An investment of qualified funds described in this section shall be treated as a qualified investment of funds for use in Puerto Rico if the funds are used for a qualified investment in a qualified Caribbean Basin country. A qualified investment in a qualified Caribbean Basin country is a loan of qualified funds by a qualified financial institution (described in paragraph (c)(3) of this section) directly to a qualified recipient (described in paragraph (c)(9) of this section) or indirectly through a single financial intermediary for investment in active busines assets (as defined in paragraph (c)(4) of this section) in a qualified Caribbean Basin country (described in paragraph (c)(10)(ii) of this section) or for investment in development projects (as defined in paragraph (c)(5) of this section) in a qualified Caribbean Basin country, provided—

(i) The investment is authorized, prior to disbursement of the funds, by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to regulations issued by such Commissioner; and

(ii) The agreement, certification, and due diligency requirements under paragraphs (c) (11), (12), and (13) of this section are met.

A loan by a qualified financial institution shall not be disqualified merely because the loan transaction is processed by the central bank of issue of the country into which the loan is made pursuant to, and solely for purposes of complying with, the exchange control laws or regulations of such country. Further, a loan by a qualified financial institution shall not be disqualified merely because the loan is acquired by another person, provided such other person is also a qualified financial institution.

(2) *Termination of qualification*—(i) *In general.* An investment that, at any time after having met the requirements for a qualified investment in a qualified Caribbean Basin country under the terms of this paragraph (c), fails to meet any of the conditions enumerated in this paragraph (c) shall no longer be considered a qualified investment in a qualified Caribbean Basin country from the time of such failure, unless the investment satisfies the requirements for a timely cure described in paragraph (c)(2)(ii) of this section. Such a failure includes, but is not limited to, the occurrence of any of the following events:

(A) Active business assets cease to qualify as such;

(B) Proceeds from the investment are diverted for the financing of assets, projects, or operations that are not active business assets or development projects or are not the assests or the project of the qualified recipient;

(C) The holder of the qualified recipient's obligation is not a qualified financial institution;

(D) The qualified recipient's qualified business activity creases to qualify as such; or

(E) The qualified Caribbean Basin country ceases to be a country described in paragraph (c)(10)(ii) of this section.

(ii) *Timely cure*—(A) *In general.* A timely cure shall be considered to have been made if the event or events that cause disqualification of the investment are corrected within a reasonable period of time. For purposes of this section, a reasonable period of time shall not exceed 60 days after such event or events come to the attention of the qualified recipient or the qualified financial institution or should have some to their attention by the exercise of reasonable diligence.

(B) *Due diligence requirements.* A time cure of a failure to comply with the due diligence requirements of paragraphs (c) (11), (12), and (13) of this section shall be considered to be made if the failure to comply is due to reasonable cause and, upon request of the Commissioner of Financial Institutions of Puerto Rico (or his delegate) or of the Assistant Commissioner (International) (or his authorized representative), the qualified financial institution (and its trustee or agent), if any), the financial intermediary, or the qualified recipient establishes to the satisfaction of the Commissioner of Financial Institutions of Puerto Rico (or his delegate) or of the Assistant Commissioner (International) (or his authorized representative) that it has exercised due diligence in ensuring that the funds were property disbursed to a qualified recipient and applied by or on behalf of such qualified recipient to uses that qualify the investment as an investment in qualified business assets or a development project under the provisions of this paragraph (c).

(iii) *Assumption of qualified recipient's obligation.* An investment shall not cease to qualify merely because the qualified recipient's obligation to the qualified financial institution (or to a financial intermediary, if any) is assumed by another person, provided such other person assumes the qualified recipient's agreement and certification requirements under paragraph (c)(11)(i) of this section and is either—

(A) A qualified recipient on the date of assumption, in which case such person shall be treated for purposes of this section as the original qualified recipient and shall be subject to all the requirements of this section for continued qualification of the loan as a qualified investment in a qualified Caribbean Basin country; or

(B) An international organization, the principal purpose of which is to foster economic development in developing countries and which is described in section 1 of the International Organizations Immunities Act (22 U.S.C. 288), if the assumption of the obligation is pursuant to a bona fide guarantee agreement.

(3) *Qualified financial institution*—(i) *General rule.* For purposes of section 936(d)(4)(A) and this section, a qualified financial institution includes only—

(A) A banking, financing, or similar business defined in § 1.864–4(c)(5)(i) that is an eligible institution described in paragraph (c)(3)(ii) of this section, but not including branches of such institution outside of Puerto Rico;

(B) A single-purpose entity described in paragraph (c)(3)(iii) of this section;

(C) The Government Development Bank for Puerto Rico;

(D) The Puerto Rico Economic Development Bank; and

(E) Such other entity as may be determined by the Commissioner by Revenue Procedure or other guidance published in the Internal Revenue Bulletin.

(ii) *Eligible institution.* An eligible institution means an institution—

(A) That is an entity organized under the laws of the Commonwealth of Puerto Rico or is the Puerto Rican branch of an entity organized under the laws of another jurisdiction, if such entity is engaged in a banking, financing, or similar business defined in § 1.864–4(c)(5)(i), and

(B) That is licensed as an eligible institution under Regulation No. 3582 (or any successor regulation) issued by the Commissioner of Financial Institutions of Puerto Rico (hereinafter "Puerto Rican Regulation No. 3582").

(iii) *Single-purpose entity.* A single-purpose entity is an entity that meets all of the following conditions:

(A) The entity is organized under the laws of the Commonwealth of Puerto Rico and is a corporation, a partnership or a trust, which conducts substantially all of its activities in Puerto Rico.

(B) The sole purpose of the entity is to use qualified funds from possessions corporations to make one or more

qualified investments in a qualified Caribbean Basin country and the entity actually uses such funds only for such purpose.

(C) In the case of an entity that is a trust, one of the trustees is a qualified financial institution described in paragraph (c)(3)(i) of this section.

(D) The entity is licensed as an eligible institution under Puerto Rican Regulation No. 3582 (or any successor regulation).

(E) Any temporary investment by the entity for its own account of funds received from a possessions corporation, and the income from the investment thereof, and any temporary investment by the entity for its own account of principal and interest paid by a borrower to the entity, and the income from the investment thereof, are limited to investments in eligible activities, as described in section 6.2.4 of Puerto Rican Regulation No. 3582, as in effect on September 22, 1989.

(4) *Investments in active business assets*—(i) *In general.* For purposes of section 936(d)(4)(A)(i)(I) and this section and subject to the provisions of paragraph (c)(8) of this section, a loan qualifies as an investment in active business assets if—

(A) The amounts disbursed to a qualified recipient under the loan or bond issue are promptly applied (as defined in paragraphs (c) (6) and (7) of this section) by (or on behalf of) the qualified recipient solely for capital expenditures for the construction, rehabilitation (including demolition associated therewith), improvement, or upgrading of qualified assets described in paragraphs (c)(4)(ii) (A), (B), (E), and (F) of this section, for the acquisition of qualified assets described in paragraphs (c)(4)(ii) (B), (C), (E), and (F) of this section, for the expenditures described in paragraphs (c)(4)(ii) (D), (E), and (F) of this section, and, if applicable, for the financing of incidental expenditures described in paragraph (c)(4)(iii) of this section;

(B) The qualified recipient owns the assets for United States income tax purposes and uses them in a qualified business activity (as defined in paragraph (c)(4)(iv)); and

(C) The requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and of paragraph (c)(7) of this section (regarding the refinancing of existing funding and the time periods within which funding for investments must be secured) are satisfied.

(ii) *Definition of qualified assets.* For purposes of this paragraph (c), qualified assets mean—

(A) Real property;

(B) Tangible personal property (such as furniture, machinery, or equipment) that is not property described in section 1221(1) and that is either new property or property which at no time during the period specified in paragraph (c)(4)(v) of this section was used in a business activity in the qualified Caribbean Basin country in which the property is to be used;

(C) Rights to intangible property that is a patent, invention, formula, process, design, pattern, know-how, or similar item, or rights under a franchise agreement, provided that such rights—

(*1*) Were not at any time during the period specified in paragraph (c)(4)(v) of this section used in a business activity in the qualified Caribbean Basin country in which the rights are to be used,

(*2*) Are not rights the use of which gives rise, or would give rise if used, to United States source income, and

(*3*) Are not rights acquired by the qualified recipient from a person related (within the meaning of section 267(b), using "10 percent" instead of "50 percent" in the places where it appears) to the qualified recipient;

(D) Exploration and development expenditures incurred by a qualified recipient for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore, oil, gas, or other mineral in a qualified Caribbean Basin country, as well as for purposes of developing such deposit (within the meaning of section 616 of the Code and the regulations thereunder);

(E) Living plants and animals (other than crops, plants, and animals that are acquired primarily to hold as inventory by the qualified recipient for resale in the ordinary course of trade or business) acquired in connection with a farming business (as defined in § 1.263–1T(c)(4)(i)), expenditures of a preparatory nature to prepare the land or area for farming (such as planting trees, drilling wells, clearing brush, leveling land, laying pipes, building roads, constructing tanks and reservoirs), expenditures for soil and water conservation of a type described in section 175(c)(1), and expenditures of a development nature incurred in connection with, and during, the preproductive period of property produced in a farming business (as defined in § 1.263–1T(c)(4)(ii));

(F) Other assets or expenditures that are not described in paragraphs (c)(4)(ii) (A) through (E) of this section and that the Commissioner may, by Revenue Procedure or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified financial institution or qualified recipient upon its request, determine to be qualified assets.

(iii) *Incidental expenditures.* An amount in addition to the loan proceeds borrowed to make an investment in active business assets shall be considered an investment in active business assets if such amount is applied to finance expenditures that are incidental to making the investment in active business assets, provided such amount is disbursed at or about the same time the proceeds for making the investment in active business assets are disbursed. For purposes of this section, expenditures incidental to an investment in active business assets include only the following items:

(A) A reasonable amount of costs (other than the cost of credit enhancement or bond insurance premiums) associated with arranging the financing of an investment in active business assets, not to exceed 3.5 percent of the proceeds of the loan or bond issue.

(B) A reasonable amount of installation costs and other reasonable costs associated with placing an active business asset in service in the qualified business activity.

(C) An amount not in excess of 10 percent of the total amount of investment in qualified assets to finance the acquisition of inventory, and other working capital requirements, but if an investment is in connection with a manufacturing or farming business, the percentage limitation shall be 50 percent rather than 10 percent provided the excess over the 10 percent limitation is used to finance inventory property. For purposes of this paragraph (c), whether a business is a manufacturing business shall be determined under principles similar to those described in section 954(d)(1)(A) and the regulations thereunder; whether a business is a farming business shall be determined under § 1.263–1T(c)(4)(i).

(D) An amount not in excess of 5 percent of the sum of the investment in active business assets and the costs described in paragraphs (c)(4)(iii) (A), (B), and (C) of this section for the refinancing of an existing debt of the qualified recipient if such refinancing is incidental to an investment in active business assets. For this purpose, the replacement of an existing loan arrangement shall not be considered the refinancing of an existing indebtedness to the extent that the funds under such loan arrangement have not yet been disbursed to the qualified recipient.

(iv) *Qualified business activity.* A qualified business activity is a lawful industrial or commercial activity that is

conducted as an active trade or business (under principles similar to those described in § 1.367(a)–2T(b) (2) and (3)) in a qualified Caribbean Basin country. A trade or business for purposes of this paragraph (c)(4)(iv) is any business activity meeting the principles of section 367 of the Code and described in Divisions A through I (excluding group 43 in Division E (relating to the United States Postal Service) and groups 84 (relating to museums, art galleries, and botanical and zoological gardens), 86 (relating to membership organizations), and 88 (relating to private households in Division I) of the 1987 Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, or in the comparable provisions of any successor Standard Industrial Classification Manual that is adopted by the Commissioner of Internal Revenue in a notice, regulation, or other document published in the Internal Revenue Cumulative Bulletin.

(v) *Period of use.* The period referred to in paragraphs (c)(4)(ii) (B) and (C) of this section shall be a five year period preceding the date of acquisition with the loan proceeds, if the date of acquisition is on or before May 13, 1991. If the date of acquisition is after May 13, 1991, then the period specified in this paragraph (c)(4)(v) shall be three years preceding the date of acquisition with the loan proceeds.

(5) *Investments in development projects*—(i) *In general.* Subject to the provisions of paragraph (c)(8) of this section, this paragraph (c)(5)(i) describes the requirements in order for a loan by a qualified financial institution to qualify as an investment in a development project for purposes of section 936(d)(4)(A)(i)(II) and for this section.

(A) The amounts disbursed under the loan or bond issue must be promptly applied (as defined in paragraphs (c) (6) and (7) of this section) by (or on behalf of) the qualified recipient solely for one or more investments described in paragraph (c)(4)(i)(A) of this section and in any land, buildings, or other property functionally related and subordinate to a facility described in paragraph (c)(5)(ii) of this section (determined under principles similar to those described in § 1.103–8(a)(3)), for use (under principles similar to those described in § 1.367(a)–2T(b)(5)) in connection with one or more activities described in paragraph (c)(5)(i)(B) of this section.

(B) The activities referred to in paragraph (c)(5)(i)(A) of this section are—

(*1*) A development project described in paragraph (c)(5)(ii) of this section in a qualified Caribbean Basin country; or

(*2*) The performance in a qualified Caribbean Basin country of a non-commercial governmental function described in paragraph (c)(5)(iv) of this section;

(C) The qualified recipient must own the assets for United States income tax purposes;

(D) The requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and of paragraph (c)(7) of this section (regarding the refinancing of existing funding and time periods within which funding for investments must be secured) must be satisfied.

(ii) *Development project.* For purposes of this paragraph (c), a development project is one or more facilities in a qualified Caribbean Basin country that support economic development in that country and that satisfy the public use requirement of paragraph (c)(5)(iii) of this section. Examples of facilities that may meet the public use requirement include, but are not limited to—

(A) Transportation systems and equipment, including sea, surface, and air, such as roads, railways, air terminals, runways, harbor facilities, and ships and aircraft;

(B) Communications facilities;

(C) Training and education facilities related to qualified business activities;

(D) Industrial parks, including necessary support facilities such as roads; transmission lines for water, gas, electricity, and sewage; docks; plant sites preparations; power generation; sewage disposal; and water treatment;

(E) Sports facilities;

(F) Convention or trade show facilities;

(G) Sewage, solid waste, water, and electric facilities;

(H) Housing projects pursuant to a government program designed to provide affordable housing to low or moderate income families, based upon local standards; and

(I) Hydroelectric generating facilities.

(iii) *Public use requirement.* To satisfy the public use requirement in paragraph (c)(5)(ii) of this section, a facility must serve or be available on a regular basis for general public use, as contrasted with similar types of facilities which are constructed for the exclusive use of a limited number of persons as determined under principles similar to those described in § 1.103–8(a)(2).

(iv) *Non-commercial governmental functions.* For purposes of paragraph (c)(5)(i)(B) of this section, the term "non-commercial governmental functions" refers to activities that, under U.S. standards, are not customarily attributable to or carried on by private enterprises for profit and are performed for the general public with respect to the common welfare or which relate to the administration of some phase of government. For example, the operation of libraries, toll bridges, or local transportation services, and activities substantially equivalent to those carried out by the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service, are considered non-commercial governmental functions. For purposes of this section, non-commercial government functions shall not include military activities.

(v) [Reserved]

(6) *Prompt application of borrowed proceeds.* This paragraph (c)(6) provides rules for determining whether amounts disbursed to a qualified recipient by a qualified financial institution (or a financial intermediary) shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section.

(i) *In general.* Except as otherwise provided in paragraphs (c)(6)(ii) and (c)(7)(iii)(B) of this section, amounts disbursed to a qualified recipient by a qualified financial institution (or a financial intermediary) shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section if the amounts are fully expended for any of the purposes described in paragraphs (c)(4)(i)(A) or (c)(5)(i)(A) of this section no later than six months from the date of such disbursement and any temporary investment of such funds by the qualified recipient during such period complies with the rules of paragraph (c)(6)(iii)(A) of this section. Where the amounts disbursed are bond proceeds described in paragraph (c)(6)(iv)(A) of this section, the six-month period shall begin on the date of issuance of the bonds. In the event the qualified financial institution (or financial intermediary) invests any part of the bond proceeds before disbursement of those proceeds to the qualified recipient, all earnings from any such investment shall be paid to the qualified recipient or applied for its benefit.

(ii) *Special rules for long term projects financed out of bond proceeds.* In the case of a long term project described in paragraph (c)(6)(iv)(B) of this section that is financed out of bond proceeds, the six-month period described in

paragraph (c)(6)(i) of this section shall be extended with respect to the amount of bond proceeds used to fund the project for such reasonable period of time as shall be necessary until completion of the project or until beginning of production (in the case of a farming business), but, in any event, not to exceed three years from the date of issuance of the bonds, and only if—

(A) The project that is financed out of bond proceeds was identified as of the date of issue;

(B) A construction and expenditure plan certified by an independent expert (such as an engineer, an architect, or a farming expert) is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico (or his delegate) prior to the date of issue, which makes a reasonable estimate, as of the date of filing of the plan, of the amounts and uses of the bond proceeds and the time of completion or production, and includes a schedule of progress payments until such time;

(C) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of bonds; and

(D) Any temporary investment of the bond proceeds complies with the rules of paragraph (c)(6)(iii)(A) and (B) of this section.

(iii) *Temporary investments*—(A) *During six-month period.* During the six-month period described in paragraph (c)(6)(i) of this section, during the first six months of the period described in paragraph (c)(6)(ii) of this section, and during the 30-day period described in paragraph (c)(7)(iii)(A) of this section, loan proceeds disbursed to a qualified recipient, bond proceeds, and income from the investment thereof, may be held in unrestricted yield investments, provided such yield reflects normal market yield for such type of investments and provided the income from such investments, if any, is or would be sourced either in Puerto Rico or in a country in which the investment in active business assets or development project is to be made.

(B) *During other periods.* During any other period, any temporary investment of bond proceeds, and of income from such investments, shall be limited to investments in eligible activities. For purposes of this paragraph (c)(6)(iii)(B), the term "eligible activities" shall mean those investments described in section 6.2.4 of Puerto Rican Regulation No. 3582, as in effect on September 22, 1989.

(iv) *Definitions*—(A) *Bond proceeds.* For purposes of this paragraph (c), bond proceeds shall mean the proceeds from the issuance of obligations by way of a public offering or a private placement by a qualified financial institution for investment in active business assets or a development project that has been identified at the time of issue and is described in a public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of the bonds.

(B) *Long term project.* For purposes of this section, the term long term project means—

(*1*) A project, whether or not under a contract, for the construction, rehabilitation, improvement, upgrading, or production of qualified assets, or for expenditures, described in paragraph (c)(4)(ii) of this section (other than paragraph (c)(4)(ii)(C) of this section), which is reasonably expected to require more than 12 months to complete; or

(*2*) The production of property in a farming business referred to in paragraph (c)(4)(ii)(E) of this section, which is reasonably expected to require a preproductive period in excess of 12 months.

(*7*) *Financing of previously incurred costs.* Loan or bond proceeds which are disbursed after a qualified recipient has paid or incurred part or all of the costs of acquiring active business assets or investing in a development project shall be considered to have been applied for such purposes only as provided in this paragraph (c)(7).

(i) *Replacement of temporary non-section 936 financing of a qualified investment.* This paragraph (c)(7)(i) prescribes the maximum time limits within which temporary non-section 936 financing of qualified investments may be replaced with section 936 funds without being considered a prohibited refinancing transaction. This paragraph (c)(7)(i) applies to the refinancing of costs incurred with respect to investments that, at the time the costs were first incurred, were either qualified investments in a qualified Caribbean Basin country or were investments by a qualified recipient in active business assets or a development project in a qualified Caribbean Basin country. This paragraph (c)(7)(i) applies also to the refinancing of costs incurred with respect to any other investment. However, in the latter case, the amount of costs that may be refinanced with section 936 funds is limited to the amount of costs that are incurred with respect to the investment after the investment becomes a qualified investment in a qualified Caribbean Basin country. For purposes of this paragraph (c)(7)(i), the time when costs are incurred shall be determined under principles similar to those applicable under section 461(h) dealing with the economic performance test for the accrual of deductible liabilities. This paragraph (c)(7)(i) applies only to the situations described in this paragraph (c)(7)(i).

(A) In the case of an investment in active business assets or a development project, a loan shall be a qualified investment for purposes of this paragraph (c) if the loan proceeds are disbursed, or the obligations are issued, no later than six months after the date on which the qualified recipient takes possession of the asset or the facility or, if earlier, places the asset or the facility in service. However, in the case of a small project described in paragraph (c)(8)(v) of this section, the six-month period shall be one year.

(B) In the case of an investment in active business assets or a development project that is part of a long term project described in paragraph (c)(6)(iv)(B) of this section, a loan shall also be a qualified investment for purposes of this paragraph (c) if the loan proceeds are disbursed, or the obligations are issued, no later than six months after completion of the project or, in the case of a farming business, after the beginning of production, and in any event, no later than three years after the date on which the first payment is made toward the eligible costs of the project. The amount of the qualified investment may not exceed the sum of—

(*1*) The eligible costs relating to investments described in paragraph (c)(4)(i)(A) in the case of an investment in active business assets, or the eligible costs relating to investments described in paragraph (c)(5)(i) of this section in the case of a development project, but only to the extent of the costs that are incurred after the date described in paragraph (c)(7)(i)(D) of this section, and

(*2*) the portion of unpaid interest that would be required to be capitalized under U.S. tax rules and that accrued on prior temporary non-section 936 financing from the date described in paragraph (c)(7)(i)(D) of this section through the date the section 936 loan proceeds are disbursed or the section 936 obligations are issued.

(C) In order to qualify for the special rules of this paragraph (c)(7)(i), a plan must be filed with the Commissioner of Financial Institutions of Puerto Rico (or his delegate) stating the qualified recipient's intention to refinance the costs of the long term project with section funds.

(D) The date referred to in paragraph (c)(7)(i)(B) (*1*) and (*2*) of this section is a date that is the later of—

(*1*) the date the plan described in paragraph (c)(7)(i)(C) is filed, or

(*2*) the date the investment becomes a qualified investment by a qualified recipient in active business assets or a development project in a qualified Caribbean Basin country.

(ii) *Refinancing of section 936 financing.* A section 936 loan or bond issue used to finance a qualified investment described in paragraph (c)(1) of this section may be refinanced with section 936 funds through a new loan or bond issue to the extent of the remaining principal balance on such existing qualified financing, increased by the amount of unpaid interest accrued through the date the new loan proceeds are disbursed or the new obligations are issued and that would be required to be capitalized under U.S. tax rules.

(iii) *Prompt application of borrowed proceeds*—(A) *In general.* In the case of a loan or bond issue described in paragraphs (c)(7) (i) or (ii) of this section, the rules of paragraph (c)(6) of this section shall apply but the six-month period described in paragraph (c)(6)(i) of this section shall be limited to 30 days from the date of disbursement of loan proceeds to the qualified recipient or from the date of issuance in the case of a bond issue.

(B) *Special rules for long term projects financed out of bond proceeds.* In the case of a long term project described in paragraph (c)(6)(iv)(B) of this section that is financed out of bond proceeds, the 30-day period described in paragraph (c)(7)(iii)(A) of this section shall be extended with respect to the amount of bond proceeds used for the permanent financing of the long term project for such reasonable period of time as shall be necessary until completion of the project or beginning of production (in the case of a farming business), but, in any event, not to exceed three years from the date of issuance of the bonds. For purposes of this paragraph (c)(7)(iii)(B), the period of time shall be considered reasonable only if—

(*1*) A construction and expenditure plan certified by an independent expert (such as an engineer, an architect, or a farming expert) is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico (or his delegate) prior to the date of issue, which makes a reasonable estimate, as of the date of issue, of the amounts and uses of the bond proceeds and the time of completion or production, and includes a schedule of progress payments until such time; and

(*2*) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the bond issue.

(8) *Miscellaneous operating rules*—(i) *Sale and leaseback.* An asset that is acquired and leased back to the person from whom acquired does not constitute an investment in an active business asset or an investment in a development project.

(ii) *Use of asset in qualified business activity.* For purposes of paragraph (c)(4)(i)(B), an asset shall be considered used or held for use in a qualified business activity if it is used or held for use in such activity under principles similar to those described in § 1.367(a)-2T(b)(5), or a successor provision.

(iii) *Definition of capital expenditures.* For purposes of this paragraph (c), capital expenditures mean those expenditures described in section 263(a) of the Code (without regard to paragraphs (A) through (G) of section 263(a)(1)), and those costs required to be capitalized under section 263A with respect to property described in section 263A(b)(1), relating to self-constructed assets.

(iv) *Loans through certain financial intermediaries.* A loan by a qualified financial institution shall not be disqualified from being an investment in active business assets or in a development project merely because the proceeds are first lent to a financial intermediary (as defined in paragraph (c)(8)(iv)(H) of this section) which, in turn, on-lends the proceeds directly to a qualified recipient, provided the requirements of this paragraph (c)(8)(iv) are satisfied.

(A) The loan to the qualified recipient must satisfy the requirements of paragraph (c)(4)(i) of this section in the case of an investment in active business assets, or of paragraph (c)(5)(i) of this section in the case of an investment in a development project.

(B) The qualified recipient and the active business assets or development project in which the proceeds are to be invested must be identified prior to disbursement of any part of the proceeds by the qualified financial institution to the financial intermediary.

(C) The effective interest rate charged by the qualified financial institution to the financial intermediary must not exceed the average interest rate paid by the qualified financial institution with respect to its eligible funds, increased by such number of basis points as is required to provide reasonable compensation to the qualified financial institution for services performed and risks assumed with respect to the loan to the financial intermediary that are not ordinarily required to be performed or assumed with respect to a deposit, loan, repurchase agreement or other transfer of eligible funds with another qualified financial institution. The average interest rate shall be the average rate, determined on a daily basis, paid by the qualified financial institution on its eligible funds over the most recent quarter preceding the date on which the rate on the loan to the financial intermediary is committed.

(D) The effective interest rate charged by the financial intermediary to the qualified recipient must not exceed the effective interest rate charged to the financial intermediary by the qualified financial institution, increased by such number of basis points as is required to provide reasonable compensation to the financial intermediary for services performed and risks assumed with respect to the loan to the qualified recipient.

(E) The financial intermediary must borrow from the qualified financial institution under substantially the same terms as it lends to the qualified recipient. In particular, both loans must have disbursement terms, repayment schedules and maturity dates for interest and principal amounts such that the financial intermediary does not retain for more than 48 hours any of the funds disbursed by the qualified financial institution nor any of the funds paid by the qualified recipient in repayment of principal or interest on the loan.

(F) The financial institution and the financial intermediary must agree to comply with the due diligence requirements described in paragraphs (c) (11), (12), and (13) of this section;

(G) The time periods and temporary investments rules in paragraphs (c) (6) and (7) of this section must be complied with; and

(H) For purposes of this paragraph (c), the financial intermediary must be—

(*1*) An active trade or business which a person maintains in a qualified Caribbean Basin country and which consists of a banking, financing or similar business as defined in § 1.864-4(c)(5)(i) (other than a central bank of issue); or

(*2*) A public international organization, the principal purpose of which is to foster economic development in developing countries and which is described in section 1 of the International Organizations Immunities Act (22 U.S.C. § 288).

For purposes of paragraphs (c)(8)(iv) (C) and (D) of this section, the determination of whether compensation is reasonable shall be made in relation to normal commercial practices for comparable transactions carrying a similar degree of commercial, currency and political risk. Reasonable credit enhancement fees and other reasonable fees and amounts charged to the financial intermediary or the qualified recipient with respect to the loan transaction in addition to interest shall be added to the interest cost in determining the effective interest rate.

(v) *Small project.* For purposes of this paragraph (c), a small project shall be a project (including the acquisition of an asset) for which the total amount of section 936 funds used for its financing does not exceed $1,000,000 in the aggregate, or such other amount as the Commissioner may publish, from time to time, in the Internal Revenue Bulletin.

(9) *Qualified recipient.* For purposes of this section, a qualified recipient is any person described in paragraphs (c)(9) (i) or (ii) of this section. The term "person" means a person described in section 7701(a)(1) or a government (within the meaning of § 1.892–2T(a)(1)) of a qualified Caribbean Basin country.

(i) In the case of an investment described in paragraph (c)(4) of this section (relating to investments in active business assets), a qualified recipient is a person that carries on a qualified business activity in a qualified Caribbean Basin country, and complies with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(ii) In the case of an investment described in pargraph (c)(5) of this section (relating to investments in development projects), a qualified recipient is the borrower (including a person empowered by the borrower to authorize expenditures for the investment in the development project) that has authority to comply, and complies, with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(10) *Investments in a qualified Caribbean Basin country*—(i) *Rules for determining the place of an investment.* The rules of this paragraph (c)(10)(i) shall apply to determine the extent to which an investment in an active business asset or a development project will be considered made in qualified Caribbean Basin Country.

(A) An investment in real property is considered made in the qualified Caribbean Basin country in which the real property is located.

(B) Except as otherwise provided in this paragraph (c)(10)(i)(B), an investment in tangible personal property is considered made in a qualified Caribbean Basin Country so long as the tangible personal property is predominantly used in that country. Whether property is used predominantly in a qualified Caribbean Basin country shall be determined under principles similar to those described in § 1.48–1(g)(1), (g)(2)(ii), (g)(2)(iv), (g)(2)(vi), (g)(2)(viii), and (g)(2)(x) (relating to investment tax credits for property used outside the United States) as in effect on December 31, 1985. A vessel, container, or aircraft shall be considered for use predominantly in a qualified Caribbean Basin country in any year if it is used for transport to and from such country with some degree of frequency during that year and at least 30 percent of the income from the use of such vessel, container or aircraft for that year is sourced in such country under principles similar to those described in section 863(c) (1) and (2) (relating to source rules for certain transportation income). Cables and pipelines which are premanently installed as part of a communication or transportation system between a qualified Caribbean Basin country and another country or among several countries which include a qualified Caribbean Basin country shall be considered used in a qualified Caribbean Basin country to the extent of 50 percent of the portion of the facility that directly links the qualified country to another country or to a hub, unless it is established by notice or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified institution or qualified recipient upon request that it is appropriate to attribute a greater portion of the cost of the facility to the qualified Caribbean Basin country.

(C) An investment in rights to intangible property is considered made in a qualified Caribbean Basin country to the extent such rights are used in that country. Where rights to intangible property are used shall be determined under principles similar to those described in § 1.954–2T(b)(3)(vii) or a successor provision.

(ii) *Qualified Caribbean Basin Country.* For purposes of this section, the term "qualified Caribbean Basin country" means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Public Law 98–67 (Aug. 5, 1983), 97 Stat. 384, 19 U.S.C. 2702(a)(1)(A)), which meets the requirements of section 274(h)(6)(A) (i) and (ii) and the U.S. Virgin Islands, and includes the territorial waters and continental shelf thereof.

(11) *Agreements and certifications by qualified recipients and financial intermediaries*—(i) *In general.* In order for an investment to be considered a qualified investment under section 936(d)(4) and paragraph (c)(1) of this section, a qualified recipient must certify to the qualified financial institution (or to the financial intermediary, if the loan is made through a financial intermediary) on the date of closing of the loan agreement and on each anniversary date thereof, that it is a qualified recipient described in paragraph (c)(9) of this section. In addition, the qualified recipient must agree in the loan agreement with the qualified financial institution (or with the financial intermediary, if the loan is made through a financial intermediary)—

(A) To use the funds at all times during the period the loan is outstanding solely for the purposes and in the manner described in paragraph (c)(4) of this section (regarding investment in active business assets) or in paragraph (c)(5) of this section (regarding investment in development projects);

(B) To comply with the requirements of paragraph (c)(6) of this section (regarding temporary investments and time periods within which the funds must be invested) and paragraph (c)(7) of this section (regarding the refinancing of existing funding and the time periods within which funding for investments must be secured);

(C) To notify the Assistant Commissioner (International), the qualified financial institution (or the financial intermediary, if the loan is made through a financial intermediary), and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section if it no longer is a qualified recipient or if, for any other reason, the investment has ceased to qualify as a qualified investment described in paragraph (c)(1) of this section, promptly upon the occurrence of such disqualifying event; and

(D) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development

projects in conformity with the terms of the loan agreement.

(ii) *Certification by a financial intermediary.* In the case of a loan by a qualified financial institution to a financial intermediary, the financial intermediary must certify to the qualified financial institution (using the procedures described in paragraph (c)(11)(i) of this section) that it is a financial intermediary described in paragraph (c)(8)(iv)(H) of this section, and must furnish to the qualified financial institution a copy of the qualified recipient's certification described in paragraph (c)(11)(i) of this section and of its loan agreement with the qualified recipient. In addition, the financial intermediary must agree in the loan agreement with the qualified financial institution:

(A) To comply with the requirements of paragraph (c)(8)(iv) of this section; and

(B) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used in conformity with the terms of the loan agreements.

(12) *Certification requirements.* In order for an investment to be considered a qualified investment under section 936(d)(4), section 936(d)(4)(C)(i) requires that both the person in whose trade or business such investment is made and the financial institution certify to the Secretary of the Treasury and the Commissioner of Financial Institutions of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures. This certification requirement is satisfied as to the qualified financial institution, the financial intermediary (if any), and the qualified recipient if the qualified financial institution submits a certificate to both the Assistant Commissioner (International) and to the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon authorization of the investment by the Commissioner of Financial Institutions and, in any event, prior to the first disbursement of the loan proceeds to the qualified recipient or to the financial intermediary (if any), in which the qualified financial institution—

(i) Represents that, as of the date of the certification, the qualified recipient and the financial intermediary (if any) have complied with the requirements described in paragraph (c)(11) of this section;

(ii) Describes the important terms of the loan to the financial intermediary (if any) and to the qualified recipient, including the amount of the loan, the nature of the investment, the basis for its qualification as an investment in active business assets or a development project under this section, the identity of the financial intermediary (if any) and of the qualified recipient, the qualified Caribbean Basin country involved, and the nature of the collateral or other security used, including any guarantee;

(iii) Agrees to permit examination by the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement or agreements with the financial intermediary (if any) and with the qualified recipient; and

(iv) In the case of a single-purpose entity that is a qualified financial institution, discloses the name and address of the entity's trustee or agent, if any, that assists the qualified financial institution in the performance of its due diligence requirement under paragraph (c) of this section, and represents that the trustee or agent has agreed with the qualified financial institution to permit examination by the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all necessary books and records of such trustee or agent that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement or agreements with the financial intermediary (if any) and with the qualified recipient.

(13) *Continuing due diligence requirements.* In order to maintain the qualification for an investment under paragraph (c)(1) of this section, the continuing due diligence requirements described in this paragraph (c)(13) must be satisfied.

(i) *Requirements of qualified recipient.* A qualified recipient must—

(A) Submit annually to the qualified financial institution or to the financial intermediary from which its qualified funds were obtained a copy of its most recent annual financial statement accompanied by an opinion of an independent accountant familiar with the financials of the qualified recipient disclosing the amount of the loan, the current outstanding balance of the loan, describing the assets financed with such loan and the qualified business activity in which such assets are used or the development project for which the loan is used, and stating that there are no reasons to doubt that the loan proceeds have been properly used and continue to be properly used, and

(B) Act in a manner consistent with its representations and agreements described in paragraph (c)(11) of this section.

(ii) *Requirements of qualified financial institutions.* Except as otherwise provided in paragraph (c)(13)(iii) of this section, a qualified financial institution described in paragraph (c)(3) of this section must maintain in its records and have available for inspection the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section. In addition, the qualified financial institution is required to notify the Assistant Commissioner (International) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. For purposes of this paragraph (c)(13)(ii), multiple loans for investment in a single qualified business activity or development project will be aggregated in determining what due diligence requirements apply.

(A) In the case of a small project described in paragraph (c)(8)(v) of this section, the following documents must be maintained and available for inspection:

(*1*) The loan application or other similar document;

(*2*) The financial statements of the qualified recipient filed as part of the loan application;

(*3*) The statement required by section 6.4.3(a)(iii) of Puerto Rican Regulation No. 3582 or any successor thereof, signed by the qualified recipient (or its duly authorized representative), acknowledging the receipt of the loan proceeds, describing the assets financed with such loan and the business activity in which such assets are to be used or the development project for which the funds will be utilized, the collateral to be provided for the transaction including any guarantee, and the basis for its qualification as a qualified recipient;

(*4*) The loan documents; and

(5) In the case of a qualified financial institution that is a single-purpose entity, a copy of the agreement with the entity's trustee or agent, if any, described in paragraph (c)(12)(iv) of this section.

(B) In the case of a disbursement concerning a project that is not a small project described in paragraph (c)(8)(v) of this section, the following documents must be maintained and available for inspection, in addition to the documents required by paragraph (c)(13)(ii)(A) of this section:

(1) A memorandum of credit prepared by an officer of the qualified financial institution (or, in the case of a single purpose entity, an agent of the entity or a trustee for the entity, if any) and signed by the officer of the qualified financial institution, containing the details of the investigation and review that the qualified financial institution, or its trustee or agent, if any, conducted in order to evaluate whether the investment is qualified under paragraph (c)(1) of this section and the opinion of the officer of the qualified financial institution, or the opinion of an officer of the agent of, or of the trustee for, the qualified financial institution, if any, that there is no reasonable ground for belief that the qualified funds will be diverted to a use that is not permitted under the provisions of this section; in making this investigation and review, factors that must be utilized are ones similar to those listed in Puerto Rico Regulation No. 3582, section 6.4.2;

(2) The annual financial statement of the qualified recipient; and

(3) The written report of an officer of the qualified financial institution, or of an officer of an agent of, or of the trustee for, the qualified financial institution, if any, documenting discussions, both before and after the disbursement of the loan proceeds, with each recipient's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(iii) *Requirements in the case of a financial intermediary.* Where a qualified financial institution lends funds to a financial intermediary which are on-lent to a qualified recipient—

(A) The obligation to maintain the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section shall apply only to the financial intermediary and not to the qualified financial institution and the provisions of paragraph (c)(13)(ii) (A) or (B) of this section shall be read so as to impose on the financial intermediary any obligation imposed on the qualified financial institution.

(B) The financial intermediary shall forward annually to the qualified financial institution a copy of the documentation it is required to maintain in its records pursuant to the provisions of this paragraph (c)(13)(iii) and shall notify the Assistant Commissioner (International), the Commissioner of Financial Institutions of Puerto Rico (or his delegate) and the qualified financial institution pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. The qualified financial institution must maintain in its records and have available for inspection the documentation furnished by the financial intermediary pursuant to this paragraph (c)(13)(iii)(B).

(C) The qualified financial institution shall cause one of its officers (or one of the officers of its agent or trustee, if any) to prepare a written report documenting his analysis of the documentation furnished by the financial intermediary purusant to paragraph (c)(13)(iii)(B) of this section, his discussions, both before and after the disbursement of the loan proceeds, with the financial intermediary's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds, and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(14) *Procedures for notices and certifications.* Notices and certifications to the Assistant Commissioner (International) required under paragraphs (c) (11), (12) and (13) of this section shall be addressed to the attention of the Assistant Commissioner (International), Office of Taxpayer Service and Compliance, IN:C, 950 L'Enfant Plaza South, SW., Washington, DC 20024. Notices and certifications to the Commissioner of Financial Institutions of Puerto Rico required under paragraphs (c) (11), (12), and (13) of this section shall be addressed as follows: Commissioner of Financial Institutions, GPO Box 70324, San Juan, Puerto Rico 00936.

(15) *Effective date.* This paragraph (c) is effective May 13, 1991. It is applicable to investments by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) after September 22, 1989. However, the taxpayer may choose to apply § 1.936–10T(c) for periods before June 12, 1991.

OMB Control Numbers Under the Paperwork Reduction Act

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 601.101(c) [Amended]

Par. 5. Section 602.101(c) is amended by removing "1.936–10T(c) . . . 1545–1138" and inserting in its place in the table:

"1.936–10(c).....1545–1138."

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Dated: April 15, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–11203 Filed 5–10–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[T.D. 8348]

RIN 1545–AB73

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to limitations on percentage depletion in the case of oil and gas wells. Changes to the applicable tax law were made by the Tax Reduction Act of 1975 and the Tax Reform Act of 1976. These regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells.

EFFECTIVE DATE: The amendments are effective on January 1, 1975 and apply to oil and gas which is produced after December 31, 1974, and to which gross income from the property is attributable after such year.

FOR FURTHER INFORMATION CONTACT: Lisa A. Fagan, 202–566–4821 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504 (h)) under control number 1545–0919. The average burden associated with the collection of information in this final rule is reflected on forms 1065, 1041, and 706.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Officer for the Internal Revenue Service, Office of Management and Budget, Washington, DC 20503.

Background

On May 13, 1977, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 612, 613, 613A, 702, 703, and 705 of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 501 of the Tax Reduction Act of 1975 (89 Stat. 47) and sections 1901 (a)(86) and 2115 of the Tax Reform Act of 1976 (90 Stat. 1779, 1907). A public hearing was held on August 31, 1977. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

With certain exceptions, the Tax Reduction Act of 1975 repealed percentage depletion for oil and gas produced and sold after December 31, 1974. In general, exemption from the repeal of percentage depletion is provided for certain production of independent producers and royalty owners, sometimes called the small producer exemption. Initially, an exemption of 2,000 barrels of average daily production for oil (or up to 12,000,000 cubic feet for natural gas if the taxpayer so elects) was provided. The amount was reduced by 200 barrels a year for 5 years from 1976 through 1980, when the permanent exemption of 1,000 barrels per day was reached. The depletion rate for oil and gas covered under this exemption was also phased down gradually from 22 percent to 15 percent. In 1981, the rate was 20 percent; in 1982, 18 percent; in 1983, 16 percent; and in 1984 and thereafter the rate is reduced to a permanent level of 15 percent. In the case of secondary or tertiary production prior to 1984, the small producer exemption permits a taxpayer to take percentage depletion at a 22 percent rate on the exempt quantity.

Section 613A provides for certain limitations on the application of the small producer exemption. The deduction resulting from the small producer exemption may not exceed 65 percent of the taxpayer's taxable income from all sources (computed without regard to depletion, net operating loss carrybacks and capital loss carrybacks). Moreover, the exemption relating to average daily production is generally not available to a transferee of any interest in a proven oil or gas property transferred after December 31, 1974. The small producer exemption does not apply to a taxpayer who directly or through a related person sells oil or natural gas, or any product derived from oil or natural gas, through a retail outlet or to certain persons. If the taxpayer or a related person engages in the refining of crude oil and has refinery runs that exceed 50,000 barrels on any day during the taxable year, the small producer exemption is also not available to such taxpayer.

Businesses Under Common Control

A comment on the notice of proposed rulemaking suggested that § 1.613A–3(g) (redesignated as § 1.613A–3(h)) be clarified to indicate which subparagraph is applicable in a case where a group of corporations meets both the definitions of "component members of a controlled group" in subparagraph (1) and "businesses under common control" in subparagraph (2). The regulations have been revised to provide that the rules relating to aggregation of business entities under common control in subparagraph (2) are inapplicable to component members of a controlled group of corporations that are subject to subparagraph (1).

Subparagraph (2) of § 1.613A–3(h) (as redesignated) has also been revised to clarify that in determining whether the requisite ownership interest is held an interest owned by or for a corporation, partnership, trust, or estate is treated as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

An additional example has been provided in redesignated § 1.613A–3(h)(5) to illustrate the inapplicability of the requirement to allocate the tentative quantity among business entities under common control to a retailer entity.

Bonus and Advanced Royalty

The proposed regulations provided that a bonus payment does not qualify for percentage depletion and that advanced royalties, to the extent that actual production during the taxable year is insufficient to earn such royalties, do not qualify for percentage depletion. However, the Supreme Court, in *Commissioner* v. *Engle*, 464 U.S. 206 (1984), held that the adoption of section 613A by the Congress was not intended to disallow percentage depletion on a bonus or advanced royalty payment even when there was no actual production in the year of receipt. In light of the *Engle* case, the final regulations provide rules consistent with Announcement 84–59 (May 18, 1984) allowing percentage depletion for lease bonuses and advanced royalties received or accrued before August 17, 1986.

Sixty-Five Percent Limitation

Several comments indicated that it is improper for the regulations under § 1.613A–4(a) to require a reduction of the taxpayer's taxable income upon which the 65 percent limitation is computed by cost depletion on a property where cost depletion exceeds percentage depletion (before application of any of the limitations in section 613A) and asked that this provision be deleted. This suggestion was not adopted. Section 613A(d)(1) provides that only depletion on production from an oil or gas property which is subject to the provisions of section 613A(c) is to be disregarded. Since section 613A(c) is inapplicable to an oil or gas property the production of which is entitled to cost depletion, the taxpayer's taxable income must be reduced by the cost depletion deduction.

Retailer Exclusion

It was suggested that example (1) in § 1.613A–4(b)(2) be revised to provide that the retailer exclusion is inapplicable to both A and Corporation M if neither A nor Corporation M has gross receipts from retail sales in excess of $5 million even though their aggregate gross receipts exceed $5 million. This suggestion was not adopted. Section 613A(d)(2) provides that the computation of the $5 million is to be based on the combined gross receipts of all retail outlets. Accordingly, the gross receipts from retail outlets owned by the taxpayer or a related person of the taxpayer must be taken into account for this purpose since such retail outlets are

relevant to the determination of retailer status. An additional example has been provided to illustrate the application of this rule.

In response to a comment, example (5) (designated as example (4) in the proposed regulations) has been revised to make it clear that only gross receipts exceeding 5 million dollars from the sale of production by B to Corporation T would result in the characterization of B as a retailer.

Definition of Natural Gas Sold Under a Fixed Contract

In response to several comments, the regulations have been revised to increase the number of situations in which taxpayers may demonstrate by clear and convincing evidence that the price increases after February 1, 1975, do not take increases in tax liabilities into account.

Average Daily Production

Under the proposed regulations, the term "average daily production" means the taxpayer's aggregate production extracted after December 31, 1974, and to which gross income from the property is attributable during the taxable year, divided by the number of days in such year. Thus, under this provision, the applicable exemption amount and percentage depletion rate for production extracted in one year and sold in the next year are determined in accordance with the exemption amount and percentage depletion rate for the year to which gross income from the property is attributable, *i.e.*, the year of sale. Several comments suggested that the year of extraction should be the sole determinant of the exemption amount and the depletion rate since these limitations are expressed in section 613A in terms of the taxpayer's production and not in terms of sale. These comments were not adopted.

Section 613A(c)(1) provides that the allowance for depletion under section 611 shall be computed "in accordance with section 613" with respect to average daily production that does not exceed a taxpayer's depletable oil quantity. Section 613(a) provides that the allowance for depletion under section 611 shall be the specified percentage of the "gross income from the property." "Gross income from the property" in the case of oil and gas wells is the amount for which the taxpayer sells the oil and gas in the immediate vicinity of the well. (See § 1.613–3(a)). Accordingly, while section 613A(c) imposes limitations on the amount of qualified production in each calendar year and the percentage depletion rate for such year, the year to which production is attributable is the year in which percentage depletion is allowable and that is the year in which there is gross income from the property.

Furthermore, failure to adopt the rule in the proposed regulations would result in the exclusion of current-year production sold in a subsequent year from the calculation of percentage depletion with respect to the gross income from the property from such sale in such subsequent year. Thus, the income from the production would not be offset by the depletion deduction attributable to it. A similar mismatching would result in the calculation of percentage depletion with respect to production in excess of the depletable oil quantity under section 613A(c)(7).

The regulatory rule is not inconsistent with the holding in Rev. Rul. 81–168, 1981–1 C.B. 384. That ruling was concerned with whether oil produced in 1974 and sold in 1975 was subject to the limitations of section 613A which became effective on January 1, 1975. On the question of the effective date, the ruling holds that since the oil was extracted in 1974 it is not subject to the section 613A restrictions applicable to oil produced in 1975. The ruling deals solely with the effective date of section 613A and does not purport to interpret the provisions of section 613A. The ruling does not deal with the interaction of sections 613(a) and 613A when production occurs in 1975 or subsequent years.

Secondary or Tertiary Production

Several comments suggested that the term "secondary or tertiary production" should be defined to mean all production recovered from a well after the application of enhanced recovery processes (as distinguished from the increase in production after that application). This suggestion was not adopted because the higher statutory rate was intended to apply only to oil that would not have been produced absent the introduction of such processes. Furthermore, allowing all production to qualify for the higher rate would provide an incentive to introduce secondary or tertiary processes prematurely and in cases where the incremental production would otherwise be uneconomical even at the higher depletion rate.

Allocation of Basis to Partners

Section 613A(c)(7)(D) provides that, in the case of a partnership, the depletion allowance shall be computed separately by the partners based on each partner's proportionate share of the adjusted basis of each partnership oil or gas property. Proposed regulations interpreting this section are being reproposed and these new proposed regulations appear in the same issue of the Federal Register as this final regulation.

Retailer Definition

Section 1.613A–7(r)(2) has been revised to provide that in determining whether a taxpayer satisfies the $5 million small retailer exception of section 613A(d)(2), only sales by the taxpayer to a person specified in section 613A(d)(2)(B)(ii) shall be included (rather than all sales by that person). This provision is consistent with the holding in *Witco Chemical Corp.* v. *United States*, 742 F. 2d 615 (Fed. Cir. 1984). However, in view of the statutory language of section 613A(d)(2), the regulations do not follow the holding of *Witco* with respect to the definition of a retail sale. The statute clearly indicates that the bulk sales exclusion rule extends only to bulk sales of oil and natural gas and not to products derived from oil or natural gas. (See placement of parenthetical in section 613A(d)(2)). This is consistent with the legislative intent which was to exclude producers having large volume sales of crude or natural gas to industrial or commercial users from being deemed to be retailers.

The definition of "any product derived from oil or natural gas" has been revised to mean any product recovered from petroleum refineries or extracted from natural gas in field facilities or natural gas processing plants. As amended, this definition would not treat residue methane gas as a product. This revision is made solely for purposes of the retailer exclusion rule and does not in any way affect or change the cutoff rules for determining gross income from the property.

In response to a comment, the regulations have been revised to make it clear that bulk sales of oil or natural gas to industrial and commercial users are to be disregarded for purposes of determining a retail outlet.

As revised, the regulations define bulk sales of oil or natural gas to mean sales of such items in very large quantities. It is not necessary that the quantity sold be in excess of the quantity customarily sold to be considered sold in bulk.

Refiner Definition

The regulations have been revised to provide that the refinery runs of the taxpayer are to be based on the input into the refining process as opposed to the output. The regulations further provide that a refinery run will include only inputs of crude oil as opposed to

crude oil products (feedstock) into the refining process.

Drafting Information

The principal author of this regulation is Walter H. Woo of the office of Assistant Chief Counsel (Passthroughs and Special Industries) of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required.

List of Subjects

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.701–1 Through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

Par. 2. Paragraph (d) of § 1.612–3 is revised to read as follows:

§ 1.612-3 Depletion; treatment of bonus and advanced royalty.

* * * * *

(d) *Percentage depletion deduction with respect to bonus and advanced royalty.* In lieu of the allowance based on cost depletion computed under paragraphs (a) and (b) of this section, the payees referred to therein may be allowed a depletion deduction in respect of any bonus or advanced royalty for the taxable year in an amount computed on the basis of the percentage of gross income from the property as provided in section 613 and the regulations thereunder. However, for special rules applicable to certain bonuses and advanced royalties received in connection with oil or gas properties, see paragraph (j) of § 1.613A–3.

* * * * *

Par. 3. Section 1.613–1 is revised to read as follows:

§ 1.613-1 Percentage depletion; general rule.

(a) *In general.* In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613(c) and §§ 1.613–3 and 1.613–4, the deduction shall be the percentage of the gross income as specified in section 613(b) and § 1.613–2. The deduction shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). The taxable income shall be computed in accordance with § 1.613–5. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in paragraph (c) of § 1.611–1. For rules with respect to "gross income from the property" and for definition of the term "mining," see §§ 1.613–3 and 1.613–4. For definitions of the terms "property," "mineral deposit," and "minerals," see paragraph (d) of § 1.611–1.

(b) *Denial of percentage depletion in case of oil and gas wells.* Except as otherwise provided in section 613A and the regulations thereunder, in the case of oil or gas which is produced after December 31, 1974, and to which gross income is attributable after that date, the allowance for depletion shall be computed without regard to section 613.

Par. 4. New § 1.613A–0 and the text of §§ 1.613A–2, 1.613A–3, 1.613A–4, and 1.613A–7 are added to read as follows:

§ 1.613A-0. Limitations on percentage depletion in the case of oil and gas wells; table of contents.

This section lists the paragraphs contained in §§ 1.613A–0 through 1.613A–7.

§ 1.613A–1 Post-1974 limitations on percentage depletion in case of oil and gas wells; general rule.

§ 1.613A–2 Exemption for certain domestic gas wells.

§ 1.613A–3 Exemption for independent producers and royalty owners.

(a) General rules.
(b) Phase-out table.
(c) Applicable percentage.
(d) Production in excess of depletable quantity.
(1) Primary production.
(2) Secondary or tertiary production.
(3) Taxable income from the property.
(4) Examples.
(e) Partnerships. [Reserved]
(f) S corporations. [Reserved]
(g) Trusts and estates.
(h) Businesses under common control; members of the same family.
(1) Component members of a controlled group.
(2) Aggregation of business entities under common control.
(3) Allocation among members of the same family.
(4) Special rules.
(5) Examples.
(i) Transfer of oil or gas property.
(1) General rule.
(i) In general.
(ii) Examples.
(2) Transfers after October 11, 1990. [Reserved]
(j) Percentage depletion with respect to bonuses and advanced royalties.
(1) Amounts received or accrued after August 16, 1986. [Reserved]
(2) Amounts received or accrued before August 17, 1986.
(k) Special rules for fiscal year taxpayers.
(l) Information furnished by partnerships, trusts, estates, and operators.

§ 1.613A–4 Limitations on application of § 1.613A–3 exemption.

(a) Limitation based on taxable income.
(b) Retailers excluded.
(c) Certain refiners excluded.

§ 1.613A–5 Election under section 613A (c)(4).

§ 1.613A–6 Recordkeeping requirements.

(a) Principal value of property demonstrated.
(b) Production from secondary or tertiary processes.
(c) Retention of records.

§ 1.613A–7 Definitions.

(a) Domestic.
(b) Natural gas.
(c) Regulated natural gas.
(d) Natural gas sold under fixed contract.
(e) Qualified natural gas from geopressured brine. [Reserved]
(f) Average daily production.
(g) Crude oil.
(h) Depletable oil quantity.
(i) Depletable natural gas quantity.
(j) Barrel.
(k) Secondary or tertiary production.
(l) Controlled group of corporations.

(m) Related person.
(n) Transfer.
(o) Transferee.
(p) Interest in proven oil or gas property.
(q) Amount disallowed.
(r) Retailer.
(s) Refiner.

§ 1.613A–2 Exemption for certain domestic gas wells.

(a) The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to:

(1) Regulated natural gas (as defined in paragraph (c) of § 1.613A–7),

(2) Natural gas sold under a fixed contract (as defined in paragraph (d) of § 1.613A–7), and

(3) Any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well within the meaning of former section 613(b)(1)(A) (as in effect before enactment of the Tax Reduction Act of 1975),

and 22 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(b) For special rules applicable to partnerships, S corporations, trusts, and estates, see paragraphs (e), (f), and (g) of § 1.613A–3.

(c) The provisions of this section may be illustrated by the following examples:

Example 1. A is a producer of natural gas which is sold by A under a contract in effect on February 1, 1975. The contract provides for an increase in the price of the gas sold under the contract to the highest price paid to a producer for natural gas in the area. The gas sold by A qualifies under section 613A(b)(1)(B) for percentage depletion as gas sold under a fixed contract until its price increases, but is presumed not to qualify thereafter unless A demonstrates by clear and convincing evidence that the price increase in no event takes increases in tax liabilities into account.

Example 2. B is a producer of natural gas which is sold by B under a contract in effect on February 1, 1975. The contract provides that beginning January 1, 1980, the price of the gas may be renegotiated. Such a provision does not disqualify gas from qualifying for the exemption under section 613A(b)(1)(B) with respect to the gas sold prior to January 1, 1980. However, gas sold on or after January 1, 1980, does not qualify for the exemption whether or not the price of the gas is renegotiated.

§ 1.613A–3 Exemption for independent producers and royalty owners.

(a) *General rules.* (1) Except as provided in section 613A(d) and § 1.613A–4, the allowance for depletion under section 611 with respect to oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after that date, shall be computed in accordance with section 613 with respect to:

(i) So much of the taxpayer's average daily production (as defined in paragraph (f) of § 1.613A–7) of domestic crude oil (as defined in paragraphs (a) and (g) of § 1.613A–7) as does not exceed the taxpayer's depletable oil quantity (as defined in paragraph (h) of § 1.613A–7), and

(ii) So much of the taxpayer's average daily production of domestic natural gas (as defined in paragraphs (a) and (b) of § 1.613A–7) as does not exceed the taxpayer's depletable natural gas quantity (as defined in paragraph (i) of § 1.613A–7), and the applicable percentage (determined in accordance with the table in paragraph (c) of this section shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(2) Except as provided in section 613A(d) and § 1.613A–4, the allowance for depletion under section 611 with respect to oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after that date and before January 1, 1984, shall be computed in accordance with section 613 with respect to:

(i) So much of the taxpayer's average daily secondary or tertiary production (as defined in paragraph (k) of § 1.613A–7) of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), and

(ii) So much of the taxpayer's average daily secondary or tertiary production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), and 22 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

(3) For purposes of this section, there shall not be taken into account any production with respect to which percentage depletion is allowed pursuant to section 613A(b) or is not allowable by reason of section 613A(c)(9), as in effect prior to the Revenue Reconciliation Act of 1990.

(4) The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, a calendar year taxpayer, owns an oil producing property with 100,000 barrels of production to which income was attributable for 1975 and a gas producing property with 1,200,000,000 cubic feet of production to which income was attributable for 1975. Under section 613A(c)(4), the oil equivalent of 1,200,000,000 cubic feet of gas is 200,000 barrels, bringing A's total production of oil and gas to which income was attributable for 1975 to the equivalent of 300,000 barrels of oil. A's average daily production was 821.92 barrels (300,000 barrels÷ 365 days) which is less than the depletable oil quantity (2,000 barrels) before reduuction for any election by A under section 613A(c)(4). Accordingly, A may make an election with respect to A's entire gas production and thereby be entitled to percentage depletion with respect to A's entire 1975 income from production of oil and gas. A's allowable depletion pursuant to section 613A(c) and A's oil and gas properties would be the amount determined under section 613(a) computed at the 22 percent rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act 1990, for 1975.

Example 2. B, a calendar year taxpayer, owns oil producing properties with 365,000 barrels of production to which income was attributable for 1975. B was a retailer of oil and gas for only the last 3 months of 1975. B's average daily production for 1975 was 1,000 barrels (365,000 barrels÷365 days).

Example 3. C, a calendar year taxpayer, owns property X with 500,000 barrels of primary production to which income was attributable for 1975 and property Y with 200,000 barrels of primary production to which income was attributable for 1975. Property Y had been transferred to C on January 1, 1975, on which date it was a proven property. Therefore, the exemption under section 613A(c)(1) does not apply to C with respect to production from property Y. In determining C's depletable oil quantity for the year, the production from property Y is not taken into account. Thus, C's average daily prduction for 1975 was 1,369.86 barrels (500,000 barrels÷375).

Example 4. D owns an oil property with producing wells X and Y on it. In 1975 D converts well X into an injection well. Prior to the application of the secondary process, it is estimated that without the application of the process the annual production from well X would have been 50x barrels of oil and from well Y would have been 100x barrels of oil. For the taxable year in which injection is commenced production from well X is 10x barrels and from well Y is 180x barrels. Forty x barrels of oil [190x barrels of oil (actual production from the property)—150x barrels (estimate of primary production from the property)] qualify as secondary production.

Example 5. E, a calendar year taxpayer, owns a domestic oil well which produced 100,000 barrels of oil in 1980. The proceeds from the sale of 15,000 barrels of that production are not includible in E's income until 1981. The 15,000 barrels produced in 1980 are included in E's average daily production for 1981 and excluded from such production for 1980. The tentative quantity and the percentage depletion rate for 1981 are applicable to the 15,000 barrels of oil.

(b) *Phase-out table.* For purposes of section 613A(c)(3)(A)(i) and § 1.613A–7(h) (relating to depletable oil quantity)—

In the case of production after 1974 and to which gross income from the property is attributable for the calendar year:	The tentative quantity in barrels per day is:
1975	2,000
1976	1,800
1977	1,600
1978	1,400
1979	1,200
1980 and thereafter	1,000

(c) *Applicable percentage.* For purposes of section 613A(c)(1) and paragraph (a) of this section—

In the case of production after 1974 and to which gross income from the property is attributable for the calendar year:	The applicable percentage is:
1975	22
1976	22
1977	22
1978	22
1979	22
1980	22
1981	20
1982	18
1983	16
1984 and thereafter	15

(d) *Production in excess of depletable quantity*—(1) *Primary production.* (i) If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance for depletion pursuant to section 613A(c)(1)(A) and paragraph (a)(1)(i) of this section with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil produced from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (c) of this section) as the amount of his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(ii) If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance for depletion pursuant to section 613A(c)(1)(B) and paragraph (a)(1)(ii) of this section with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's natural gas produced from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (c) of this section) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(2) *Secondary or tertiary production.* (i) If the taxpayer's average daily secondary or tertiary production of domestic crude oil exceeds his depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), the allowance for depletion pursuant to section 613A(c)(6)(A)(i), as in effect prior to the Revenue Reconciliation Act of 1990, and paragraph (a)(2)(i) of this section with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's secondary or tertiary production of oil from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (a)(2) of this section) as the amount of his depletable oil quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990) bears to the aggregate number of barrels representing the average daily secondary or tertiary production of domestic crude oil of the taxpayer for such year.

(ii) If the taxpayer's average daily secondary or tertiary production of domestic natural gas exceeds his depletable natural gas quantity (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990), the allowance for depletion pursuant to section 613A(c)(6)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990, and paragraph (a)(2)(ii) of this section with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable pursuant to section 613(a) for all of the taxpayer's secondary or tertiary production of natural gas from the property during the taxable year (computed as if section 613 applied to all of the production at the rate specified in paragraph (a)(2) of this section) as the amount of his depletable natural gas quantity in cubic feet (determined without regard to section 613A(c)(3)(A)(ii), as in effect prior to the Revenue Reconciliation Act of 1990) bears to the aggregate number of cubic feet representing the average daily secondary or tertiary production of domestic natural gas of the taxpayer for such year.

(iii) This paragraph (d)(2) shall not apply after December 31, 1983.

(3) *Taxable income from the property.* If both oil and gas are produced from the property during the taxable year, then for purposes of section 613A(c)(7) (A) and (B) and paragraph (d) of this section the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income from the property during the taxable year from each. If both gas with respect to which section 613A(b) and § 1.613A–2 apply and oil or gas with respect to which section 613A(c) and this section apply are produced from the property during the taxable year, then for purposes of section 613A(d)(1) and paragraph (a) of § 1.613A–4 the taxable income from the property, in applying the taxable income limitation in section 613(a), shall also be so allocated. In addition, if both primary production and secondary or tertiary production (to which gross income from the property is attributable before January 1, 1984) are produced from the property during the taxable year and the total amount of production is in excess of the depletable quantity, then for purposes of paragraph (d) of this section the taxable income from the property, in applying the taxable income limitation in section 613(a), shall also be so allocated.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A owns Y and Z oil producing properties. With respect to properties Y and Z, the percentage depletion allowable pursuant to section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5)) for 1975 was $100x and $200x, respectively. A's average daily production for 1975 was 4,000 barrels. A's allowable depletion pursuant to section 613A(c) with respect to property Y was $50x ($100x depletion × 2,000 depletable oil quantity/ 4,000 average daily production). A's allowable depletion pursuant to section 613A(c) with respect to property Z was $100x ($200x depletion × 2,000 depletable oil quantity/ 4,000 average daily production).

Example 2. B owns gas producing properties which had secondary gas production for 1975 of 3,285,000,000 cubic feet, which under section 613A(c)(4) is equivalent to 547,500 barrels of oil. B's average daily secondary production of gas for 1975 was equivalent to 1,500 barrels (547,500 barrels ÷ 365). B elected to have section 613A(c)(4) apply to the gas production. With respect to the production, the percentage depletion allowable pursuant to section

613(a) (computed at the rate specified in section 613A(c)(6)(A), as in effect prior to the Revenue Reconciliation Act of 1990) was $150x. B also owns an oil producing property which had primary oil production for 1975 of 365,000 barrels. B's average daily production of oil for 1975 was 1,000 barrels (365,000÷365). With respect to the oil property, the percentage depletion allowable pursuant to section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) was $100x. B's depletable oil quantity for 1975 was 500 barrels (2,000 barrels tentative quantity −1,500 barrels average daily secondary production). B's allowable depletion pursuant to section 613A(c) with respect to the oil property was $50x ($100x depletion×500 depletable oil quantity/ 1,000 average daily production).

Example 3. Assume the same facts as in *Example 2* except that B's primary production was 6,000,000 cubic feet of natural gas daily rather than its equivalent under section 613A(c)(4) of 1,000 barrels of oil and that B elected to have that section apply to such gas. B's allowable depletion pursuant to section 613A(c) with respect to B's primary production is $50x, the same as in example (2).

Example 4. C is a partner with a one-third interest in Partnerships CDE and CFG with each partnership owning a single oil property. C's percentage depletion allowable under section 613(a) (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the the Revenue Reconciliation Act of 1990) for 1975 was $20x with respect to 495,000 barrels (his allocable share of Partnership CDE production) and $40x with respect to 600,000 barrels (his allocable share of Partnership CFG production). C's average daily production is 3,000 barrels (1,095,000 total production÷365 days). C's allowable depletion pursuant to section 613A(c) with respect to C's share of the production of Partnership CDE is $13.33x ($20x depletion×2,000 depletable oil quantity/ 3,000 average daily production). C's allowable depletion pursuant to section 613A(c) with respect to C's share of the production of Partnership CFG is $26.67x ($40x depletion×2,000 depletable oil quantity/ 3,000 average daily production). See § 1.613A–3(e) for the rules on computing depletion in the case of a partnership.

Example 5. H owns a property which, during H's fiscal year which began on June 1, 1975, and ended on May 31, 1976, produced gas qualifying under section 613A(b) and oil qualifying under section 613A(c). For the fiscal year H's gross income from the property was $400x, of which $100x was from gas and $300x was from oil. For the oil his gross income from the property for the period beginning June 1, 1975, and ending December 31, 1975, was $100x and for the 1976 portion of the fiscal year was $200x. The percentage depletion allowance (before applying the 50 percent limitation of section 613(a) or the 65 percent limitation of section 613A(d)(1)) was $22x for the gas, $22x for the oil in 1975, and $44x for the oil in 1976. H's taxable income from the property for the fiscal year was $100x. In accordance with paragraph (d)(3) of this section, the taxable income from the property is allocated $25x to the gas:

$$\left[\text{\$100 x taxable income from the property}\left(\frac{\text{\$100x gross income from gas from the property}}{\text{\$400x total gross income from the property}}\right)\right]$$

$25x to the 1975 oil:

$$\left[\text{\$100x taxable income from the property}\left(\frac{\text{\$100x gross income from 1975 oil from the property}}{\text{\$400x total gross income from the property}}\right)\right]$$

and $50x to the 1976 oil:

$$\left[\text{\$100x taxable income from the property}\left(\frac{\text{\$200x gross income from 1976 oil from the property}}{\text{\$400x total gross income from the property}}\right)\right]$$

With the application of the 50 percent of taxable income from the property limitation, the allowable percentage depletion (computed without reference to section 613A) is limited to $12.50x for the gas, $12.50x for the oil in 1975, and $25x for the oil in 1976.

(e) *Partnerships.* [Reserved]

(f) *S corporations.* [Reserved]

(g) *Trusts and estates.*

(1) In the case of production from domestic oil and gas properties held by a trust or estate, the depletion allowance under section 611 shall be computed initially by the trust or estate. The determination of whether cost or percentage depletion is applicable shall be made at the trust or estate level, but such determination shall not result in the disallowance of cost depletion to a beneficiary of a trust or estate for whom cost depletion exceeds percentage depletion. The limitations contained in section 613A (c) and (d), other than section 613A(d)(1), shall be applied at the trust or estate level in its computation of percentage depletion pursuant to section 613A and shall also be applied by a beneficiary with respect to any percentage depletion apportioned to the beneficiary by the trust or estate. The limitation of section 613A(d)(1) shall be applied by each taxpayer (*i.e.*, trust, estate or beneficiary) only with respect to its allocable share of percentage depletion under section 611(b) (3) or (4). For purposes of adjustments to the basis of oil or gas properties held by a trust or estate, in the absence of clear and convincing evidence to the contrary, it shall be presumed that no beneficiary is affected by any section 613A (d) limitations or by the rules contained in section 613A(c)(8) and (9) (relating to businesses under common control and members of the same family and to transfers, respectively), as in effect prior to the Revenue Reconciliation Act of 1990, or has any oil or gas production from sources other than the trust or estate.

(2) The provisions of this paragraph may be illustrated by the following examples.

Example 1. A is the income beneficiary of a trust the only asset of which is a domestic producing oil property. The trust instrument requires that an amount which equals 10 percent of the gross income from the property be set aside annually as a reserve for depletion. In 1975 the property a had production of 1,095,000 barrels of oil. The trust's gross income from the property in 1975 was $30,000x. In that year, after setting aside

$3,000x of income for the reserve for depletion, the trustee distributed the remaining income to A which represented 80 percent of the trust's net income. The percentage depletion computed by the trust with respect to the production (computed as if section 613 applied to all of the production at the rate specified in section 613A(c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) for 1975 was $6,600x. The trust's average daily production for 1975 was 3,000 barrels (1,095,000 ÷ 365 days). The trust's allowable depletion pursuant to section 613A(c) with respect to the production was $4,400x:

$$\left[\text{\$6,600x depletion} \left(\frac{\text{2,000 depletable oil quantity}}{\text{3,000 average daily production}}\right)\right]$$

Pursuant to § 1.611–1(c)(4)(ii), the percentage depletion of $4,400x was apportioned between the trustee and A so that the trustee received $3,000x (an amount equal to the amount of income set aside for the reserve for depletion) and A received $1,400x of the depletion deduction. The $1,400x depletion received by A is attributable to 80 percent of the trust's depletable oil quantity, *i.e.*, 1,600 barrels per day.

Example 2. B, a retailer of oil and gas, is the income beneficiary of a trust the only asset of which is a domestic producing oil property. In 1975 the trustee distributed one-half of the trust's net income and accumulated the other one-half for the benefit of the remainderman. One-half of the percentage depletion computed by the trust with respect to the production from the property was apportioned to B. Since B is a retailer of oil and gas, B is not entitled to deduct any of the percentage depletion apportioned to B. However, B is entitled to take cost depletion with respect to one-half of the production from the oil property, notwithstanding the fact that depletion was computed at the trust level on the basis of percentage depletion.

(h) *Businesses under common control; members of the same family*—(1) *Component members of a controlled group.* For purposes of only the depletable quantity limitations contained in section 613A (c) and this section, component members of a controlled group of corporations (as defined in paragraph (1) of § 1.613A–7) shall be treated as one taxpayer. Accordingly, the group shares the depletable oil (or natural gas) quantity prescribed for a taxpayer for the taxable year and the secondary production of a member of the group will reduce the group's depletable quantity prior to its allocation among members in proportion to their production.

(2) *Aggregation of business entities under common control.* If 50 percent or more of the beneficial interest in any two or more entities (*i.e.*, corporations, trust, or estates) is owned by the same or related persons (taking into account only each person who owns at least 5 percent of the beneficial interest in an entity and with respect to such person his or her entire interest) as defined in paragraph (m) (2) of § 1.613A–7, the tentative quantity determined under the table in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) for a taxpayer for the taxable year shall be allocated among all such entities in proportion to their respective production. This paragraph (h)(2) shall not apply to component members of a controlled group of corporations (as defined in § 1.613A–7 (1)). For purposes of determining ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(3) *Allocation among members of the same family.* In the case of individuals who are members of the same family, the tentative quantity determined under the table in section 613A (c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) for a taxpayer for the taxable year shall be allocated among such individuals in proportion to the respective production of barrels of domestic crude oil (and the equivalent in barrels to the cubic feet of natural gas determined under paragraph (h)(4)(ii) of this section) during the period in question by such individuals.

(4) *Special rules.* For purposes of section 613A (c)(8) and this section—

(i) The family of an individual includes only his spouse and minor children, and

(ii) Each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(5) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example 1. A owns 50 percent of the stock of Corporation M and 50 percent of the stock of Corporation N. Both corporations are calendar year taxpayers. For 1975 Corporation M's production of domestic crude oil was 8,000,000 barrels (365,000 of which was secondary production) and Corporation N's was 2,000,000 barrels (all of which was primary production). The tentative quantity (2,000 barrels per day) determined under the table in section 613A (c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) must be allocated between the two corporations in proportion to their respective barrels of production of domestic crude oil during the taxable year. Corporation M's allocable share of the tentative quantity is 1,600 barrels:

$$\left[2{,}000 \left(\frac{8{,}000{,}000}{10{,}000{,}000}\right)\right]$$

and Corporation N's allocable share is 400 barrels:

$$\left[2{,}000 \left(\frac{2{,}000{,}000}{10{,}000{,}000}\right)\right]$$

With respect to M's primary production, M's depletable oil quantity is 600 barrels (1,600 barrels – 1,000 barrels [365,000 secondary production ÷ 365 days]). N's depletable oil quantity, unaffected by M's secondary production, is 400 barrels.

Example 2. Assume the same facts as in *Example 1* except that Corporation M is a retailer and Corporation N is not selling its oil through Corporation M. Because Corporation M is a retailer, no portion of the tentative quantity is allocated to Corporation M. Accordingly, Corporation N's depletable oil quantity is the entire 2,000 barrels per day because section 613A (c), which contains the

allocation requirements, is inapplicable to retailers.

Example 3. Corporations O and P are members of a controlled group and are treated as one taxpayer as provided in paragraph (h)(1) of this section. Corporation O owns oil properties A and B. Property A had primary production for 1975 of 800,000 barrels of oil. Property B had secondary production for 1975 of 365,000 barrels of oil. Corporation P owns oil property C which had primary production of 660,000 barrels for 1975. The allowable percentage depletion with respect to property B's secondary production was $360x. The controlled group's average daily production was 4,000 barrels [(800,000 + 660,000) ÷ 365]. The controlled group's depletable oil quantity was 1,000 barrels [2,000 tentative quantity − 1,000 average daily secondary production (365,000 ÷ 365)]. The allowable percentage depletion pursuant to section 613 (a) (computed as if section 613 applied to all of the production at the rate specified in section 613A (c)(5), as in effect prior to the Revenue Reconciliation Act of 1990) was $800x with respect to production from property A and $660x with respect to production from property C.

Corporation O's allowable depletion pursuant to section 613A (c) with respect to property B's secondary production (for which depletion is allowable before primary production) for 1975 was $360x. Corporation O's allowable depletion pursuant to section 613A (c) with respect to property A was $200x:

$$\left[\$800x \text{ depletion} \left(\frac{\text{1,000 depletable oil quantity}}{\text{4,000 average daily production}} \right)\right].$$

Therefore, Corporation O's allowable depletion pursuant to section 613A (c) was $560x ($360x relating to property B plus $200x relating to property A). Corporation P's allowable depletion pursuant to section 613A (c) with respect to property C was $165x:

$$\left[\$660x \text{ depletion} \left(\frac{\text{1,000 depletable oil quantity}}{\text{4,000 average daily production}} \right)\right]$$

(i) *Transfer of oil or gas property*—(1) *General rule*—(i) *In general.* Except as provided in paragraph (i)(2) of this section, in the case of a transfer (as defined in paragraph (n) of § 1.613A–7) of an interest in any proven oil or gas property (as defined in paragraph (p) of § 1.613A–7), paragraph (a)(1) of this section shall not apply to a transferee (as defined in paragraph (o) of § 1.613A–7) with respect to production of crude oil or natural gas attributable to such interest, and such production shall not be taken into account for any computation by the transferee under this section.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. On January 1, 1975, Individual A transfers proven oil properties to Corporation M in an exchange to which section 351 applies for shares of its stock. Since there is no allocation requirement pursuant to section 613A(c)(8) between A (the transferor) and Corporation M (the transferee), the transfer of the proven properties by A is a transfer for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990) and percentage depletion is not allowable to Corporation M with respect to such properties.

Example 2. On January 1, 1975, Corporation N sells proven oil property to Corporation O, its wholly-owned subsidiary. Because the transfer was made between corporations which are members of the same controlled group of corporations, Corporation O is entitled to percentage depletion with respect to production from the property so long as the tentative oil quantity is allocated between the two corporations. If Corporation N were a retailer, the tentative oil quantity would not be required to be allocated between the two corporations (see example (2) of § 1.613A–3(h)(5)), and Corporation O would not be entitled to percentage depletion on the production from the property.

Example 3. B, owner of a proven oil property, died on January 1, 1975. Pursuant to the provisions of B's will, B's estate transferred the oil property on April 1, 1975, into a trust. On July 1, 1976, pursuant to a requirement in B's will, the trustee distributed the oil property to C. The transfer of the oil property by the estate to the trust and the later distribution of the property by the trust to C are transfers at death. Therefore, the trust was entitled to compute percentage depletion with respect to the production from the oil property when the property was owned by the trust and C is entitled to percentage depletion with respect to production from the oil property after the trust distributes the property to C.

Example 4. On January 1, 1975, property which produces oil resulting from secondary processes was transferred to D. The exemption under section 613(c) applies to D because section 613A(c)(9) (relating to transfers of oil or gas property), as in effect in 1975, does not apply with respect to secondary production. In addition, even if at the time of the transfer the production from the property was primary and D applied secondary processes to the property transferred and obtained secondary production, D would be entitled to percentage depletion with respect to the secondary production.

Example 5. On July 1, 1975, E and F entered into a contract whereby F is given the privilege of drilling a well on E's unproven property, and if F does so F is to own the entire working interest in the property until F has recoverd all the costs of drilling, equipping, and operating the well. Therefore, 50 percent of the working interest would revert to E. In accordance with the contract, 50 percent of the working interest reverted to E on July 1, 1976. F is entitled to percentage depletion because the transfer of the working interest to F occurred when the property was unproven on July 1, 1975, which is the date of the contract establishing F's right to working interest. E is entitled to percentage depletion with respect to this working interest since the reversion of such interest with respect to which E was eligible for percentage depletion is not a transfer. However if on the date of the contract E's property was proven (although not proven when E acquired the

property), F would not be entitled to claim percentage depletion with respect to any of the working interest income. Nonetheless, E would still be entitled to percentage depletion with respect to E's working interest since the reversion of the interest is not a transfer.

Example 6. On January 1, 1975, G subleased an oil property to H, retaining a ⅛ royalty interest with the option to convert G's royalty into a 50-percent working interest. On July 1, 1975, the property was proven and on July 1, 1976, G exercised G's option. G is entitled to claim percentage depletion with respect to G's working interest since the conversion of the royalty interest which is eligible for percentage depletion pursuant to section 613A(c) into an interest which constituted part of an interest previously owned by G is not a transfer pursuant to § 1.613A–7(n)(8).

Example 7. I and J (both of whom are minors) are beneficiaries of a trust which owned a proven oil property. The oil property was transferred to the trust on January 1, 1975, by the father of I and J. For 1975, the trustee allocated all the income form the oil property to I. For 1976, the trustee allocated all the income from such property to J. On January 1, 1977, the trustee distributed the property to I and J as equal tenants in common. Since I, J, and their father are members of the same family within the meaning of section 613A(c)(8)(C), the transfer of the property to the trust by the father, the shifting of income between I and J, and the distribution of the oil property by the trust to I and J are not transfers for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990). However, the distribution of the oil property will constitute a transfer to each distributee on the date on which the distributee reaches majority under state law.

Example 8. In 1975, K transferred a proven oil property productive at 5,000 feet to L. Subsequent to the transfer, L drilled new wells on the property finding another reservoir at 10,000 feet. The two zones were combined under section 614 as a single property. L is not entitled to percentage depletion on the gross income attributable to the production from the productive zone at 5,000 feet, but is entitled to percentage depletion on the gross income attributable to the production from the productive zone at 10,000 feet because that zone was not part of the proven property until the date of development expenses by L, which is after the date of the transfer. Accordingly, L's maximum allowable percentage depletion deduction for 1975 would be zero percent of gross income from the property with respect to the production from 5,000 feet, plus 22 percent of gross income from the property with respect to the production from 10,000 feet. This maximum deduction would be subject to the limitation provided for in section 613(a), *i.e.*,50 percent of "taxable income from the property (computed without allowance for depletion)," such taxable income being the overall taxable income resulting from the sale of production from both zones, and would also be subject to the limitations provided in section 613A. The production from the productive zone at 5,000 feet is not taken into account in determining K's depletable oil quantity for the year.

Example 9. On July 1, 1975, M transferred an oil property with a fair market value of $100x to N. On February 1, 1976, N commenced production of oil from the property. The fair market value of the property on February 1, 1976, as reduced by actual costs incurred by N for equipment and intangible drilling and development costs, was $300x. Because the value of the property on transfer was not 50 percent or more of the value on February 1, 1976, the property transferred to N was not a proven property (see § 1.613A–7(p)). However, if there had been only marginal production from the property so that the fair market value of the property on February 1, 1976, was $40x rather than $300x, the property transferred to N would have been a proven property provided the other requirements of a proven property were met.

Example 10. O is the owner of a remainder interest in a trust created January 1, 1970. On that date, the trust held oil and gas properties. On January 1, 1976, O's interest for the first time entitled O to the trust's income from oil and gas production from the properties. The reversion of the remainder interest to O is not a transfer (see § 1.613A–7(n)(7)). Accordingly, the transfer of the interest in oil and gas property to O is deemed to have occurred on January 1, 1970, the date O's interest was created.

Example 11. On January 1, 1976, P, Q, and R entered into a partnership for the acquisition of oil and gas leases. It was agreed that the sharing of income will be divided equally among P, Q, and R. However, it was further agreed that with respect to the first production obtained from each property acquired P will receive 80 percent thereof and Q and R each will receive 10 percent thereof until $100x has been received by P. Assume these allocations have substantial economic effect under section 704 of the Code and the regulations thereunder. On February 1, 1976, Partnership PQR acquired an unproven property and production therefrom was shared pursuant to the partnership agreement. P is entitled to percentage depletion with respect to the production allocated to him since the transfer of right to the production is deemed to have been made on the date the partnership agreement became applicable to the specific property, at which time the property was unproven. See § 1.613A–7(n) for rules relating to the definition of transfer. Similarly, when $100x has been obtained and Q and R each commence receiving 33⅓ percent of the revenue, Q and R are entitled to percentage depletion with respect to their entire interests. However, if the property had been proven when acquired by the partnership, P, Q, and R would not be entitled to claim any percentage depletion with respect to production from the property.

Example 12. On December 30, 1960, S placed producing oil property in trust for the benefit of S's nephew, T, and executed a trust agreement which required the trustee of the trust to transfer the oil property to T on January 1, 1975. The trustee's transfer of the oil property to T on January 1, 1975, is deemed to have occurred on December 30, 1960 (see § 1.613A–7(n)). Since the transfer is deemed to have occurred before January 1, 1975, section 613A(c) applies with respect to the production from the oil property. Moreover, if the trustee was not required to transfer the oil property on a specific date but was given discretion to select the date of transfer, the transfer of such property would still be deemed to have occurred on December 30, 1960. However, the result would be different if the trust agreement had provided that the trustee, at the trustee's discretion, may transfer the oil property to T on January 1, 1975, but is not under any obligation to transfer the property to T on January 1, 1975, or on any other date. Since the transfer was discretionary, the date of the actual transfer governs.

Example 13. On January 1, 1974, U acquired an oil property. On February 1, 1974, U granted V an option to purchase the oil property. V exercised V's option on March 2, 1975, and subsequently the oil property was conveyed to V. The date of the transfer was March 2, 1975, the day V exercised V's option (on which date both parties were bound).

Example 14. On July 1, 1974, W executed a deed conveying oil and gas property to X. W delivered the deed to X on January 1, 1975. Under state law, the mere execution of the deed without delivery did not give X any rights in the property. Title to the oil property passed to X on the date of delivery. Therefore, the date of transfer was January 1, 1975.

Example 15. Y, owner of a proven oil property, transferred Y's interest therein on July 25, 1975, to a revocable trust of which Y is treated as the owner under section 676. Y is not deemed a transferee and section 613A(c) applies to Y because immediately preceding the transfer Y was entitled to percentage depletion on the production from the property.

Example 16. On January 1, 1975, a proven oil property was transferred to Z; therefore, section 613A(c)(1) did not apply with respect to the production from such property. After Z's death, neither Z's estate nor its beneficiaries are entitled to percentage depletion with respect to the decedent's oil property since Z was a transferee of proven property.

Example 17. Partnership ABC, owner of proven oil and gas properties, admitted D as a partner in 1975 in consideration of cash. The shares of Partners A, B, and C of the partnership income were proportionately reduced so that D had a 25 percent interest in the income. D is not entitled to percentage depletion with respect to D's share of partnership oil and gas income because D is a transferee for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990). See § 1.613A–7(n).

Example 18. On January 1, 1975, E and F formed Partnership EF to which E contributed proven oil property. For 1975, pursuant to the

partnership agreement 70 percent of the mineral income from the property was allocated to E and 30 percent of the mineral income from the property was allocated F. F is not entitled to percentage depletion with respect to production from the property because F is a transferee of an interest in proven property. However, E is not a transferee of an interest in proven property because E was entitled to percentage depletion on the oil produced with respect to the property immediately before the transfer. Therefore, E is entitled to percentage depletion with respect to the income allocated to E. However, if in 1976 the partnership agreement were revised so that E's interest in the income was increased by 10 percent, E would not be entitled to percentage depletion with respect to the additional 10 percent interest because E is a transferee with respect thereto.

Example 19. G is the owner of a ⅓ interest in a partnership owning a proven oil property, and as such is entitled to ⅓ of the income from the property. G received a distribution on July 1, 1975, from the partnership of a ⅓ interest in the proven oil property. Although the transfer of such interest is a transfer for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), G is still entitled to percentage depletion with respect to the ⅓ interest in the oil production from the property since G was entitled to percentage depletion on such production with respect to such property immediately before the transfer. If the entire property were distributed to G, G's percentage depletion allowance would still be based on only ⅓ of the oil produced.

Example 20. H and I contributed property X and property Y respectively to Partnership HI. The partnership agreement provides that all the gross income from property X is to be allocated to H and all the gross income from property Y is to be allocated to I. Assume these allocations have substantial economic effect under section 704 of the Code and the regulations thereunder. For 1975 H and I each received $100x gross income. Although the contributions of the properties by H and I are transfers for purposes of section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), both H and I are entitled to percentage depletion with respect to the $100x income received since each was entitled to a percentage depletion allowance with respect to the property contributed immediately before the transfer. However, if no special allocation of income were made but H and I are to share equally in the income from both properties, each would be entitled to a depletion allowance based on only one-half of the production with respect to the property he had contributed. If property X produces $100x of gross income from the property and property Y produces $200x of gross income from the property, H would be entitled to percentage depletion but only with respect to $50x (50 percent of $100x) of gross income from the property and I would be entitled to percentage depletion with respect to $100x (50 percent of $200x) of gross income from the property.

(2) *Transfers after October 11, 1990.* [Reserved]

(j) *Percentage depletion with respect to bonuses and advanced royalties*—(1) *Amounts received or accrued after August 16, 1986.* [Reserved]

(2) *Amounts received or accrued before August 17, 1986.* (i) A lease bonus or advanced royalty received or accrued before August 17, 1986, with respect to oil or gas property shall be taken into account for purposes of percentage depletion in the taxable year such payment is includible in income. Percentage depletion shall be determined according to the depletion rate and depletable oil and natural gas limitations of section 613A(c)(1) and § 1.613A–3(a) applicable on the date of such inclusion. The payee of the bonus or advanced royalty shall apply the depletable oil and natural gas quantity limitations by attributing a specific number of barrels of oil or cubic feet of natural gas to the lease bonus or advanced royalty. The determination of the number of barrels of oil or cubic feet of natural gas shall be based on the average price of oil or gas produced from the property during the taxable year. If oil or gas is not produced from the property during that year, or if the oil or gas is not sold before conversion or transportation from the premises, the number of barrels of oil or cubic feet of gas shall be based on a price (as of the date of the bonus or advanced royalty) determined under the constructive pricing principles applicable under section 613(a), generally the representative market or field price. In the case where no oil or gas has been produced in such year, the constructive price applicable to the type of production expected to be produced from the property shall apply. However, if the first actual production from the property in a later year is different from the type of production upon which the conversion of the bonus or advanced royalty into barrels of oil or cubic feet of gas was based and the period of limitations on assessment has not expired (see section 6501) for the year in which the lease bonus or advanced royalty is includible in income, the taxpayer should promptly file an amended return, if necessary. In the amended return the conversion shall be recomputed taking into account the pricing applicable to the actual production. For purposes of paragraph (f) of § 1.613A–7, the number of barrels of oil or cubic feet of natural gas attributed to a lease bonus or advanced royalty is deemed to have been extracted on the date the bonus or advanced royalty is includible in the payee's income.

(ii) For purposes of applying the depletable oil and natural gas quantity limitations in taxable years after the year in which the advanced royalty payment is included in income, the payee of an advanced royalty which is recouped out of future production shall not include production which recoups the advanced royalty in such later years. The payor of a bonus or advanced royalty that is not recouped from future production may reduce the production to be taken into account for purposes of applying the depletable quantity limitations in each year in which the payor's gross income from the property is adjusted under § 1.613–2(c)(5)(ii) to reflect the bonus paid by an amount determined by dividing the portion of the bonus required to be excluded from the payor's gross income from the property by the price of oil or gas applicable to the payee for converting the bonus into barrels of oil or cubic feet of gas.

(iii) See § 1.612–3 (a)(2) and (b)(2) for rules relating to the requirement that certain depletion deductions allowed with respect to lease bonuses and advanced royalties be restored to income.

(k) *Special rules for fiscal year taxpayers.* In applying this section to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(l) *Information furnished by partnerships, trusts, estates, and operators.* Each partnership, trust, or estate producing domestic crude oil or natural gas, and each operator of a well from which domestic crude oil or natural gas was produced, shall provide each partner, beneficiary, or person holding a nonoperating interest, as the case may be, with all information in its possession necessary to determine the amount of his depletion deduction allowable with respect to such crude oil or natural gas. For example, for each property a partnership is required to provide each partner with partnership information relating to the partner's allocable share of gross income from the property, the partner's allocable share of operating expenses, the partner's allocable share of depreciation, the partner's share of allocated overhead, the partner's share of estimated reserves, the partner's share of production in barrels or cubic feet for the taxable year, the partner's original share of the partnership adjusted basis of properties producing domestic crude oil or domestic natural gas, the partner's allocable share of any adjustments made to the basis of such properties by the partnership, and the percentage by which existing partners

must reduce their bases in a partnership oil or gas property upon entry of a partner by contribution. In addition, upon the disposition of an oil or gas property by the partnership, the partnership shall inform each partner of his allocable portion of the amount realized from the sale of the property.

§ 1.613A–4 Limitations on application of § 1.613A–3 exemption.

(a) *Limitation based on taxable income.* (1) The aggregate amount of a taxpayer's deductions allowed pursuant to section 613A(c) for the taxable year shall not exceed 65 percent of the taxpayer's taxable income (reduced in the case of an individual by the zero bracket amount for taxable years beginning after December 31, 1976, and before January 1, 1987) for the year, adjusted to eliminate the effects of:

(i) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c) (1) and (6) (as in effect prior to the Revenue Reconciliation Act of 1990) or the taxable income limitation contained in section 613A(d)(1);

(ii) Any net operating loss carryback to the taxable year under section 172;

(iii) Any capital loss carryback to the taxable year under section 1212; and

(iv) In the case of a trust, any distributions to its beneficiaries, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last 6 days of the 5th month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

The amount disallowed (as defined in paragraph (q) of § 1.613A–7) shall be carried over to the succeeding year and treated as an amount allowable as a deduction pursuant to section 613A(c) for such succeeding year, subject to the 65-percent limitation of section 613A(d)(1). For rules relating to corporations filing a consolidated return, see the regulations under section 1502. With respect to fiscal year taxpayers, except as provided in § 1.613A–1 for taxable years beginning before January 1, 1975, and ending after that date, the limitation shall be calculated on the entire fiscal year and not applied with respect to each short period included in a fiscal year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction after the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties pursuant to section 613A(c). Accordingly, the maximum amount which may be allowable as a deduction pursuant to section 613A(c) after application of this paragraph (65 percent × adjusted taxable income) shall be allocated to properties for which percentage depletion pursuant to section 613A(c) would be allowed in the absence of the limitation contained in section 613A(d)(1) by application of the same proportion. However, once it is determined that after application of this paragraph cost depletion exceeds percentage depletion with respect to a property, the maximum amount determined under the preceding sentence shall be reallocated among the remaining properties, and the portion of the amount disallowed which is allocable to such property shall be the amount by which percentage depletion pursuant to section 613A(c) before application of this paragraph exceeds cost depletion. See example (1) of paragraph (a)(2) of this section. If the taxpayer becomes entitled to the deduction in a later year (*i.e.*, because the disallowed depletion does not exceed 65 percent of the taxpayer's taxable income for that year after taking account of any percentage depletion deduction otherwise allowable for that year), then the basis of the taxpayer's properties must be adjusted downward (but not below zero) by the amount of the deduction in proportion to the portion of the amount disallowed to the respective properties in the year of the disallowance. However, if the property in question was disposed of by the taxpayer prior to the beginning of such later year, the amount of the deduction in such later year shall be reduced by the difference between the taxpayer's adjusted basis in the property at the time it is disposed of and the adjusted basis which the taxpayer would have had in the property in the absence of the 65-percent limitation.

(2) The application of this paragraph may be illustrated by the following examples:

Example 1. A owns producing oil properties M, N, and O. With respect to property M, the depletion allowable pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $60× (cost depletion would have been $40×). With respect to property N, the depletion allowable pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $90× (cost depletion would have been zero). With respect to property O, the depletion pursuant to section 613A(c) for 1975 without regard to section 613A(d)(1) was $50× (cost depletion would have been $10X). A's taxable income (as adjusted under § 1.613A–4(a)(1)) for 1975 was $100×; accordingly, A's percentage depletion pursuant to section 613A(c) for 1975 must be reduced from $200× to $65× (65 percent × $100× taxable income). Of that amount, $19.5×:

$$\left[65x \text{ dollars} \left(\frac{\$60x}{\$60x+\$90x+\$50x}\right)\right]$$

is tentatively allocated to property M, $29.25×:

$$\left[65x \text{ dollars} \left(\frac{\$90x}{\$90x+\$60x+\$50x}\right)\right]$$

is tentatively allocated to property N, and $16.25×:

$$\left[65x \text{ dollars} \left(\frac{\$50x}{\$50x+\$90x+\$60x} \right)\right]$$

is tentatively allocated to property O.

Since cost depletion of $40× with respect to property M exceeded the percentage depletion of $19.5× allowable on such property, A claimed the cost depletion. Accordingly, the only percentage depletion deduction allowable to A pursuant to section 613A(c) for 1975 is with respect to properties N and O. Therefore, the $65× ceiling applies to the percentage depletion allowable on properties N and O. Of that amount, $41.79×:

$$\left[65x \text{ dollars} \left(\frac{\$90x}{\$90x+\$50x} \right)\right]$$

is allocated to property N, and $23.21×:

$$\left[65x \text{ dollars} \left(\frac{\$50x}{\$50x+\$90x} \right)\right]$$

is allocated to property O.

Accordingly, A is allowed a total depletion deduction of $105× ($40× cost depletion on property M + $41.79× percentage depletion on property N + $23.21× percentage depletion on property O). The amount disallowed to A under section 613A(d)(1) is $95× ($200× aggregate depletion allowable before application of section 613A(d)(1) − $105× [$40× cost depletion allowable on property M + $41.79× percentage depletion allowable on property N after application of section 613A(d)(1) + $23.21× depletion allowable on property O after application of section 613A(d)(1)]). For purposes of basis adjustments, $20× ($60× percentage depletion before limitation − $40× cost depletion allowed) of the amount disallowed is allocated to property M. The balance of the amount disallowed of $75× is allocated $48.21×:

$$\left[75x \text{ dollars} \left(\frac{\$90x}{\$90x+\$50x} \right)\right]$$

to property N, and

$$\left[75x \text{ dollars} \left(\frac{50x}{\$50x+\$90x} \right)\right]$$

to property O.

Example 2. The amount disallowed to B as a deduction under this paragraph is $50x for 1975 and $125x for 1976 (including the $50x carried over from 1975). B may carry forward the $125x as a deduction to 1977 and subsequent years.

Example 3. C is a fiscal year taxpayer whose fiscal year ended on May 31, 1975. For purposes of applying the 65 percent of taxable income limitation, the period beginning January 1, 1975, and ending May 31, 1975, is treated as a short taxable year. The depletion allowable pursuant to section 613A(c) without regard to section 613A(d)(1) for such short taxable year was $80x and A's taxable income (as adjusted under § 1.613A–4(a)(1)) during such short taxable year was $100x. Only $65x (65 percent x $100x adjusted taxable income) of the deduction pursuant to section 613A(c) was deductible for such portion of 1975, in addition to any percentage depletion allowable for June 1, 1974, through December 31, 1974. With respect to the taxable year commencing June 1, 1975, and ending May 31, 1976, the 65 percent limitation is applied to the taxable income for the entire taxable year.

Example 4. Under the trust law of State X, a trustee is required to allocate 22 percent of gross mineral income to the principal of a trust for purposes of maintaining a reserve for depletion and the depletion deduction is entirely allocated to the trustee. In 1975 the gross income of a trust in State X the only assets of which were oil properties was $1,000. The trust's allowable percentage depletion pursuant to section 613A(c) without regard to section 613A(d)(1) was $220. The trust incurred expenses of $150 for the taxable year and made distributions to beneficiaries (who are not described in the exception for family members set forth in paragraph (a)(1)(iv) of this section) of $630 ($1,000 gross income −$220 allocated to principal −$150 expenses). The trust's deduction for personal exemption under section 642(b) is $300. For purposes of applying the 65 percent limitation, the trust's taxable income was $550 ($1,000 gross income −$150 expenses −$300 exemption). The limitation under section 613A(d)(1) was $357.50 (65% x $550 taxable income). Accordingly, the trust's percentage depletion allowance was unaffected by the 65 percent limitation.

Example 5. In 1980 the gross income of the estate of D was $1,000. The only assets of the estate were oil properties. The estate's adjusted basis in the oil properties was $0. The estate's allowable percentage depletion pursuant to section 613A(c) without regard to section 613A(d)(1) was $220. The estate incurred expenses of $150 for the taxable year and made distributions to beneficiaries of $425. The distributions thus equaled one half of the net income of the estate (ignoring depletion). Under section 611(b)(4), the percentage depletion is apportioned equally between the estate and its beneficiary. The distribution amount of $425 is deductible under section 661(a) in computing the taxable income of the estate. For purposes of applying the 65 percent limitation to the percentage depletion apportioned to the estate, the estate's taxable income was $0 ($1,000 gross income −$150 expenses −$425 distribution −$600 exemption). The limitation under section 613A(d)(1) was therefore also $0 (65% x $0 taxable income). Accordingly, the $110 amount is disallowed to the estate for the taxable year but may be carried forward by the estate as a deduction to 1981 and subsequent years. The beneficiaries shall apply the 65 percent limitation to the $110 percentage depletion apportioned to them based on their respective taxable incomes.

Example 6. In 1975 E sold an oil property for which E's adjusted basis was $20x. The amount disallowed for 1975 to E under section 613A(d) was $10x. The amount of the carryover under that section to 1976 was $0 ($10x disallowed amount −$10x ($20x adjusted basis of property on sale −$10x adjusted basis which taxpayer would have had in the property in the absence of the 65-percent limitation)). However, if the adjusted basis of the property on disposition had been $0, the amount of the carryover to 1976 would have been $10x ($10x disallowed amount −$0 adjusted basis of property on sale).

Example 7. In 1975 F owned producing properties M, N, O, P, Q, and R. With respect to property M, the allowable cost depletion was $100x (the allowable percentage depletion pursuant to section 613A(c) without regard to the depletable quantity and taxable income limitations contained in section 613A(c)(1), (6) and (d)(1) would have been $90x). With respect to property N, the allowable percentage depletion pursuant to section 613A(c) before applying section 613A(d)(1) was $80x (cost depletion would have been $0). With respect to property O, the allowable cost depletion was $60x (the allowable percentage depletion pursuant to section 613A(c) would have been $70x, except that the application of section 613A(d)(1) reduced allowable percentage depletion to less than $60x). With respect to property P, the allowable percentage depletion pursuant to section 613A(b) was $55x (cost depletion would have been $40x). With respect to property Q, which produces both gas subject to section 613A(b)(1)(B) and oil subject to section 613A(c), the allowable percentage depletion was $45x (cost depletion would have been $40x). With respect to property R, the allowable cost depletion was $40x (the allowable percentage depletion pursuant to section 613A(c) would have been $50x, except that the application of section 613A(c)(7)(A) reduced allowable percentage depletion to less than $40x). Under paragraph (a)(1)(i) of this section, for purposes of applying the 65 percent limitation under section 613A(d)(1), F's taxable income must be reduced by the allowable depletion with respect to property M (for which cost depletion exceeded percentage depletion even in the absence of section 613A(c)(1), (6), and (d)) and property P (for which all depletion is determined pursuant to section 613A(b)), but shall not be reduced by the allowable depletion with respect to properties N, O, Q, and R.

(b) *Retailers excluded.* (1) Section 613A(c) and § 1.613A–3 shall not apply in the case of any taxpayer who is a retailer as defined in paragraph (r) of § 1.613A–7.

(2) The application of this paragraph may be illustrated by the following examples (those that involve sales through retail outlets assume, unless

otherwise stated, that the $5,000,000 gross receipts requirement section 613A(d)(2) is met):

Example 1. A, owner of producing oil and gas properties, also owns 5 percent in value of the stock of Corporation M, a retailer of oil and gas. None of A's production is sold through Corporation M. Since A may benefit from Corporation M's sales of oil and gas through A's ownership interest in Corporation M, A is considered to be selling oil or natural gas through Corporation M, a related person. Accordingly, the exemption under section 613A(c) does not apply to A, even though none of A's production is sold through Corporation M.

Example 2. Assume the same facts as in *Example 1* except that A has gross receipts of $2 million from sales of oil for the taxable year from A's retail outlets and Corporation M has gross receipts of $4 million from sales of oil for the taxable year from its retail outlets. For purposes of the $5 million gross receipts requirement of section 613A(d)(2), A is treated as having gross receipts of $6 million. Accordingly, the exemption under section 613A(c) does not apply to A.

Example 3. Corporation N, a retailer of oil and gas, owns 5 percent in value of the stock of Corporation O, owner of producing oil and gas properties. None of Corporation O's production is sold through Corporation N. Since Corporation O has no direct or indirect ownership interest in Corporation N, and therefore does not benefit from Corporation N's sales of oil and gas, and since none of Corporation O's production is sold through Corporation N, the exemption under section 613A(c) applies to Corporation O.

Example 4. Corporation P, a producer of oil, owns 70 percent in value of the stock of Corporation Q. Corporation Q owns 30 percent in value of the stock of Corporation R. Corporation R owns 30 percent in value of the stock of Corporation S, a retailer of oil and gas. P indirectly owns 6.3 percent (70 percent × 30 percent × 30 percent) in value of the stock of Corporation S. Since P may benefit from Corporation S's sales of oil and gas through P's indirect ownership interest in Corporation S, P is not entitled to percentage depletion.

Example 5. B is the owner of certain oil and gas properties in Texas and is also the owner of a service station in Washington, D.C., which B leases to Corporation T. None of B's production is sold to Corporation T. The exemption under section 613A(c) applies to B. However, if sales of B's production were made to Corporation T and the gross receipts from such sales of B's production to Corporation T exceed 5 million dollars, the exemption under section 613A(c) would not apply to B because B is selling oil or natural gas to a person given authority to occupy a retail outlet leased by the taxpayer, B.

Example 6. C has a ⅛ royalty interest and Corporation U has a ⅞ working interest in an oil property. Corporation V, a retailer of oil, owns 5 percent in value of the stock of Corporation U. C has no interest in either corporation. All of the production from the property is sold through Corporation V, C receiving from Corporation U ⅛ of its receipts therefrom. The exemption under section 613A(c) does not apply to Corporation U because Corporation U is selling oil of natural gas through Corporation V, a related person that is a retailer. However, the exemption applies to C because C, as owner of a nonoperating mineral interest, is not treated as an operator of a retail outlet merely because C's oil and gas is sold on C's behalf through a retail outlet operated by an unrelated person.

Example 7. D owns and operates retail grocery stores where refined oil may be purchased. D also owns oil and gas producing properties. If the sales of refined oil at each store location constitute less than 5 percent of the gross receipts from all sales made at that store, D is not considered a retailer by reason of such sales.

Example 8. Lessee E sells natural gas to lessor F directly from a wellhead gathering pipelines system for F's local agricultural use, in transactions incidental to the acquisition of a natural gas lease. The sales of natural gas to F are not sales through a retail outlet.

Example 9. Corporation W produces natural gas, some of which it sells at retail. For purposes of determining whether Corporation W is a retailer selling gas through a retail outlet within the meaning of § 1.613A–7(r), the business office of Corporation W where a purchaser would normally contact the corporation with respect to its sales to the purchaser is considered the place at which those sales of natural gas are made.

Example 10. G, husband, is the sole owner and operator of a retail outlet which sells oil and gas. H, wife, owns producing oil and gas properties. G is not related to H for purposes of section 613A(d).

Example 11. I, husband, and J, wife, are community property owners of 10 percent in value of the stock of Corporation X which is a retailer of oil and gas. I and J are each treated as owning 5 percent of Corporation X. Therefore, neither I nor J qualify for the exemption under section 613A(c).

Example 12. Corporation Y, an electing small business corporation as defined in section 1371 (as in effect prior to the enactment of the subchapter S Revision Act of 1982), owns producing oil and gas properties. K, a retailer of oil and gas, is a 50 percent interest shareholder of Corporation Y. None of Corporation Y's production is sold through K. Corporation Y is eligible for percentage depletion.

Example 13. Corporation Z, a producer of natural gas, makes bulk sales of natural gas to industrial users. For purposes of determining whether Corporation Z is a retailer under § 1.613A–7(r), the bulk sales are disregarded.

Example 14. L, a calendar year taxpayer, is the owner of a producing oil property. On September 1, 1976, L purchased a chain of gasoline service stations. Therefore, L was a retailer of oil and gas for the last 122 days of 1976. L's gross income from the oil property for the taxable year was $150x and L's taxable income from the property was $30x. L is treated as a retailer with respect to $50x of gross income from the property ($150x × 122/366) and $10x of taxable income from the property ($30x × 122/366). Therefore, L is entitled to percentage depletion with respect to $100x of gross income from the property ($150x minus $50x). However, the allowable percentage depletion is limited by the 50 percent of taxable income from the property limitation to $10x (50 percent times $20x taxable income ($30x minus $10x)).

Example 15. Corporation M is a partner in Partnership MNO which is the owner of an operating interest in a producing oil property. Corporation P, a retailer of oil and gas, owns 5 percent in value of the stock of Corporation M. Partnership MNO sells its production to Corporation P. Corporation M is retailing oil through Corporation P, a related person, because its share of the oil is being sold on its behalf by the partnership through a retail outlet operated by a person related to Corporation M. Therefore, the exemption under section 613A(c) does not apply to Corporation M.

Example 16. AA and BB are beneficiaries of a trust which is a retailer of oil and gas. AA has an interest in the income of the trust for AA's lifetime which, actuarially determined, represents more than 5 percent of the beneficial interests in the trust. BB's interest in the trust, which entitles BB to 5 percent of the corpus of the trust 5 years after AA's death, represents less than 5 percent of the beneficial interests in the trust prior to AA's death and represents more than 5 percent after AA's death. The trust is a related person of AA but not BB while AA is alive. Accordingly, during AA's lifetime BB is not disqualified from the exemption provided by section 613A(c), but AA is.

Example 17. Assume the same facts as in *Example 16*, except that AA's interest in the income of the trust represents 4 percent of the beneficial interests in the trust. AA is disqualified from the exemption provided by section 613A(c) with respect to the income from the trust but not with respect to income from other sources.

(c) *Certain refiners excluded.* (1) Section 613A(c) and § 1.613A–3 shall not apply in the case of any taxpayer who is a refiner as defined in paragraph (s) of § 1.613A–7.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. Corporation M owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year. Corporation M also owns a 5 percent interest in Corporation N, owner of producing oil and gas properties. None of Corporation N's production is sold to Corporation M. The exemption under section 613A(c) does not apply to Corporation N because Corporation M, a related person of Corporation N, engages in the refining of crude oil.

Example 2. A and B are equal partners in Partnership AB, which owns oil and gas producing properties. A owns a refinery which has refinery runs in excess of 50,000 barrels on at least one day during the taxable year and which buys all of Partnership AB's production. B has no ownership interest in any refinery. B is not a refiner.

§ 1.613A-7 Definitions.

For purposes of section 613A and the regulations thereunder—

(a) *Domestic.* The term "domestic," as applied to oil and gas wells (or to production from such wells), refers to wells located in the United States or in a possession of the United States, as defined in section 638 and the regulations thereunder.

(b) *Natural gas.* The term "natural gas" means any product (other than crude oil as defined in paragraph (g) of this section) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(c) *Regulated natural gas.* Natural gas is considered to be "regulated" only if all of the following requirements are met:

(1) The gas must be domestic gas produced and sold by the producer (whether for himself or on behalf of another person) before July 1, 1976,

(2) The price for which the gas is sold by the producer must not be adjusted to reflect to any extent the increase in liability of the seller for tax under chapter 1 of the Code by reason of the repeal of percentage depletion for gas,

(3) The sale of the gas must have been subject to the jurisdiction of the Federal Power Commission for regulatory purposes,

(4) An order or certificate of the Federal Power Commission must be in effect (or a proceeding to obtain such an order or certificate must have been instituted), and

(5) The price at which the gas is sold must be taken into account, directly or indirectly, in the issuance of the order or certificate by the Federal Power Commission. Price increases after February 1, 1975, are presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence that the increases are wholly attributable to a purpose or purposes unrelated to the repeal of percentage depletion for gas (*e.g.*, where the record of the Federal Power Commission clearly establishes that the Commission did not take the repeal into account). Increases to reflect additional State and local real property or severance taxes, increases for additional operating costs (such as costs of secondary or tertiary processes), adjustments for inflation, increases for additional drilling and related costs, or increases to reflect changes in the quality of gas sold, are some examples of increases that are not attributable to the repeal of percentage depletion for gas. In the absence of a statement in writing by the Federal Power Commission that the price of the gas in question was not in fact regulated, the requirement of paragraph (c)(5) of this section is deemed to have been met in any case in which the Federal Power Commission issued an order or certificate approving the sale to an interstate pipeline company or, in a case in which it is established by the taxpayer that the Federal Power Commission has influenced the price of such gas, an order or certificate permitting the interstate transportation of such gas. In addition, an "emergency" sale of natural gas to an interstate pipeline, which, pursuant to the authority contained in 18 CFR 2.68, 2.70, 157.22, and 157.29, may be made without prior order approving the sale, is deemed to have met the requirements of paragraph (c) (3), (4), and (5) of this section. For purposes of meeting the requirements under this paragraph, it is not necessary that the total gas production from a property qualify as "regulated natural gas." The determination of whether mineral production is "regulated natural gas" shall be made with respect to each sale of the mineral or minerals produced.

(d) *Natural gas sold under a fixed contract.* The term "natural gas sold under a fixed contract" means domestic natural gas sold by the producer (whether for himself or on behalf of another person) under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for the gas during such period cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under chapter 1 of the Code by reason of the repeal of percentage depletion for gas. The term may include gas sold under a fixed contract even though production sold under the contract had previously been treated as regulated natural gas. Price increases after February 1, 1975, are presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence. Paragraph (c) of this section provides examples of increases which do not take increases in tax liabilities into account. However, if an adjustment provided for in the contract permits the possible increase in federal income tax liability of the seller to be taken into account to any extent, the gas sold under the contract after such an increase becomes permissible is not gas sold under a fixed contract. If the adjustment provided for in the contract provides for an increase in the price of the contract to the highest price paid to a producer for natural gas in the area, or if the price may be renegotiated, then gas sold under the contract after such an increase becomes permissible is presumed not to be sold under a fixed contract unless the taxpayer demonstrates by clear and convincing evidence that the price increase in no event takes increases in tax liabilities into account. For purposes of meeting the requirements of this paragraph, it is not necessary that the total gas production from a property qualify as "natural gas sold under a fixed contract," for the determination of "natural gas sold under a fixed contract" is to be made with respect to each sale of each type of natural gas sold pursuant to each contract.

(e) *Qualified natural gas from geopressured brine.* [Reserved]

(f) *Average daily production.* (1) The term "average daily production" means the taxpayer's aggregate production of domestic crude oil or natural gas, as the case may be, which is extracted after December 31, 1974, and to which gross income from the property is attributable during the taxable year divided by the number of days in such year. As used in the preceding sentence the term "taxpayer" includes a small business corporation as defined in section 1371 (as in effect prior to the enactment of the Subchapter S Revision Act of 1982) and the regulations thereunder. Notwithstanding the provisions of § 1.612–3 and except as provided in § 1.613A–3(j)(2), in computing the average daily production for a taxable year only oil or gas which has been actually produced by the close of such taxable year is taken into account. Average daily production does not include production resulting from secondary or tertiary recovery processes to which gross income from the property is attributable.

(2) In the case of a fiscal-year taxpayer, paragraph (f)(1) of this section shall be applied separately to each short taxable year under section 613A(c)(11), as in effect prior to the Revenue Reconciliation Act of 1990.

(3) In the case of a taxpayer holding a partial interest in the production from any property (including an interest of a partner in property of a partnership or a net profit interest) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production (which is produced after December 31, 1974, and to which gross income from the property is attributable during the taxable year) of the property by the taxpayer's percentage participation in the gross revenues from the property during the year. However, the portion of trust (or estate) production allocable to a beneficiary shall not exceed that amount of the

trust's (or estate's) depletable oil quantity determined by multiplying such quantity by the beneficiary's percentage interest in the trust's (or estate's) gross income from the property.

(g) *Crude oil.* For purposes of section 613A and the regulations thereunder, the term "crude oil" means—

(1) A mixture of hydrocarbons which existed in the liquid phase in natural underground reservoirs and which remains liquid at atmospheric pressure after passing through surface separating facilities,

(2) Hydrocarbons which existed in the gaseous phase in natural underground reservoirs but which are liquid at atmospheric pressure after being recovered from oil well (casinghead) gas in lease separators, and

(3) Natural gas liquid recovered from gas well effluent in lease separators or field facilities before any conversion process has been applied to such production.

(h) *Depletable oil quantity.* The taxpayer's depletable oil quantity, within the meaning of section 613A(c)(1)(A), shall be equal to the tentative quantity determined under the table contained in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) and paragraph (b) of § 1.613A–3.

(i) *Depletable natural gas quantity.* The taxpayer's depletable natural gas quantity, within the meaning of section 613A(c)(1)(B), shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have section 613A(c)(4) apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced (in addition to any reduction required to be made under paragraph (h) of this section) by the number of barrels with respect to which an election under section 613A(c)(4) for natural gas has been made. See § 1.613A–5.

(j) *Barrel.* The term "barrel" means 42 United States gallons.

(k) *Secondary or tertiary production.* For purposes of section 613A the term "secondary or tertiary production" means the increased production of domestic crude oil or natural gas from a property at any time after the application of a secondary or tertiary process. The increased production is the excess of actual production over the maximum primary production which would have resulted during the taxable year if the secondary or tertiary process had not been applied. The increased production may be due to an increase in either the rate or the duration of recovery. A secondary or tertiary process is a process applied for the recovery of hydrocarbons in which liquids, gases, or other matter is injected into the reservoir to supplement or augment the natural forces required to move the hydrocarbons through the reservoir. However, no process which must be introduced early in the productive life of the mineral property in order to be reasonably effective (such as cycling of gas in the case of a gas-condensate reservoir) is a secondary or tertiary process. A process (such as fire flooding or miscible fluid injection) introduced early in the productive life of the mineral property will not be disqualified as a secondary or tertiary process if a later introduction of the process in the property would still have been reasonably effective.

(l) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that "more than 50 percent" shall be substituted for " at least 80 percent" each place it appears in section 1563(a).

(m) *Related person.* (1) A person is a "related person" to another person, within the meaning of section 613A(d)(2) and (4), paragraphs (b) and (c) of § 1.613A–4, and paragraphs (r) and (s) of this section, if either a significant ownership interest in such person is held by the other, or a third person has a significant ownership interest in both such persons. For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be. The term "significant ownership" means—

(i) With respect to any corporation, direct or indirect ownership of 5 percent or more in value of the outstanding stock of such corporation,

(ii) With respect to a partnership, direct or indirect ownership of 5 percent or more interest in the profits or capital of such partnership, and

(iii) With respect to an estate or trust, direct or indirect ownership of 5 percent or more of the beneficial interests in such estate or trust. The relative percentage ownership of beneficiaries of an estate or trust in the beneficial interests therein shall be determined under actuarial principles.

(2) A person is a "related person" to another person, within the meaning of section 613A(c)(8)(B) and paragraph (h)(2) of § 1.613A–3, if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only the individual's spouse and minor children.

(n) *Transfer.* The term "transfer" means any change in ownership for federal tax purposes after December 31, 1974, by sale, exchange, gift, lease, sublease, assignment, contract, or other disposition (including any contribution to or any distribution by a corporation, partnership, or trust), any change in the membership of a partnership or the beneficiaries of a trust, or any other change by which a taxpayer's proportionate share of the income subject to depletion of an oil or gas property is increased. However, the term does not include—

(1) A transfer of property at death (including a distribution by an estate, whether or not a pro rata distribution),

(2) An exchange to which section 351 applies,

(3) A change of beneficiaries of a trust by reason of the death, birth, or adoption of any vested beneficiary if the transferee was a beneficiary of the trust or is a lineal descendant of the settlor or any other vested beneficiary of the trust, except in the case of any trust where any beneficiary of the trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and the settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which the trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

(4) A transfer of property between corporations which are members of the same controlled group of corporations (as defined in section 613A(c)(8)(D)(i)),

(5) A transfer of property between business entities which are under common control (within the meaning of section 613A(c)(8)(B)) or between related persons in the same family (within the meaning of section 613A(c)(8)(C)),

(6) A transfer of property between a trust and members of the same family (within the meaning of section 613A(c)(8)(C)) to the extent that both (i) the beneficiaries of the trust are and continue to be members of the family that transferred the property, and (ii) the tentative oil quantity is allocated among the members of such family.

(7) A reversion of all or part of an interest with respect to which the

taxpayer was eligible for percentage depletion pursuant to section 613A(c), or

(8) A conversion of a retained interest which is eligible for such depletion into an interest which constituted all or part of an interest previously owned by the taxpayer also eligible for such depletion.

However, paragraph (n) (2), (4), and (5) of this section shall apply only so long as the tentative quantity determined under the table contained in section 613A(c)(3)(B) (as in effect prior to the Revenue Reconciliation Act of 1990) is required to be allocated under section 613A(c)(8) between the transferor and transferee, or among members of a controlled group of corporations. In the case of an individual transferor, the allocation test of the preceding sentence shall not be failed merely because of the death of the transferor. For purposes of paragraph (n) (3) and (6), an individual adopted by a beneficiary is a lineal descendant of that beneficiary. For purposes of paragraph (n) (7) and (8), a taxpayer previously ineligible for percentage depletion solely by reason of section 613A(d) (2) or (4) will be considered to have been eligible for such depletion. A transfer is deemed to occur on the day on which a contract or other commitment to transfer the property becomes binding upon both the transferor and transferee, or, if no such contract or commitment is made, on the day on which ownership of the interest in oil or gas property passes to the transferee.

(o) *Transferee.* The term "transferee," as used in section 613A(c)(9) (as in effect prior to the Revenue Reconciliation Act of 1990), paragraph (i) of § 1.613A–3, and this section includes the original transferee of proven property and the original transferee's successors in interest. A person shall not be treated as a transferee of an interest in a proven oil or gas property to the extent that such person was entitled to a percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. However, a person shall be treated as a transferee of an interest in a proven property to the extent that the interest such person receives is greater than the interest in the property the person held immediately before the transfer. For example, where the owner of a proven oil property transfers his or her entire interest therein to a partnership of which he or she is a member and, as a consequence, becomes entitled to a depletion allowance based on only one-third of the oil produced with respect to that property, the owner (the transferor) is not denied percentage depletion with respect to the one-third interest in oil production which the owner still possesses. If the partnership agreement had made an effective allocation (under section 704 and § 1.704.1) of all the income in respect of such property to the transferor partner, that partner would be entitled to percentage depletion on the entire oil production from that property. For this purpose, a person who has transferred oil or gas property pursuant to a unitization or pooling agreement shall be treated as having been entitled to a depletion allowance immediately before the transfer to that person of the interest in the unit or pool with respect to all of the mineral in respect of which the person receives gross income from the property pursuant to the unitization or pooling agreement, except to the extent such income is attributable to consideration paid by that person for such interest in addition to that person's contribution of the oil or gas property and equipment affixed thereto.

(p) *Interest in proven oil or gas property.* The term "interest in an oil or gas property" means an economic interest in oil or gas property. An economic interest includes working or operating interests, royalties, overriding royalties, net profits interests, and, to the extent not treated as loans under section 636, production payments from oil or gas properties. The term also includes an interest in a partnership, S corporation, small business corporation, or trust holding an economic interest in oil or gas property but does not include shares of stock in a corporation (other than an S corporation and small business corporation) owning such an interest. An oil or gas property is "proven" if its principal value has been demonstrated by prospecting, exploration, or discovery work. The principal value of the property has been demonstrated by prospecting, exploration, or discovery work only if at the time of the transfer—

(1) Any oil or gas has been produced from a deposit, whether or not produced by the taxpayer or from the property transferred;

(2) Prospecting, exploration, or discovery work indicate that it is probable that the property will have gross income from oil or gas from the deposit sufficient to justify development of the property; and

(3) The fair market value of the property is 50 percent or more of the fair market value of the property, minus actual expenses of the transferee for equipment and intangible drilling and development costs, at the time of the first production from the property subsequent to the transfer and before the tansferee transfers his or her interest.

For purposes of this paragraph, the property is to be determined by applying section 614 and the regulations thereunder to the transferee at the time of the transfer. If the transfer is of an interest in a partnership, S corporation, small business corporation, or trust, the determination shall be made with respect to each property owned by the partnership, S corporation, small business corporation, or trust. The term "prospecting, exploration, or discovery work" includes activities which produce information relating to the existence, location, extent, or quality of any deposit of oil or gas, such as seismograph surveys and drilling activities (whether for exploration or for the production of oil or gas).

(q) *Amount disallowed.* The amount disallowed, within the meaning of section 613A(d)(1) and paragraph (a) of § 1.613A–4, is the excess of the amount of the aggregate of the taxpayer's allowable depletion deductions (whether based upon cost or percentage depletion) computed without regard to section 613A(d)(1) over the amount of the aggregate of such deductions computed with regard to such section. The disallowed amount shall be carried over to the succeeding year and treated as an amount allowable as a deduction pursuant to section 613A(c) for the succeeding year, subject to the 65-percent limitation of section 613A(d)(1) and the rules contained in § 1.613A–4(a).

(r) *Retailer.* (1) Except as otherwise provided in paragraph (r)(2) of this section, the term "retailer" means any taxpayer who directly, or through a related person (as defined in paragraph (m)(1) of this section), sells oil or natural gas, or any product derived from oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

For purposes of the preceding sentence, bulk sales (*i.e.*, sales in very large quantities) of oil or natural gas (but not

bulk sales of any product derived from oil or natural gas) to commercial or industrial users shall be disregarded. In addition, sales of oil or natural gas (whether or not produced by the taxpayer), or of any product derived from oil or natural gas, which are made outside the United States shall be disregarded if no domestic production of oil, natural gas (or products derived therefrom) of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(2) Notwithstanding paragraph (r)(1) of this section, the taxpayer shall not be considered a retailer in any case where, during the taxable year of the taxpayer, the combined gross receipts from sales (excluding sales for resale) of oil or natural gas, or products derived therefrom, of all retail outlets taken into account under paragraph (r)(1) of this section (including sales through a retail outlet of oil, natural gas, or a product derived from oil or natural gas which had previously been the subject of a sale described in paragraph (r)(1)(ii) of this section) do not exceed $5 million. If the taxpayer's combined gross receipts for the taxable year exceed $5 million, the taxpayer will be treated as a retailer as of the first day in which a retail sale was made. For purposes of paragraph (r)(1) of this section, a taxpayer shall be deemed to be selling oil or natural gas (or a product derived therefrom) through a related person in any case in which any sale of oil or natural gas (or a derivative product) by the related person produces gross income from which the taxpayer may benefit by reason of the taxpayer's direct or indirect ownership interest in the related person. In such cases (and in any other case in which the taxpayer is selling through a retail outlet referred to in section 613A(d)(2)(A) or is selling such items to a person described in section 613A(d)(2)(B)), it is immaterial whether the oil or natural gas which is sold, or from which is derived a product which is sold, was produced by the taxpayer. A taxpayer shall be deemed to be selling oil or natural gas (or a derivative product) through a retail outlet operated by a related person in any case in which a related person who operates a retail outlet acquires for resale oil or natural gas (or a derivative product) which the taxpayer produced or caused to be made available for acquisition by the related person pursuant to an arrangement whereby some or all of the taxpayer's production is marketed. An owner of a nonoperating mineral interest (such as a royalty) shall not be treated as an operator of a retail outlet merely because the owner's oil or gas is sold on the owner's behalf through a retail outlet operated by an unrelated person. In addition, the mere fact that a member of a partnership is a retailer shall not result in characterization of the remaining partners as retailers. However, any partner of a partnership who has a 5 percent or more interest in any entity actually engaging in retail activities (including the partnership or another entity to which the partnership is related) is treated as a retailer. See paragraph (m)(1) of this section for rules on the ownership interest by partners in an entity related to a partnership. Similarly, if a trust or estate is a retailer, only its beneficiaries having a 5 percent or more current income interest from the trust or estate are treated as retailers. A person who is a retailer during a portion of the taxable year shall be treated as a retailer with respect to a fraction of that person's gross and taxable income from oil or gas properties for the taxable year, the numerator of which is the number of days during the taxable year in which the taxpayer is a retailer and the denominator of which is the total number of days during the taxable year; except that a person who ceases to be a retailer during the taxable year before the first production of oil or gas during such year shall not be treated as a retailer for any portion of such year.

(3) For purposes of this paragraph (r), the term "any product derived from oil or natural gas" means gasoline, kerosene, Number 2 fuel oil, refined lubricating oils, diesel fuel, butane, propane, and similar products which are recovered from petroleum refineries or extracted from natural gas in field facilities or natural gas processing plants. The term "retail outlet" means any place where sales of oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or a product of oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense), accounting for more than 5 percent of the gross receipts from all sales made at such place during the taxpayer's taxable year, are systematically made for any purpose other than for resale. For this purpose, sales of oil or natural gas, or any product derived from oil or natural gas, to a person for refining are considered as sales made for resale.

(s) *Refiner.* A person is a refiner if such person or a related person (as defined in paragraph (m)(1) of this section) engages in the refining of crude oil (whether or not owned by such person or related person) and if the total refinery runs of such person and any related persons exceed 50,000 barrels on any day during the taxable year. A refinery run is the volume of inputs of crude oil (excluding any product derived from oil) into the refining stream. For purposes of this paragraph, crude oil refined outside the United States shall be taken into account. Refining is any operation by which the physical or chemical characteristics of crude oil are changed, exclusive of such operations as passing crude oil through separators to remove gas, placing crude oil in settling tanks to recover basic sediment and water, dehydrating crude oil, and blending of crude oil products.

Par. 5. Section 1.702–1(f) is amended by revising the heading and by adding a new sentence at the end thereof to read as follows:

§ 1.702–1 Income and credits of partner.

* * * * *

(f) *Cross—references.* * * * In the case of a disposition of an oil or gas property by the partnership, see the rules contained in section 613A(C)(7)(D) and § 1.613A–3(e).

Par. 6. Section 1.703–1 is amended by redesignating paragraph (a)(2)(vii) as paragraph (a)(2)(viii) and adding a new paragraph (a)(2)(vii), to read as follows:

§ 1.0703–1 Partnership computations.

(a) * * *

(2) * * *

(vii) The deduction for depletion under section 611 with respect to domestic oil or gas which is produced after December 31, 1974, and to which gross income from the property is attributable after such year.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.613A–3(l) * * * 1545–0919."

Dated: April 9, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–10856 Filed 5–10–91, 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB60

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This notice amends rules governing civil penalty assessment under section 24(b) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350(b)) to implement revised authority for the Secretary of the Department of the Interior (DOI) to assess civil penalties for failure to comply with regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). This action will enable the Minerals Management Service (MMS) to assess a civil penalty without first providing notice and time for corrective action in cases where the failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR part 250 address requirements for oil and gas and sulphur operations under a lease in the OCS. Included in these regulations are provisions in § 250.200, Remedies, which address the assessment of civil penalties. The provisions for civil penalties were developed pursuant to section 24(b) of the OCSLA (43 U.S.C. 1350(b)) which, prior to the August 18, 1990, amendment to the OCSLA, stated:

> If any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty.
> * * *

This provision in the OCSLA required that prior to assessment of a civil penalty, a person who was determined to be in violation of a requirement be provided with notice of failure to comply and given time to take corrective action. On August 18, 1990, section 8201 of the Oil Pollution Act of 1990 (PL 101-380) amended the OCSLA to redesignate previous section 24(b) as paragraph (1) of the new section 24(b), raise the maximum civil penalty assessment from $10,000 to $20,000 per day, require the Secretary of DOI, not less than every 3 years, to adjust the daily limit for assessment of civil penalties in accordance with the Consumer Price Index, and provide that:

> If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

This rule modifies the regulations governing civil penalties to provide for the assessment of civil penalties if (1) a failure to comply with any provision of the OCSLA, any provision of a lease, license, or permit issued pursuant to the OCSLA, or any provision of any regulation issued under the OCSLA continued beyond any notice of failure and the expiration of any reasonable period allowed for corrective action or (2) such failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

The revision also establishes the maximum civil penalty at a level of $20,000 per day as provided for in the statute. This maximum level will be periodically adjusted as required by the statute.

This change to the regulations was proposed in the **Federal Register** on November 27, 1990 (55 FR 49301), with a public comment period through January 28, 1991. Ten comment letters were received during the comment period. A summary of the comments received and responses to the comments follows.

Comment: One commenter offered overall support of the rulemaking action while another commenter offered opposition to the rulemaking, claiming that the threat of a shut in was sufficient deterrent without imposing civil penalties and that the vast majority of lessees conduct business in a manner that makes this rule unnecessary.

Response: The MMS agrees that the vast majority of lessees are substantially in compliance with requirements of the OCSLA, MMS regulations, and conditions of the lease. However, in those cases where violations occur, this rule change provides MMS with broader authority to assess civil penalties. Congress specifically amended the OCSLA to provide this authority to MMS, and MMS believes that the authority should be responsibly exercised. The rule provides no added burden for those lessees in compliance with applicable requirements.

Comment: One commenter suggested that Congress did not intend that operations in the OCS constitute zero risk. The commenter cited several operations that should not be considered a threat as contemplated by Congress.

Response: The civil penalty provision does not establish a standard of zero risk. The acceptable risk is determined by requirements in the OCSLA, the lease, licenses, permits, and regulation or order issued under OCSLA. A civil penalty can only be assessed after a violation of a provision in one of these documents.

Comment: One commenter suggested that, in § 250.200(a)(1), the Regional Director be required to make a determination that the violation represents serious, irreparable, or immediate harm prior to appointing a Reviewing Officer.

Response: The determination of serious or irreparable harm is a very important determination under the new provision for assessment of civil penalties. The regulations require that the Reviewing Officer make that determination. A provision is being added to § 250.203 to require that such determinations be made based on substantial evidence in the record. It would be inappropriate for the Regional Director to make a determination of serious, irreparable, or immediate harm prior to appointing a Reviewing Officer.

Comment: One commenter recommended that § 250.203 be modified to require that a finding of serious, irreparable, or immediate harm be based on substantial information in the record.

Response: Section 250.203 has been modified to expand the conditions under which a case will be dismissed to include cases where there is not substantial evidence in the record that a threat of serious, irreparable, or immediate harm existed.

Comment: Many commenters recommended that the use of the phrase "penalty shall be assessed" be replaced with the phrase "penalty may be assessed" in § 250.206(a). Some also recommended that the regulation should state that the penalty may be compromised.

Response: The statute provided discretion to MMS to determine when to assess civil penalty. To ensure that this discretion is clear in the regulations,

"shall" was changed to "may" in § 250.206(a) to make clear that discretion is present. This change, together with other provisions providing for discretion on the part of the Reviewing Officer to set civil penalty amounts, will adequately provide for MMS to compromise penalties when warranted.

Comment: Two commenters recommended that § 250.206(a) be modified to require that fines based on serious, irreparable, or immediate harm or damage (i.e., those civil penalties assessed without notice and time for corrective action) only be assessed for days after notice is given.

Response: The use of the phrase "constitutes or constituted" rather than the word "constitutes" indicates a congressional mandate to consider assessment of a civil penalty even in cases where the threat has ended prior to the discovery of the violation. Accordingly, it would be inappropriate and contrary to the intent of Congress to limit fines to days after receipt of notice in those cases where there is evidence of serious, irreparable, or immediate harm or damage.

Comment: Several commenters recommended that the regulation define what constitutes a serious, irreparable, or immediate harm to safety or the environment and provide criteria by which the size of the penalty will be determined.

Response: There will be many factors that influence whether a violation is determined to constitute a threat of serious, irreparable, or immediate harm or damage. These factors include whether or not an accident, e.g., blowout, fire, or oil spill, resulted from the violation, the likelihood of an accident resulting from the violation, the distance to environmentally sensitive areas, and the size of a possible oil spill that resulted or might have resulted from the violation. In addition, there will be much other information that will be gathered in the course of determining whether or not a violation constituted a threat of serious, irreparable, or immediate harm. The decision of what constitutes serious, irreparable, or immediate harm will be made on a case-by-case basis. The size of the penalty will also be made on a case-by-case basis. The MMS expects lessees to voluntarily comply with all regulations and does not believe that it is necesary to identify when failure to comply will result in a notice and time for corrective action prior to assessment of a civil penalty.

Author

This document was prepared by John V. Mirabella, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12291

The MMS experience has shown that in the vast majority of cases, lessees conduct their activities in a manner that does not constitute a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The economic effect of this rule was estimated based on the number and magnitude of civil penalties in 1981 and 1982 since civil penalty procedures were similar to procedures that could be employed under the proposed amendment. The estimated economic effect was calculated assuming that the number of civil penalties will change in proportion to changes in drilling and production activity in the OCS and that the amount of each civil penalty will increase in proportion to the increase in statutory maximum levels. Based on these assumptions, the economic impact of the new rule is estimated to be $960,690 annually. Accordingly, DOI has determined that this rule will not have a significant economic effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on a significant number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned approval number 1010–0038.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: March 20, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.0, paragraph (n) is revised to read as follows:

§ 250.0 Authority for information collection.

* * * * *

(n) The information collection requirements in subpart N, Remedies and Penalties, have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0038. The information is being collected to inform MMS of evidence relating to violations of provisions of the Act, leases, and OCS rules. The information is used to review violations and determine whether the imposition of a civil penalty is warranted. The requirement to respond is mandatory under 43 U.S.C. 1334. Public reporting burden for this collection of information is estimated to average 80 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments submitted relative to this information collection should reference Paperwork Reduction Project 1010–0038.

3. In § 250.200, redesignate paragraph (c) as paragraph (d), revise paragraphs (a)(1) and (b), and add a new paragraph (c) to read as follows:

§ 250.200 Remedies.

(a)(1) Whenever the Regional Director determines, on the basis of available evidence, that a violation of or failure to comply with any provision of the Outer Continental Shelf Lands Act (Act), or

any provision of a lease, license, or permit issued pursuant to the Act, or any provision of any regulation issued under the Act (hereinafter referred to as "violation") probably occurred and that such violation continued beyond actual notice of the violation and the expiration of any reasonable period allowed for corrective action or that the violation may constitute or may have constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, the Regional Director may direct the preparation of a case file, and appoint a Minerals Management Service (MMS) employee to serve as a Reviewing Officer. In making this determination, the Regional Director shall have the authority to summon witnesses, administrator oaths, and issue orders to produce evidence. Chairmen of investigative panels appointed by the Regional Director to investigate violations or other matters shall also have authority to summon witnesses, administer oaths, and issue orders to produce evidence while conducting investigations.

* * * * *

(b) The Reviewing Officer shall proceed with provisions of paragraph (c) of this section upon determining that there is sufficient evidence that a violation probably occurred and that:

(1) The violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, or

(2) The violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(c) The Reviewing Officer shall notify, in writing, the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(2) The amount of penalty that appears to be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available for the Reviewing Officer;

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(4) The fact that, subject to the provisions in § 250.201 of this part, the party has a right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

* * * * *

4. In § 250.203, redesignate paragraph (b) as paragraph (c), revise paragraph (a), and add a new paragraph (b) to read as follows:

§ 250.203 Reviewing Officer's decision.

(a) The Reviewing Officer's decision shall be in writing and shall include the Reviewing Officer's conclusions and the basis for the conclusions. Any decision shall be based upon substantial evidence in the record. The Reviewing Officer shall dismiss the case and remand it to the Regional Director if the Reviewing Officer finds that:

(1) there is not substantial evidence in the record establishing that the alleged violation occurred,

(2) for a violation under § 250.200(b)(1) of this part, either the required notice of the alleged violation was not provided or that the alleged violation did not continue after the termination of any period provided for the taking of corrective action, or

(3) for a violation under § 250.200(b)(2) of this part, there is not substantial evidence on the record that, at the time of the discovery of the violation or during a time prior to the discovery of the violation, the violation constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(b) A dismissal under paragraph (a) of this section is without prejudice to the Regional Director's right to refile the case and have it reheard if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

* * * * *

5. In § 250.206, revise the heading and paragraph (a)(1) to read as follows:

§ 250.206 Civil penalties.

(a)(1) If the Reviewing Officer determines that a civil penalty is to be assessed, the penalty shall not exceed $20,000 for each day of the continuation of the violation. For violations described in § 250.200(b)(1) of this part, the penalty may be assessed for each day the violation continues after notice and a reasonable period for corrective action. For violations described in § 250.200(b)(2) of this part, the penalty may be assessed for each day the violation continued after it first occurred.

* * * * *

[FR Doc. 91-11314 Filed 5-10-91; 8:45 am]
BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerance Processing Fees

CFR Correction

In title 40 of the Code of Federal Regulations, parts 150 to 189, revised as of July 1, 1990, § 180.33 appears twice, at pages 269 to 270 and again at pages 270 to 272. Section 180.33 Fees had been revised at 55 FR 5218, February 14, 1990. This revision starting at page 269 and ending on page 270 is the correct text.

The superseded text was incorrectly retained in the volume. The superseded text of § 180.33 at pages 270 to 272 is removed.

BILLING CODE 1505-01-D

40 CFR Parts 261, 271, and 302

[FRL-FFFF-F; 3922-3]

RIN 2050-AB70

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: On November 2, 1990 the Environmental Protection Agency (EPA) promulgated regulations under the Resource Conservation and Recover Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated as F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters.

New information acquired by the Agency since the promulgation of the F037 and F038 listings indicates that inclusion of non-contact, once-through cooling waters in the definition of "oily cooling waters" has included within the scope of the listing separation sludges that are not similar in constituent

concentration or oil/grease content to other sludges generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling waters. Based on the newly received information, the Agency is today promulgating an interim final rule revising the definition of wastes subject to the F037 and F038 listings to state that sludges from non-contact, once-through cooling waters are not included.

Further, the Agency is amending the definition of petroleum refinery secondary (emulsified) oil/water/solids separation sludge, F038, to clarify that floats generated in aggressive biological treatment units are not included in the listing description of that waste stream.

DATES: This interim final rule is effective May 2, 1991.

Comments on today's action and any additional data must be received on or before June 30, 1991.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–91–PT1F–FFFFF and is located in the EPA RCRA Docket Room, M2427, 401 M Street, SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m. Monday through Friday, except Federal holidays. To review docket material, the public must make an appointment by calling (202) 475–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost. Additional copies cost $0.15 per page. The public must send an original and two copies of their comments to the above docket. Place the Docket Number F–91–PT1F–FFFFF on your comments.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 920–9810. For technical information, contact John Austin, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephone at (202) 382–4789. For further information on the CERCLA portions of this rule, contact Gerain Perry, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 382–2198.

SUPPLEMENTARY INFORMATION: CERCLA section 103(a) requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ shall immediately notify the National Response Center of the release. The toll-free telephone number of the National Response Center is (800) 424–8802; in the Washington, DC metropolitan area, the number is (202) 267–2675.

A. Background

On November 2, 1990 (55 *FR* 46354) the Environmental Protection Agency (EPA) promulgated regulations under the Resource Conservation and Recovery Act (RCRA) adding two wastes to the list of hazardous wastes under 40 CFR 261.31. Those wastes, designated as F037 and F038, are generated in the primary and secondary separation of oil/ water/solids from petroleum refinery process wastewater and oily cooling wastewaters.

Development of listings for sludges generated in the primary and secondary treatment of process wastewaters and oily cooling wastewaters in the petroleum refining industry has been a long process, dating back ten years. Prior to promulgation of the final regulation, notices were published regarding primary and secondary treatment sludges on Novermber 2, 1980 (45 *FR* 74893), February 11, 1985 (50 *FR* 5637), and April 13, 1988 (53 *FR* 12182).

In the November 2, 1990 final rule, the preamble discussed the scope of the listing and described those process and oily cooling wastewaters generating the listed waste (55 *FR* 46364). The preamble indicated that "oily cooling waters" for the purposes of the listing included once-through cooling water from C_6 (six carbon) hydrocarbons and heavier operations. However, since publication of the final rule, the Agency has learned that the inclusion of non-contact, once-through cooling water (as opposed to once-through contact cooling water) in the definition of oily cooling waters unintentionally may extend the F037 and F038 listings to wastes that are not similar in constituent concentration to others included in the listing. The American Petroleum Institute (API) provided data, which is included in the docket for today's notice, that supports the conclusion that sludges from non-contact, once-through cooling waters are not similar to other primary and secondary oil/water/solids separation sludges generated at petroleum refineries and should, therefore, be excluded from the listings. Consequently, EPA has determined that sludges from once-through, non-contact cooling water should not be listed and is therefore today amending the listing description.

In addition, the Agency today is revising the definition of wastes subject to the F038 listing for petroleum refinery secondary (emulsified) oil/water/solids separation sludge, to clarify an ambiguity in the listing description. The revised language clarifies that both sludges and floats generated in aggressive biological treatment units, as defined in 40 CFR 261.31(b)(2)(i), and not included in the F038 listing, are excluded from the scope of that listing. It was not EPA's intent to include those floats in the F038 listing, and today's rule adds language to clear up any confusion on this issue.

B. Interim Final Rule

1. Non-Contact Once-Through Cooling Water

Section 3001 of RCRA requires EPA to list particular hazardous wastes that must be subject to the RCRA hazardous waste management system. Regulations listing specified wastes must be based on EPA-developed criteria codified at 40 CFR 261.11. The Hazardous and Solid Waste Amendments of 1984 (HSWA), among other provisions, added a new secton 3001(e)(2) directing EPA to make a determination whether or not to list as hazardous a number of wastes, including refinery wastes. In the previously published notices, the Agency explicitly discussed the inclusion of cooling waters from C_6 and heavier operations in the scope of the listings (see 53 *FR* 12164, April 13, 1988). However, the notice did not indicate that cooling water included non-contact, once-through cooling water, which is segregated wastewater used for cooling that does not come in contact with oil. Further, the Agency did not request comment or data on the composition of non-contact, once-through cooling water in any of the notices. Further, the cost of managing such wastes was not analyzed when EPA evaluated the regulatory impact of the listings.

After publication of the final rule, EPA received comments from the regulated community contending that waste produced in oil/water/solids separation of non-contact, once-through cooling water is not similar in constituent concentration to other wastes included in the listing. As noted above, API submitted data supporting their contention that non-contact, once-through cooling water should not have been included in the definition of oily cooling waters.

The Agency's inclusion of once-through cooling water from C_6 (six carbon) hydrocarbons and heavier operations in the definition of oily cooling waters was based on a 1969 API petroleum refinery waste disposal manual that was developed prior to implementation of current Clean Water Act (CWA) requirements. Discussion of

liquid wastes in the manual described "once-through cooling water from surface condensers and coolers handling oil which will *not* vaporize rapidly on exposure to air (C_6 and heavier)" as one type of oily cooling waters. The manual indicated that such oily cooling waters were of concern because they can contain minor oil contamination from sources such as spills or leaks in heat exchange equipment. The manual made a clear distinction between oily cooling waters and oil-free cooling wastewaters, such as once-through cooling water from surface condensers and coolers which normally handle gaseous products (C_5 and lighter).

In response to CWA requirements related to surface water discharges that were promulgated after publication of the manual, API contends that refineries have changed processes and adapted their facilities to separate non-contact, once-through cooling water from other wastewaters. Thus, these wastewaters are segregated from other oily wastewaters. As a result, sludges from treatment of these wastewaters for the most part contain metals (*e.g.*, arsenic, nickel, lead, and chromium) at much lower levels than found in other primary and secondary oil/water/solids separation sludges. Further, the API data indicate that the semivolatile constituents of concern (*e.g.*, benzene, benzo(a)pyrene, and chrysene), when present, are detected at levels at least 100 times less than the average found in other wastes included in the F037 and F038 listings.

Based on the comments received by the Agency after promulgation of the November 2, 1990 final rule, EPA has concluded that wastes from the separation of non-contact, once-through cooling water are significantly different from the sludges the Agency intended to list as F037 and F038 and, thus, should not be included in the scope of these listings. The Agency, however, is not making a final listing determination on these wastes and may, in the future, evaluate sludges generated from non-contact once-through cooling waters. Today, the Agency is promulgating an interim final rule that amends the listing definitions for F037 and F038 to exclude sludge generated from non-contact, once-through cooling waters that are segregated for treatment from other process or oily cooling wastewaters. It should be noted that non-contact, once-through cooling waters that are mixed with the wastewaters that will generate the listed waste or with any other listed hazardous waste become subject to Subtitle C regulations under the mixture rule (40 CFR 261.3(a)(2)(iv)). It also should be noted that these wastewaters, and any sludges generated from them, could still exhibit one or more of the characteristics of hazardous waste, and if so, would be subject to appropriate RCRA Subtitle C controls.

2. Floats Generated in Aggressive Biological Treatment

The Agency also has learned that the F038 listing description published in the final rule on November 2, 1990 could be misinterpreted to include floats generated during or after aggressive biological treatment. Today's rule further revises the F038 listing definition to clarify that the F038 listing for petroleum refinery secondary (emulsified) oil/water/solids separation does not include floats generated in or downstream from aggressive biological treatment units. EPA believes this was clearly implicit in its discussion in the final rule. The Agency spelled out in detail what units were aggressive biological treatment units in the preamble to the final rule (see 55 *FR* 46358, November 2, 1990) and promulgated a detailed definition for such units under 40 CFR 261.31(b)(2)(i). The Agency believes its intent was plain in both the preamble discussion and the regulatory language. However, the Agency agrees that some potential for misinterpretation may exist and, therefore, is clarifying the listing description.

The Agency used the term "[a]ny sludge and/or float" to describe the listed F038 waste in the definition at 40 CFR 261.31 (55 *FR* 46396). This phrase indicated the Agency's intent to regulate all sludges and floats generated in the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters. However, the Agency used the term "sludges" to describe the waste generated in an aggressive biological treatment unit *not* included in the listing. By failing to include "and/or floats" the Agency did not mean to suggest floats generated in aggressive biological treatment units remained within the scope of the listing as well. However, because of the potential for some confusion, the Agency is amending the definition of F038 specifically to exclude floats generated in aggressive biological treatment units from the F038 listing.

EPA today is soliciting comments on its action today. In particular, the Agency is seeking additional data that would support or refute API's contention that non-contact, once-through cooling waters are substantially different from other wastewaters included in the definition of oily cooling waters, and comment on the data the Agency has received to date.

C. State Authority

1. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim. Consequently, in light of today's revision, Table 1 in 40 CFR 271.1(j) also has been amended. Table 1 identifies Federal program requirements promulgated pursuant to HSWA that are effective regardless of a State's authorization status.

2. Effect on State Authorizations

EPA will implement the provisions of today's interim final rule in authorized States until their programs are modified to adopt the final listings for primary and secondary oil/water/solids separation sludge and the modification to the State's program is approved by EPA. See discussion in the final rule at 55 *FR* 46381 (November 2, 1990). In nonauthorized States EPA will, of

course, implement the provisions of today's rule.

As previously noted, the primary and secondary oil/water/solids separation sludge listings were promulgated pursuant to a HSWA provision and must be adopted by States that intend to retain final authorization. However, today's rule revises and narrows the scope of the listing for primary and secondary oil/water/solids separation sludge from that of the final regulation as promulgated. Today's interim final rule (1) excludes non-contact, once-through cooling water from the F037 and F038 listings and (2) does not include within the scope of the F038 listing floats generated in or after aggressive biological treatment units. Consequently, such wastes are not hazardous wastes for the purposes of Federal regulation and regulation of these wastes is not required. At the same time, under section 3009 of RCRA, States remain free to impose more stringent requirements than those imposed under Federal regulations. As a result, States, as authorized by State statute, may chose to regulate the wastes from non-contact, once-through cooling wastes or aggressive biological treatment units or may require other more stringent conditions upon management of these wastes.

D. CERCLA Designation and Reportable Quantities

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, pursuant to CERCLA section 101(14). Therefore, the waste streams that were listed as hazardous waste in the November 2, 1990 rule (55 *FR* 46354) will, on the effective date of the rule, May 2, 1991, automatically become hazardous substances. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs).

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ shall immediately notify the National Response Center of the release. In addition to the reporting requirements under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the releases of a CERCLA hazardous substance or Extremely Hazardous Substance (EHS) to State and local authorities. EPCRA Section 304 notification must be given immediately after the release of an EHS in the amount of an RQ or more to the community emergency coordinator for each local emergency planning committee (LEPC) for an area likely to be affected by the release, and to the State emergency planning commission of any State likely to be affected by the release.

With the revision of the definitions of waste subject to the F037 and F038 listings, as discussed previously in today's notice, the Agency is revising the F037 and F038 listings in 40 CFR 302.4 and the codified list of CERCLA hazardous substances.

Under Section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutory RQ of one pound unless and until the RQ is adjusted by regulation under CERCLA. The November 2, 1990 rule provided that the RQ for the newly added F037 and F038 wastes would be one pound until revised under a CERCLA rulemaking. On March 27, 1991, the Agency published a separate rulemaking under CERCLA (55 *FR* 12826), which proposed to adjust the RQ for these wastes at one pound. The changes in today's rule do not change the proposed RQs.

E. Regulatory Requirements

1. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The overall effect of today's rule is to narrow the definition of those wastes subject to the F037 and F038 hazardous waste listings for petroleum refinery primary and secondary oil/water/solids separation sludge. The net effect of this proposal is to extend cost savings to the regulated community. Consequently, no regulatory impact analysis is required.

2. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The narrowing of the definition of oily cooling waters as applied to petroleum refinery primary and secondary oil/water/solids separation sludge (F037 and F038) promulgated today is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

3. Paperwork Reduction Act

There are no reporting, notification, or recordkeeping (information) provision in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous wastes, hazardous constituents, recycling.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Interim and final State authorizations.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 1, 1991.

F. Henry Habicht, II,

Deputy Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6221, 6922, and 6938.

2. The table in § 261.31(a) is amended by revising the entries F037 and F038 to read as follows:

§ 261.31 Hazardous waste from non-specific sources

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * * * * * *		
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.	(T)
* * * * * * *		

PART 271—REQUIREMENT FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding at the end of the following entry to Table 1.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Insert Publication Date]	Petroleum refinery primary and secondary oil/water/solids separation sludge listings.	[Insert *FR* page citation]	May 2, 1991.
* * * * * * *			

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

5. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

6. Section 302.4 is amended by revising the entries F037 and F038 in Table 302.4 to read as follows.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste no.	Category	Pounds (KG)
* * * * *				*		*	
F037			1*	4	F037		# #
Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing							
F038			1*	4	F038		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code+	Statutory RCRA waste no.	Final RQ Category	Final RQ Pounds (KG)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or oil cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing								
*	*	*	*	*	*	*	*	*

+ Indicates the statutory sources as defined by 4 below.
* Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.
The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 91-10898 Filed 5-10-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No 910507-1107]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce changes the quota for wreckfish in the snapper-grouper fishery off the South Atlantic states in accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as amended. This notice establishes an annual quota for wreckfish of up to three million pounds (1,360,791 kilograms), whole weight, as follows: One million pounds (453,597 kilograms), whole weight, during each of the periods April 16, 1991, through July 15, 1991, and July 16, 1991, through October 15, 1991; with an additional one million pounds for the period October 16, 1991, through January 14, 1992, available if analysis of current data indicates that it is the appropriate harvest level for the resource. The intended effect is to protect the wreckfish resource.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, (813) 893-3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species, including wreckfish, are managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with procedures approved in Amendment 3 to the FMP, the Council recommended and NOAA published a proposed rule changing the wreckfish annual quota (56 FR 14496, April 10, 1991). That notice (1) described the framework procedure of the FMP through which the Council recommended the change; (2) specified the change; and (3) described the need and rationale for the change. Those descriptions and specifications are not repeated here. No comments were received on the proposed rule.

The Regional Director, Southeast Region, NMFS, concurs that the Council's recommended wreckfish quota is necessary to protect the resource and finds that it is consistent with the goals and objectives of the FMP. In addition, NOAA finds that it is consistent with the Magnuson Act and other applicable law. Accordingly, the Council's recommended wreckfish quota is implemented for the fishing year that commenced April 16, 1991.

Because this change in quota is for a fishing year that has already commenced, the Assistant Administrator for Fisheries, NOAA, finds for good cause, namely, to provide effective conservation and management of the wreckfish resource, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule under the provisions of section 553(d)(3) of the Administrative Procedure Act.

Other Matters

This action is authorized by 50 CFR 646.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 7, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

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

2. Section 646.24 is revised to read as follows:

§ 646.24 Wreckfish quota and closure.

(a) Persons fishing for wreckfish are subject to a quota of up to 3 million pounds (1,360,791 kilograms), whole weight, each fishing year, distributed as follows:

(1) A quota of one million pounds (453,597 kilograms) is available on April 16;

(2) A quota of one million pounds (453,597 kilograms) is available on July 16; and

(3) A quota of one million pounds (453,597 kilograms) is available on October 16, unless the fishery is closed for the remainder of the fishing year by notice in the **Federal Register**.

(b) When a quota specified in paragraph (a) of this section is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register**. After the effective date of such notice, until an additional quota is available, wreckfish may not be harvested or possessed in or from the EEZ and the purchase, barter, trade, offer for sale, and sale of wreckfish taken from the EEZ is prohibited. This prohibition does not apply to trade in wreckfish that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the **Federal Register** and where held in cold storage by a dealer or processor.

[FR Doc. 91–11295 Filed 5–10–91; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 681

[Docket No. 910494–1094]

Western Pacific Crustacean Fisheries

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

ACTION: Emergency interim rule; closure of lobster fishery in the Northwestern Hawaiian Islands.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule is needed to provide immediate protection to the lobster stocks in the Northwestern Hawaiian Islands (NWHI) from heavy fishing pressure. An immediate closure will protect the spawning population before and during the summer peak spawning period and delay the opening of the fishery until after the FMP can be amended to establish a limited-entry plan and an annual harvest quota.

EFFECTIVE DATE: This emergency rule is effective from May 8, 1991, through 2400 hours local time August 12, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Director, NMFS Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 523–1368 or (FTS) 551–1974, or E.C. Fullerton, Director, NMFS Southwest Region, (213) 514–6196 or (FTS) 795–6196.

SUPPLEMENTARY INFORMATION: The FMP was developed by the Council and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) by regulations appearing at 50 CFR part 681.

Responding to concerns voiced by members of the NWHI lobster fishery about falling catch rates and lobster tail sizes, the Council directed its advisory committees to meet with industry representatives to work out solutions to the problem. At the same time, the NMFS Honolulu Laboratory analyzed data from commercial fishing logbooks and research cruises. The research and discussions indicated that the NWHI fishery could be in jeopardy, and that immediate action was required to protect and rebuild the lobster stocks.

A detailed analysis of the status of lobster stocks in the NWHI for 1990 is presented in a NMFS report (Polovina, J.J. Draft Report, March 1991. Status of lobster stocks in the Northwestern Hawaiian Islands, 1990. Honolulu Laboratory, Southwest Fisheries Science Center, NMFS, NOAA. Admin. Rept. H–91–04. 16 pp.). Preparation of this report was accelerated at the Council's request, due to concern about the status of the stocks. The main findings of the report are:

1. Fishing effort in 1990 was 1.2 million trap-hauls, a 10 percent increase over 1989. The catch per unit of effort (CPUE) for slipper and spiny lobsters combined, however, was 0.66 lobsters/trap-haul, a 38 percent decrease from 1989, the lowest CPUE since the inception of the fishery in the late 1970s;

2. The current low population level is due to poor recruitment to the fishery beginning in late 1989, combined with heavy fishing pressure; and

3. Most significantly, the index of spawning stock biomass indicates that the 1990 spawning stock biomass was about 22 percent of the pre-exploitation level.

The recent poor recruitment to the fishery has resulted in a current spawning stock biomass that is close to 20 percent of the biomass in the absence of fishing, the threshold level of overfishing defined in amendment 6 to the FMP. There is no evidence that recruitment to the fishery has returned to normal levels. The Council agrees with its Crustacean Planning Team, its Scientific and Statistical Committee, and with members of the lobster industry that the fishery should be closed as soon as possible.

The closure will serve two purposes. The first is to protect the spawning population before and during the summer peak spawning period. The second is to delay the opening of the fishery until after amendment 7 to the FMP can be implemented. Amendment 7 will establish a limited entry program and a process to set an annual harvest quota. These actions are intended to rebuild the lobster stocks and maintain them at maximum sustainable yield levels.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable laws. This emergency rule is implemented for 90 days under section 305(c) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. The Assistant Administrator has determined that continuing the regulations now in force for the NWHI would result in serious reduction in the lobster resource and considerable economic loss to the fishery.

The Council prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis make it impractical and contrary to the public interest to provide notice and opportunity for comment, or to delay for any period the effective date of these emergency regulations, under the provisions of 553 (b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order (E.O.) 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

The Council requested that the State of Hawaii concur with its finding that the proposed action is consistent with the State's approved coastal zone management program. The State of Hawaii has concurred with this determination.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule is exempt from the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

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

List of Subjects in 50 CFR Part 681

Fisheries, Fishing.

Dated: May 7, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

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

2. In § 681.7, effective from May 8, 1991, through 2400 hours local time August 12, 1991, paragraph (b)(1) is suspended, and new paragraphs (b)(7) and (b)(8) are added, to read as follows:

§ 681.7 Prohibitions.

* * *

(b) * * *

(7) Possess on a fishing vessel any gear (trap) for the fishing or taking of lobsters.

(8) Fish for, take, or retain lobsters.

* * * * *

[FR Doc. 91–11296 Filed 5–8–91; 4:23 p.m.]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 92
Monday, May 13, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL-088-89]

RIN 1545-AL81

Requirements For Investments to Qualify Under Section 936(d)(4) As Investments In Qualified Caribbean Basin Countries; Public hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to the use of section 936 funds to finance an investment that qualifies as privatization.

DATES: The public hearing will be held on July 12, 1991, beginning at 10 a.m. Outlines of oral comments must be received by June 28, 1991.

ADDRESSES: The public hearing will be in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IL-088-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 936(d)(4) of the Internal Revenue Code. The proposed regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 28, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:30 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge of the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 91-11205 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[INTL-088-89]

RIN 1545-AL81

Requirements For Investments To Qualify Under Section 936(d)(4) As Investments In Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the use of section 936 funds to finance an investment that qualifies as a privatization. The regulations prescribe conditions for such an investment to qualify as for use in Puerto Rico under section 936(d)(4). These regulations are necessary to give guidance as to whether the use of section 936 funds in a privatization transaction will qualify as for use in Puerto Rico under section 936(d)(4).

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for Friday, July 12, 1991, at 10 a.m., must be received by Friday, June 28, 1991. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear and outline of oral comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, atten: CC:COPR:T:R (INTL-88-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing on the proposed rulemaking, Felocoa Daniels, Regulations Unit, 202-566-3935; concerning a particular provision of this proposed regulation, Christine Halphen (202-377-9493, not a toll-free call) or W. Edward Williams (202-287-4851, not a toll-free call) of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1). These regulations are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

On September 22, 1989, the Federal Register published proposed and temporary Income Tax Regulations (26 CFR part 1) [T.D. 8268, 1989-2 C.B. 134] under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085). The proposed and temporary regulations reserved on the issue of privatization. The final regulations published in the Rules and Regulations portion of this Federal Register also reserve on this issue.

Explanation of Provision

In general, the proposed regulations provide that a financing transaction effecting a privatization will be a qualified investment for purposes of section 936(d)(4) if the investment involves a transfer of ownership from a government entity to the private sector and has a positive developmental impact on the economy of a qualified

CBI country. Section 1.936–10(c)(5)(v) of the proposed regulations lists six requirements for a qualified privatization. One of these requirements is that the United States Agency for International Development, or the Overseas Private Investment Corporation if it is sponsoring a transaction, certifies that the acquisition is expected to have a significant positive developmental impact in the qualified Caribbean Basin country where the privatization occurs. The regulations are proposed to be effective 30 days after their publication in the **Federal Register** as final regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal authors of these proposed regulations are Christine Halphen and W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these proposed regulations.

List of Subjects in 26 CFR 1.931–1 Through 1.936–10T

Guam income taxes, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Proposed amendments to the regulations

The proposed amendments to 26 CFR part 1 is as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

Par. 2. Section 1.936–10 is amended as follows:

1. Paragraph (c)(5)(i)(A) is amended by adding a new sentence at the end of the paragraph to read as set forth below;

2. Paragraph (c)(5)(i)(B)(*1*) is amended by removing the word "or" at the end of the paragraph.

3. Paragraph (c)(5)(i)(B)(*2*) is amended by adding the word "or" at the end of the paragraph, and paragraph (c)(5)(i)(B)(*3*) is added to read as set forth below.

4. Paragraph (c)(5)(v) is added to read as set forth below.

5. Paragraphs (c)(9)(i) and (ii) are revised to read as set forth below.

§ 1.936–10 Qualified investments.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(A) * * * Solely for purposes of a qualified privatization described in paragraph (c)(5)(v) of this section, the amounts disbursed under the loan or bond issue may also be applied to an investment in a corporation, partnership, or trust.

(B) * * *

(*3*) A qualified privatization described in paragraph (c)(5)(v) of this section;

* * * * *

(v) *Qualified privatization.* This paragraph (c)(5)(v) is effective for investments made by a possessions corporation in a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico (or his delegate) on or after [insert date that is 30 days after publication of the final regulations in the **Federal Register**]. For purposes of this section, a qualified privatization is a financing transaction that satisfies all of the requirements of this paragraph (c)(5)(v).

(A) The loan must be made to finance the acquisition, directly or through an investment in a corporation, partnership or trust, of any assets that are currently used in a trade or business or were used in a trade or business but are no longer so used at the time of acquisition and a plan exists to continue or resume using those assets in the conduct of an active trade or business. The loan can also be used to finance other costs associated with acquiring the trade or business or placing assets back in service, within the limits set forth in paragraph (c)(4)(iii) of the section.

(B) After the acquisition, the assets must be used in a trade or business conducted as a qualified business activity.

(C) The United States Agency for International Development (USAID) or the Overseas Private Investment Corporation (OPIC) must certify, prior to the acquisition, that, as a result of the transfer of the activity from the public to the private sector, the acquisition is expected to have a significant positive developmental impact in the qualified Caribbean Basin country where the trade or business is conducted. The determination of whether an acquisition has significant positive developmental impact depends upon an analysis measuring the extent to which incremental developmental benefits exceed incremental negative effects. Generally, developmental effects will be measured in relation to the impact of the acquisition on those economic factors generally used to measure the effect of an activity on the economy of a qualified Caribbean Basin country. Those factors include (but are not limited to) increased economic efficiency and innovation conducive to self-sustaining growth, decreased government expenditures or increased direct revenues to the government, an improved balance of payments of the qualified Caribbean Basin country (through expanded exports of goods or services), increased employment over time, reduced cost of capital, increased expenditures for maintenance and operations, increased capital expenditures, increased net output and improved market competitiveness. Negative factors include (but are not limited to) increased capital outflows (*e.g.*, expenditures abroad and repatriation to any foreign shareholders).

(D) During the 3-year period preceding the acquisition, the government of the qualified Caribbean Basin country must have owned an interest, directly or indirectly, in the acquired assets that, by value or voting interest, represented 50 percent or more of the total of such interests in the acquired assets, and such government must have exercised effective control over such assets.

(E) After the acquisition and during all the time that the loan is outstanding, no government or government-controlled entity may own, directly or indirectly, any interest in the acquired assets.

(F) No government or government-controlled entity may exercise any effective control, or managerial or operational responsibility or authority, over the acquired assets at any time during the time that the loan is outstanding. This restriction is not intended to restrict the normal exercise of regulatory authority by a government, provided such power is not exercised in a way that would defeat the intent of the provisions in this paragraph (c)(5)(v)(F).

* * * * *

(9) * * *

(i) In the case of an investment described in paragraph (c)(4) of this section (relating to investments in active business assets) or in paragraph (c)(5)(v) of this section (relating to qualified privatization), a qualified recipient is a person that carries on a qualified business activity in a qualified Caribbean Basin country, and complies with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(ii) In the case of an investment described in paragraph (c)(5) of this section (relating to investments in development projects), other than an investment described in paragraph (c)(5)(v) of this section, a qualified recipient is the borrower (including a person empowered by the borrower to authorize expenditures for the investment in the development project) that has authority to comply, and complies, with the agreement and certification requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-11204 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-005-91]

RIN 1545-AP56

Limitations on Percentage Depletion in the Case of Oil and Gas Wells; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed amendments to final regulations that clarify the circumstances under which percentage depletion is available in the case of oil and gas wells. The proposed rules reflect changes to the applicable tax laws that were made by the Tax Reduction Act of 1975, the Energy Tax Act of 1978, the Technical Corrections Act of 1982, the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Revenue Reconciliation Act of 1990.

DATES: The public hearing will be held on Monday, July 8, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, June 17, 1991.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-005-91], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that contains proposed amendments to the Income Tax Regulations under section 613, 613A, and 705 of the Internal Revenue Code of 1986 (Code). These amendments are proposed to conform the regulations to section 403(a)(2)(B), (b), and (c) of the Energy Tax Act of 1978, sections 202(d)(2) and 203(b)(3)(B) of the Technical Corrections Act of 1982, section 3(a) of the Subchapter S Revision Act of 1982, sections 25(b) and 722(e)(1) of the Tax Reform Act of 1984, section 412(a)(1) of the Tax Reform Act of 1986, and sections 11521 and 11522 of the Revenue Reconciliation Act of 1990. These proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, June 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

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

[FR Doc. 91-10854 Filed 5-10-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-005-91]

RIN 1545-AP56

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to final regulations which the Internal Revenue Service is issuing in the rules and regulations portion of this issue of the **Federal Register.** The final regulations clarify the circumstances under which percentage depletion is available in the case of oil and gas wells. The proposed rules contained herein reflect changes to the applicable tax law that were made by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Tax Act of 1978, the Technical Corrections Act of 1982, the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Revenue Reconciliation Act of 1990.

DATES: Written comments and requests to appear at a public hearing scheduled for July 8, 1991 at 10 a.m. must be received by June 17, 1991. Outlines of oral comments must be received by June 17, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to speak and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-005-91), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lisa A. Fagan, (202) 566-4821 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and

Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.613A–3(e)(6)(i). This information is required by the Internal Revenue Service to verify that the partners' adjusted basis in oil and gas property has been adjusted to reflect the depletion allowance.

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

Estimated total reporting burden: 49,950 hours.

The estimated average burden associated with the collection of information in this notice of proposed rulemaking is .0333 hours per recordkeeper.

Estimated number of respondents: 1,500,000.

Background

This document contains proposed amendments to the Income Tax Regulations under sections 613, 613A, and 705 of the Internal Revenue Code of 1986 (Code). The rules contained herein are proposed to amend the final regulations that the Internal Revenue Service is issuing in the rules and regulations portion of this issue of the **Federal Register**. These amendments are proposed to conform the regulations to section 501 of the Tax Reduction Act of 1975, section 2115(c) of the Tax Reform Act of 1976, section 403(a)(2)(B), (b), and (c) of the Energy Tax Act of 1978, sections 202(d)(2) and 203(b)(3)(B) of the Technical Corrections Act of 1982, section 3(a) of the subchapter S Revision Act of 1982, sections 25(b) and 722(e)(1) of the Tax Reform Act of 1984, section 412(a)(1) of the Tax Reform Act of 1986, and sections 11521 and 11522 of the Revenue Reconciliation Act of 1990.

Explanation of Provisions

Although the provisions concerning oil and gas property held by partnerships were contained in the 1977 proposed regulations under section 613A, partnership provisions are being reproposed because the regulations proposed by this notice differ substantially from the regulations previously proposed. In the case of an entry of a new partner (or an additional contribution by an existing partner), the proposed amendments to the regulations require a partnership to allocate to the new partner his or her share of the aggregate of the partners' adjusted bases in each partnership oil or gas property. Concurrently, each existing partner is required to reduce his or her basis in each partnership oil or gas property by the percentage of the partnership's aggregate basis in the property that has been allocated to the new partner. The partnership may determine the partners' aggregate bases by using data submitted by partners or by using assumptions. Where a partner does not inform the partnership of the partner's basis in an oil or gas property, the partnership must use assumptions to determine the basis.

Use of the assumptions may result in the loss of a portion of the partners' collective basis in partnership property upon reallocation to an entering partner. A partnership may avoid the loss of any portion of the collective basis by using written data submitted by partners. A number of alternative methods of basis reallocation were considered and rejected on the ground the proposed method is the simplest and most administrable method. In particular, the proposed method minimizes required information on transfers and allows partnerships the flexibility to use written data with respect to some partners and assumptions with respect to others.

All other amendments proposed by this notice reflect legislation enacted after the issuance of the proposed May 13, 1977 regulations under section 613A. Consistent with *Commissioner* v. *Engle*, 464 U.S. 206 (1984) (holding that section 613A was not intended to disallow percentage depletion on a lease bonus or advanced royalty payment even when there is no actual production in the year of receipt), the final regulations under section 613A provide rules allowing percentage depletion for lease bonuses and advanced royalties received or accrued before August 17, 1986. However, section 412(a)(1) of the Tax Reform Act of 1986 enacted section 613A(d)(5) which overrules *Engle*. Thus, the proposed amendment of the regulations provides that any advanced royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production that is received or accrued after August 16, 1986, is not taken into account in computing the percentage depletion allowance pursuant to section 613A(c).

The proposed amendments to the regulations also reflect the repeal by section 11521 of the Revenue Reconciliation Act of 1990 of the "transfer rule" which made transferred proven properties ineligible for percentage depletion. The proposed amendments interpret the term "transfer," for purposes of determining whether a transfer occurs following the effective date of the repeal, in the same manner as it was interpreted under prior law. Under the proposed regulations, the repeal of the transfer rule is effective for transferees of proven properties transferred after October 11, 1990. The amendments interpreting the repeal of the transfer rule are proposed to be effective after the date of publication of the proposed regulations. This effective date is intended solely to make the regulations prospective, and should not be construed as altering or in any way affecting the statutory effective date of the repeal of the transfer rule. In addition, it is intended that no transaction after October 11, 1990 shall cause a property to become ineligible for percentage depletion as a result of the application of the transfer rule. See proposed § 1.613A–3(j)(1) Examples 6 and 7.

Special Analyses

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

Comments and Requests to Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m. on July 8, 1991 in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW.1, Washington, DC. Comments and

requests to appear must be received by June 17, 1991. Outlines of oral comments must be received by June 17, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Walter H. Woo, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.611–0 through 1.617–4

Income taxes, Natural resources, Reporting and recordkeeping requirements.

26 CFR 1.701–1 through 1.771–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR, chapter 1, part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

Par. 2. Paragraph (a) of § 1.613–1 is amended by revising the second sentence to read as follows:

§ 1.613–1 Percentage depletion; general rule.

(a) * * * The deduction shall not exceed 50 percent (100 percent in the case of oil and gas properties for taxable years beginning after December 31, 1990) of the taxpayer's taxable income from the property (computed without regard to the allowance for depletion). * * *

* * * * *

Par. 3. Section 1.613A–2 is amended by revising paragraph (a)(3), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b), to read as follows:

§ 1.613–2 Exemption for certain domestic gas.

(a) * * *

(3) Any geothermal deposit in the United States or in a possession of the United States that is determined to be a gas well within the meaning of former section 613(b)(1)(A) (as in effect before enactment of the Tax Reduction Act of 1975) for taxable years ending after December 31, 1974, and before October 1, 1978 (see section 613(e) for depletion on geothermal deposits thereafter),

* * * * *

(b) For taxable years ending after September 30, 1978, the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine (as defined in paragraph (e) of § 1.613A–7), and 10 percent shall be deemed to be specified in section 613(b) for purposes of section 613(a).

* * * * *

Par. 4. Section 1.613A–3 is amended as follows:

1. The text of paragraphs (e) and (f) is added as set forth below.
2. Paragraph (h)(1) is amended by revising the last sentence thereof to read as set forth below.
3. The text of paragraph (i)(2) is added as set forth below.
4. The text of paragraph (j)(1) is added as set forth below.

§ 1.613A–3 Exemption for independent producers and royalty owners.

* * * * *

(e) *Partnerships*—(1) *General rule.* In the case of a partnership, the depletion allowance under section 611 with respect to production from domestic oil and gas properties shall be computed separately by the partners and not by the partnership. The determination of whether cost or percentage depletion is applicable is to be made at the partner level. The partnership must allocate to each partner the partner's proportionate share of the adjusted basis of each partnership oil or gas property in accordance with the provisions of paragraphs (e)(2) through (e)(6) of this section. This allocation of the adjusted basis of oil or gas property does not affect a partner's adjusted basis in his or her partnership interest.

(2) *Initial allocation of adjusted basis of oil or gas property among partners*—(i) *General rule.* Each partner shall be allocated his or her proportionate share of the adjusted basis of each partnership domestic oil or gas property. The initial allocation of adjusted basis is to be made as of the later of the date of acquisition of the oil or gas property by the partnership or January 1, 1975.

(ii) *Allocation methods.* Except as otherwise provided in paragraph (e)(5) of this section, the provisions of this paragraph (e)(2)(ii) govern the determination under paragraph (e)(2)(i) of this section of a partner's proportionate share of the adjusted basis of oil or gas property. Each partner's proportionate share is determined in accordance with the partner's proportionate interest in partnership capital at the time of the allocation unless both—

(A) the partnership agreement provides that a partner's share of the adjusted basis of one or more properties is determined in accordance with his or her proportionate interest in partnership income, and

(B) at the time of allocation under the partnership agreement the share of each partner in partnership income is reasonably expected to be substantially unchanged throughout the life of the partnership, other than changes merely to reflect the admission of a new partner, an increase in a partner's interest in consideration for money, property, or services, or a partial or complete withdrawal of an existing partner.

If the requirements of paragraph (e)(2)(ii) (A) and (B) of this section are met, a partner's proportionate share is determined in accordance with his or her proportionate interest in partnership income. The partners' shares of adjusted basis are determined on a property-by-property basis. Accordingly, the basis of one property may be allocated in proportion to capital and the basis of another property may be allocated in proportion to income. See §§ 1.613A–3 (e)(5) and 1.704–1 (b)(4)(v) for special rules concerning allocation of the adjusted basis of oil and gas properties.

(3) *Adjustments by partnership to allocated adjusted bases*—(i) *Capital expenditures by partnership.* Appropriate adjustments shall be made to the partners' adjusted bases in any domestic oil and gas property for any partnership capital expenditures relating to such property that are made after the initial allocation. These adjustments shall be allocated among the partners in accordance with the principles set forth in paragraph (e)(2)(ii) of this section.

(ii) *Admission of a new partner or increase in partner's interest*—(A) *In general.* Upon a contribution of money, other property, or services to the partnership by a new or existing partner ("contributing partner") as consideration for an interest in the partnership, the partnership shall allocate, in accordance with paragraph (e)(3)(ii)(B) of this section, a share of the partnership's basis in each existing oil and gas property to the contributing partner, and each existing partner shall reduce, in accordance with paragraph (e)(3)(ii)(C) of this section, his or her share of the partnership's basis in such property.

(B) *Allocation of basis to contributing partner.* The partnership shall allocate

to a contributing partner his or her proportionate share (determined under paragraph (e)(2)(ii) of this section in accordance with the partner's proportionate interest in partnership capital or income) of the partnership's adjusted basis in each existing partnership oil or gas property. For purposes of this allocation, the partnership's adjusted basis in such property equals the aggregate of its partners' adjusted bases in the property, as determined under paragraph (e)(3)(iii) of this section.

(C) *Reduction of existing partners' bases.* Each existing partner's basis in each existing partnership oil or gas property is reduced by the percentage of the partnership's aggregate basis in the property that is allocated to the contributing partner. Thus, if one third of the partnership's aggregate basis in a property is allocated to a contributing partner because the contributing partner has a one-third interest in partnership capital, after the admission of the contributing partner each existing partner's basis (including the contributing partner's pre-existing basis if such partner is also an existing partner) in each property equals the partner's basis (prior to the admission) reduced by one-third.

(iii) *Determination of aggregate of partners' adjusted bases in the property*—(A) *In general.* To determine the aggregate of its partners' adjusted bases for purposes of this paragraph (e)(3), the partnership must determine each partner's adjusted basis under either paragraph (e)(3)(iii)(B) (written data) or paragraph (e)(3)(iii)(C) (assumptions) of this section. The partnership is permitted to determine the bases of some partners under paragraph (e)(3)(iii)(B) and of others under paragraph (e)(3)(iii)(C). For this purpose, a partner's basis in an oil or gas property does not include any basis adjustment under section 743(b).

(B) *Written data.* A partnership may determine a partner's basis in an oil or gas property by using written data provided by a partner stating the amount of the partner's adjusted basis or depletion deductions with respect to the property unless the partnership knows or has reason to know that the written data is inaccurate. In determining depletion deductions, a partner must treat as actually deducted any amount disallowed and carried over as a result of the 65 percent-of-income limitation of section 613A(d)(1). If a partnership does not receive written data upon which it may rely, the partnership must use the assumptions provided in paragraph (e)(3)(iii)(C) of this section in determining a partner's adjusted basis in an oil or gas property.

(C) *Assumptions.* A partnership that does not use written data pursuant to paragraph (e)(3)(iii)(B) of this section to determine a partner's basis must use the following assumptions to determine the partner's adjusted basis in an oil or gas property:

(*1*) The partner deducted his or her share of deductions under section 263(c) in the first year in which the partner could claim a deduction for such amounts, unless the partnership elected to capitalize such amounts;

(*2*) The partner was not subject to the 65 percent-of-income limitation of section 613A(d)(1) with respect to the partner's depletion allowance under section 611; and

(*3*) The partner was not subject to the following limitations, with respect to the partner's depletion allowance under section 611, except to the extent a limitation applied at the partnership level: The taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of sections 613A(d) (2), (3), and (4) (exclusion of retailers and refiners).

(iv) *Withdrawal of partner or decrease in partner's interest.* Upon a distribution of money or other property to a withdrawing partner as consideration for an interest in the partnership, the withdrawing partner's adjusted basis in each domestic oil or gas property is allocated to the remaining partners in proportion to their proportionate interest in partnership capital or income after taking into account any increase or decrease as a result of the event giving rise to the reallocation. A similar rule shall apply in the case of a diminution of a continuing partner's interest in the partnership.

(v) *Effective date.* The provisions of § 1.613A–3(e)(3) (i) through (iv) are generally effective for taxable years ending after December 31, 1974, but are not effective for purposes of allocations and adjustments made with respect to taxable years ending before May 13, 1991, if the partners used a different interpretation of section 613A(c)(7)(D) that was reasonable. A partnership that has employed such a reasonable interpretation need not reallocate basis of existing properties with respect to taxable years ending after May 13, 1991, except upon an event requiring reallocation under this paragraph (e)(3) (*e.g.*, entry of a new partner). An interpretation that resulted in more than one partner claiming the same basis is not reasonable for this purpose.

(4) *Determination of a partner's interest in partnership capital or income.* For purposes of this paragraph (e), a partner's interest in partnership capital or income is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. See the factors listed in § 1.704–1(b)(3)(ii).

(5) *Special rules on allocation of adjusted basis to partners.* An allocation or reallocation of the adjusted basis of oil or gas property is deemed to be in accordance with the partner's proportionate interest in partnership capital or income for purposes of this paragraph (e) where so provided in § 1.704–1(b)(4)(v). In addition, in connection with a revaluation described in § 1.704–1(b)(2)(iv)(*f*), the basis of an oil or gas property is allocated among the partners based on the principles used under § 1.704–1(b)(4)(i) of allocating tax items to take into account variations between the adjusted basis of the property and its fair market value. In the case of an oil or gas property contributed to a partnership by a partner, the partner's share of the adjusted basis shall be determined under section 704(c).

(6) *Miscellaneous rules*—(i) Each partner must separately keep records of his or her share of the adjusted basis in each domestic oil or gas property of the partnership, adjust his or her share of such basis pursuant to section 1016 (including adjustments for any depletion allowed or allowable with respect to such property), and use that adjusted basis each year in the computation of his cost depletion or in the computation of his or her gain or loss on the disposition (including abandonment) of the property by the partnership.

(ii) The adjusted basis of a partner's interest in a partnership is decreased (but not below zero) pursuant to section 705(a)(3) by the amount of the depletion deduction allowed or allowable to the partner with respect to a domestic oil or gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to the partner under section 613A(c)(7)(D), as adjusted by the partner after the initial allocation. Section 705(a)(1)(C) does not apply to depletion deductions that are not included in a partner's distributive share under section 702. Accordingly, the adjusted basis of a partner's interest in a partnership is not increased under section 705(a)(1)(C) with respect to depletion of oil or gas properties. See § 1.705–1(a)(2)(iii).

(iii) Upon the disposition of an oil or gas property by the partnership, each

partner must subtract the partner's adjusted basis in the property from his or her allocable portion of the amount realized from the sale of the property to determine gain or loss. The partner's allocable portion of amount realized must, except to the extent governed by section 704(c) (or related principles under § 1.704–1(b)(4)(i)), be determined in accordance with § 1.704–1(b)(4)(v). Except as otherwise provided (*e.g.*, section 751), the sale of a partnership interest is not treated as a sale of an oil and gas property.

(iv) In the case of a transfer of an interest in a partnership, the transferor partner's adjusted basis in each partnership oil or gas property carries over to the transferee partner. If an election under section 754 (relating to optional adjustment to the basis of partnership property) is in effect, such basis is adjusted in accordance with section 743.

(v) For purposes of section 732 (relating to basis of distributed property other than money) and section 734(b) (relating to optional adjustment to basis of partnership property), the partnership's adjusted basis in oil and gas property is an amount equal to the aggregate of its partners' adjusted bases in the property as determined under the rules provided in paragraph (e)(3) of this section.

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, B, and C have equal interests in capital in Partnership ABC. On January 1, 1970, the partnership acquired a producing domestic oil property. On January 1, 1975, the partnership's basis in the property was $90x. The partnership allocated the adjusted basis of the property to each partner in proportion to the partner's interest in partnership capital. Accordingly, each partner was allocated an adjusted basis of $30x. Each partner must separately compute his or her depletion allowance. The amount of percentage depletion allowable for each partner for 1975 was $10x. On January 1, 1976, each partner's adjusted basis in the property was $20x ($30x minus $10x). On January 1, 1976, the oil property was sold for $150x. Each partner's gain was $30x ($50x allocable share of amount realized minus the partner's adjusted basis of $20x). Each partner must adjust the partner's adjusted basis in his or her partnership interest to reflect the gain.

Example 2. The facts are the same as in *Example 1* except that on January 1, 1976, the property was not sold but transferred by the partnership to partner A. A's basis in the property was $60x (the sum of A's, B's, and C's adjusted bases in the property).

Example 3. The facts are the same as in *Example 1* with the exception that in 1975 C was a retailer of oil and gas and was only entitled to a cost depletion deduction of $5x. C's gain from the sale of the mineral property was $25x ($50x allocable share of amount realized minus C's adjusted basis of $25x ($30x minus $5x)).

Example 4. D, a calendar year taxpayer, is a partner in Partnership DEF which owns a domestic producing oil property. On January 1, 1975, the partnership's adjusted basis in the property was $900x. On January 1, 1975, D's adjusted basis in D's partnership interest was $300x and D's adjusted basis in the partnership's oil property was $300x. D's allowable percentage depletion for 1975 with respect to production from the oil property was $50x. On January 1, 1976, D's adjusted basis in D's partnership interest was $250x and D's adjusted basis in the partnership's oil property was $250x ($300x minus $50x).

Example 5. On January 1, 1975, G has an adjusted basis of $5x in partnership GH's proven domestic oil property, which is the sole asset of the partnership. On January 1, 1975 G sells G's partnership interest to I for $100x when the election under section 754 is in effect. I has a special basis adjustment for the oil property of $95x (the difference between I's basis, $100x, and I's share of the basis of the partnership property, $5x). I is not entitled to percentage depletion with respect to I's distributive share of the oil property income because I is a transferee of an interest in a proven oil property. However, I is entitled to cost depletion and for this purpose I's interest in the oil property has an adjusted basis to I of $100x ($5x, plus I's special basis adjustment of $95x).

Example 6. On January 1, 1980, Partnership JK acquired a domestic producing oil property. On January 1, 1975, the partnership's adjusted basis in the property was zero. On January 1, 1975, L is admitted as a partner to the partnership. Since the partnership's adjusted basis in the oil property is zero, L's proportionate share of the basis in the property is also zero. L is not entitled to percentage depletion because L is a transferee of a proven oil property (see paragraph (g) of this section). Since the property's basis is zero, L is also not entitled to any cost depletion with respect to production from the property.

Example 7. (i) O and P have equal interests in capital in Partnership OP. On January 1, 1983, the partnership acquired an unproven domestic oil property X the basis of which is $200x to the partnership. The partnership allocates $100x of the basis of the property to each partner in accordance with each partner's proportionate interest in partnership capital. For the 1983 taxable year, O has a $10x cost depletion allowance and P has a $25x percentage depletion allowance. Accordingly, at the end of the 1983 taxable year, O's adjusted basis in the property is $90x, and P's adjusted basis in the property is $75x. On January 1, 1984, Q is admitted as an equal partner. The partnership does not use written data from the partners and must therefore assume that each partner was entitled to $25x depletion based on the assumptions provided in § 1.613A–3(e)(3)(iii). This would result in a $50x combined depletion allowance for the partners and an aggregate adjusted basis in the oil property of $150x. Accordingly, the partnership allocates $50x of the basis of the property to Q, one-third of the aggregate adjusted basis determined by the partnership. O and P must each reduce their basis in the property by one-third. Accordingly, after the admission of Q, O's adjusted basis in the property is $60x ($90x minus $30x), and P's adjusted basis in the property in $50x ($75x minus $25x).

(ii) Assume the same facts as in (i) of this *Example* except that O informs the partnership that its adjusted basis in the property is $90x (determined without regard to section 613A(d)(1)). The partnership uses the written data provided by O and determines the aggregate adjusted basis in the property to be $165x ($90x+$75X). Accordingly, the partnership allocates $55x (⅓ of $165x) of the basis of the property to Q, and O and P must each reduce their adjusted basis in the property by one-third, as in subdivision (i) of this example. Thus, after the admission of Q, O's adjusted basis in the property is $60x and P's adjusted basis in the property is $50x.

(f) *S corporations.* For purposes of section 613A(c)(13), adjustments to shareholders' adjusted bases in any domestic oil or gas property to reflect capital expenditures by S corporations, the addition of a new shareholder or an increase in a shareholder's interest by reason of a contribution to the S corporation, or the redemption of a shareholder's interest shall be made in accordance with principles similar to the principles under § 1.613A–3(e) applicable to the entry or withdrawal of a partner.

* * * * *

(h) * * *

(1) * * * Accordingly, the group shares the depletable oil (or natural gas) quantity prescribed for a taxpayer for the taxable year and the secondary production (to which gross income from the property is attributable before January 1, 1984) of a member of the group will reduce the other members' share of the group's depletable quantity.

* * * * *

(i) * * *

(2) *Transfers after October 11, 1990*—(i) *General rule.* Section 613A(c) (9) and (10), as in effect prior to the Revenue Reconciliation Act of 1990 (relating to prohibition of percentage depletion on transferred proven properties) has been repealed effective for transfers after October 11, 1990. Accordingly, a transferee of a proven oil or gas property transferred after October 11, 1990 is permitted to claim percentage depletion with respect to production from the property.

(ii) *Transfer.* The term "transfer" has the same meaning as under § 1.613A–7(n).

(iii) *Transferee.* A person shall not be treated as a transferee with respect to a transferred property to the extent that such person held an interest in the property but was not entitled to a

percentage depletion allowance on mineral produced with respect to the property immediately before the transfer. Thus, for example, if a taxpayer who is not entitled to claim percentage depletion on a proven property transfers the property to a partnership for an interest in the partnership, the taxpayer is not a transferee with respect to the property in the hands of the partnership.

(iv) *Effective date.* The provisions of paragraph (i)(2) of § 1.613A–3 are effective for transfers occurring after May 13, 1991.

(v) *Examples.* The examples below illustrate the provisions of this subparagraph. The examples ignore the application of any restriction on percentage depletion other than the proven property transfer rule.

Example 1. On December 31, 1991, A transfers a proven oil property to B. B may claim percentage depletion with respect to production from the property regardless of whether production from the property was eligible for percentage depletion in A's hands (even if A were a retailer or refiner of oil or gas).

Example 2. On October 10, 1990, A transfers a proven oil property to B. B may not claim percentage depletion with respect to production from the property.

Example 3. On January 1, 1990, C purchases a proven oil property. Because C is a transferee of a proven property, production from the property is not eligible for percentage depletion in C's hands. On December 31, 1991, C contributes the property to Corporation M, and S corporation in which C owns 100 percent of the stock. The contribution of the property is a transfer, but C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to production from the property. However, if prior to the contribution C had been entitled to claim percentage depletion with respect to production from the property, C would be entitled to claim percentage depletion with respect to production from the property after the contribution.

Example 4. On December 31, 1991, C contributes a proven oil property (with respect to which C is not entitled to claim percentage depletion) to Corporation N, and S corporation in which C owns 30 percent and D owns 70 percent of the stock. The contribution of the property is a transfer, but C is not a transferee with respect to the property in the hands of the corporation. Accordingly, C may not claim percentage depletion with respect to C's share of the production from the property. D is a transferee with respect to the property in the hands of Corporation N, and may claim percentage depletion with respect to D's share of production from the property.

Example 5. On December 31, 1991 D transfers a proven oil property (with respect to which D is not entitled to claim percentage depletion) to DE, an equal partnership between D and E. E is a transferee with respect to the property and may claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. D is not a transferee with respect to the property, and may not claim percentage depletion with respect to production from the property allocated to E under the DE partnership agreement. However, if D had been entitled to claim percentage depletion with respect to production from the property, then D would be entitled to claim percentage depletion with respect to production from the property in the hands of DE.

Example 6. On January 1, 1990, Corporation P contributes a proven property to Corporation O, its wholly owned subsidiary. Under § 1.613–7(n)(4), the contribution is not treated as a transfer, but only for so long as the tentative quantity is required under section 613A(c)(8) to be allocated between P and O. On December 31, 1991, P sells 90% of the O stock to an unrelated person; accordingly, the tentative quantity is no longer required under section 613A(c)(8) to be allocated between P and O. After the sale of O stock, production from the property in O's hands is eligible for percentage depletion because a transfer of a proven property is deemed to occur upon the transfer of the stock.

Example 7. On October 10, 1990, G transfers a proven oil property to his minor son, H. G had been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), H is permitted to claim percentage depletion for so long as G and H are related persons under section 613A(c)(8)(C). On December 31, 1991, H reaches majority and is no longer related to G under section 613A(c)(8)(C). H is entitled to continue to claim percentage depletion on production from the property because the property is treated as being transferred to H on December 31, 1991.

Example 8. On December 31, 1991, I sells a proven property to J, her husband. I had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(5), the sale is not a transfer because it is made between persons related under section 613A(c)(8). Accordingly, J may not claim percentage depletion with respect to production from the property. If, however, I had been entitled to claim percentage depletion with respect to production from the property, J would be entitled to claim percentage depletion with respect to production from the property.

Example 9. On December 31, 1991, L inherits a proven property from K. K had not been entitled to claim percentage depletion with respect to production from the property. Under § 1.613A–7(n)(1), the inheritance is not a transfer. Accordingly, L may not claim percentage depletion with respect to production from the property. If, however, K had been entitled to claim percentage depletion with respect to production from the property, L would be entitled to claim percentage depletion with respect to production from the property.

Example 10. On December 31, 1991, Corporation R, a calender year taxpayer, made an S election effective for the taxable year beginning January 1, 1992 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1992, the shareholders of Corporation R are eligible to claim percentage depletion with respect to the production from the properties.

Example 11. Assume the same facts as in *Example 10* except that Corporation R makes the S election on December 31, 1989, effective for the taxable year beginning January 1, 1990 and succeeding taxable years. Since Corporation R is deemed to have transferred its oil and gas properties on January 1, 1990, the shareholders of Corporation R are not eligible to claim percentage depletion with respect to the production from the properties.

(j) *Percentage depletion with respect to bonuses and advanced royalties*—(1) *Amounts received or accrued after August 16, 1986.* In computing the percentage depletion allowance pursuant to section 613A(c) with respect to amounts received or accrued after August 16, 1986, there shall not be taken into account any advance royalty (to the extent that actual production during the taxable year is insufficient to earn such royalty), lease bonus, or other amount payable without regard to production, even though the amount may be taken into account for purposes of sections 61 and 612 (relating to definitions of gross income and cost depletion, respectively).

* * * * *

Par. 5. Section 1.613A–7 is amended as follows:

1. The text of paragraph (e) is added as set forth below.

2. Paragraph (f)(1) is amended by revising the last sentence to read as set forth below.

3. Paragraph (h) is revised as set forth below.

4. Paragraph (n) is amended by adding the sentence set forth below after the first sentence thereof.

5. Paragraph (o) is amended by revising the first sentence thereof to read as set forth below.

6. Paragraph (r)(1) is amended by adding the sentence set forth below after the first sentence of the concluding text.

§ 1.613A–7 Definitions.

* * * * *

(e) *Qualified natural gas from geopressured brine.* The term "qualified natural gas from geopressured brine" means any natural gas which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine and which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(f) * * *

(1) * * * Average daily production does not include production resulting from secondary or tertiary process to which gross income from the property is attributable before January 1, 1984.

* * * * *

(h) *Depletable oil quantity.* The taxpayer's depletable oil quantity, within the meaning of section 613A(c)(1)(A), shall be equal to the tentative quantity determined under the table contained in section 613A(c)(3)(B) and paragraph (b) of § 1.613A–3 (except that, in the case of determinations with respect to days prior to January 1, 1984, such quantity shall be reduced (but not below zero) by the taxpayer's average daily secondary or tertiary production for the taxable year).

* * * * *

(n) * * * For taxable years beginning after 1982, the term "transfer" includes an election by a C corporation to be an S corporation (properties deemed transferred by the C corporation on the day the election first becomes effective) and a termination of an S election (each shareholder's pro rata share of assets of S corporation deemed transferred to C corporation on the day that the termination first becomes effective). * * *

* * * * *

(o) * * * The term "transferee", as used in section 613A(c)(9), paragraph (i)(1) of § 1.613A–3, and this section includes the original transferee of proven property and his or her successors in interest (excluding successors in interest of proven property transferred after October 11, 1990). * * *

* * * * *

(r) * * *

(l) * * *

* * * Bulk sales made after September 18, 1982, of aviation fuels to the Department of Defense shall be also disregarded. * * *

* * * * *

Par. 6. Section 1.705–1 is amended by revising paragraph (a)(2)(iii), redesignating paragraph (a)(4) as paragraph (a)(6), and inserting new paragraphs (a)(4) and (a)(5), to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(2) * * *

(iii) The excess of the deductions for depletion over the basis of the depletable property, unless the property is an oil or gas property the basis of which has been allocted to partners under section 613A(c)(7)(D).

* * * * *

(4) The basis shall be decreased (but not below zero) by the amount of the partner's deduction for depletion allowable under section 611 for any partnership oil and gas property.

(5) The basis shall be adjusted (but not below zero) to reflect any gain or loss to the partner resulting from a disposition by the partnership of a domestic oil or gas property after December 31, 1974.

* * * * *

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–10855 Filed 5–10–91; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 717]

RIN 1512–AA07

Benmore Valley Viticultural Area (91F–002P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in the southwestern corner of Lake County, California to be known as "Benmore Valley." Benmore Valley, at an elevation of 2,400 feet, is neastled in the Mayacmas Mountains, and is surrounded by peaks of up to 2,900 feet in height. It is located entirely within the North Coast viticultural area and does not overlap any other approved or proposed viticultural areas.

This proposal is the result of a petition submitted by Compliance Specialists, Santa Rosa, CA, on behalf of Vimark Inc. which owns vineyards in Benmore Valley. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific grape-growing areas where their wines come from, and better enables consumers to identify the wine they purchase.

DATES: Written comments must be received by June 27, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 717).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Disclosure Branch, 650 Massachusetts Avenue, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, Washington, DC 20226; telephone (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delimited in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate (U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area located in the southwestern corner of Lake County, California to be known as Benmore Valley. At an elevation of 2,400 feet, Benmore Valley is nestled in the Mayacmas Mountains, and is surrounded by peaks of up to 2,900 feet

in height. This proposal is the result of a petition submitted by Compliance Specialists, Santa Rosa, California, on behalf of Vimark, Inc., a Benmore Valley vineyard owner. There are 125 acres of vineyards and no bonded wine cellars within the proposes area.

1. Evidence of Name.

Name derivation

Benmore Valley, at the 2,400' elevation, is identified by name on U.S.G.S. maps. The petition states the first use of the name Benmore can be traced back to the nineteenth century cattle rustler, Benjamin Logan Moore, or Ben Moore. His practice was to steal cattle in the adjacent Mendocino County, and then drive them to Lake County into the hidden valley that now bears his name, Benmore. He continued this practice for years until emigrating to South America to escape the law.

Local/national renown

The 1988 Lake County Historical Society publication, Pomo Bulletin, detailed the historical aspects of Ben Moore, and his life in Benmore Valley. The Benmore name has been incorporated into a number of local geographical areas including Benmore Creek, Benmore Trail, Benmore Ridge and Benmore Valley. The Benmore name is found on the Hopland, Purdys Gardens, and Lakeport U.S.G.S. maps. The name Benmore Valley is directly associated with the history of Lake County.

2. Evidence of Boundaries

The petitioner submitted a 1:24,000 scale U.S.G.S. map which is the largest scale map that describes the area. The boundaries of the proposed Benmore Valley viticultural area coincide in a general manner with those of the region known as Benmore Valley, which is so labeled on the Purdys Gardens and Hopland U.S.G.S. maps. The boundaries of the proposed viticultural area encompass the valley floor of Benmore Valley and a portion of the watershed surrounding it. A specific description of the boundaries appears in the proposed regulation of the boundaries appears in the proposed regulation at § 9.138.

3. Evidence Distinguishing the Geographic Features.

Climate

The petition demonstrates that Benmore Valley is characterized by a cooler climate than surrounding areas. Analysis of data from the University of California Hopland Field Station shows Benmore Valley to be a region I classification with fewer than 2,000 annual heat units. Adjacent areas in Mendocino County are warmer. McDowell Valley two miles distant is classified as a region II area with 2,500 to 3,000 annual heat untis, while the City of Hopland three miles distant is classified as having a region III climate with 3,000 to 3,500 annual heat units. Kelseyville and Middletown in Lake County are classified as region III or region IV climates and are much warmer. In addition, ten-year statistical data from the University of California Hopland Field Station shows that the growing season begins later in the year in Benmore Valley than adjacent areas. The date of the last frost in Benmore Valley occurs as much as one month later than in surrounding areas, including both higher mountain elevations, and lower valley areas. Although Benmore Valley does not experience high temperatures, the valley tends to warm up earlier and cool later than other coastal areas, and thus stay warm for a longer percentage of the day. This fact, together with the relative lack of fog in the valley, provides a suitable climate for grape-growing.

Soils

Soil types found within Benmore Valley differ from soils in the mountains surrounding the valley. The three soil types on the valley floor are Manzanita loam, which predominates, Still loam and Wolfcreek loam. These are deep, well-drained soils of slow to moderately slow permeability found on alluvial plains. These soils contrast sharply with those in the surrounding mountains. Soil types of the bordering mountains are complexes made of varying mixtures of Maymen, Etsel, Mayacama and Snook soils, all shallow, excessively drained soils derived from weather shale and sandstone.

Elevation

Benmore Valley can be described as a slight depression in the surrounding mountains. The valley itself is a high elevation upland valley, higher than most nearby areas, but isolated from other areas by even higher mountains immediately surrounding the valley. The valley floor elevation is 2,400 feet with the surrounding mountains averaging 2,800 feet, and rising to the north to just over 3000 feet in elevation.

Water

The petition states that three man-made lakes and a natural creek provide adequate natural water supply for vineyard production. There is a high water table, which contrasts with the surrounding mountain area with little water capactiy. Due to its high elevation, there are no watercourses which flow into the valley. This natural watershed boundary provides definition between the valley and its surrounding areas. The proposed boundaries closely follow the peaks that enfold the valley into seclusion from the surrounding world.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competiton, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning the proposed viticultural area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any

material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed viticultural area should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Nancy Sutton, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, the Director proposes the amendment of 27 CFR part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in part 9 is amended by adding the title of § 9.138 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.138 Benmore Valley.

Par. 3. Subpart C is amended by adding § 9.138 to read as follows:

§ 9.138 Benmore Valley.

(a) *Name.* The name of the viticultural area described in this section is "Benmore Valley."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Benmore Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Hopland, CA," 7.5 Minute Series, edition of 1960, (photoinspected 1975); and

(2) "Purdys Gardens, CA," 7.5 Minute Series, edition of 1958, (photoinspected 1975).

(c) *Location.* The Benmore Valley viticultural area is located in the southwest corner of Lake County, California. It lies entirely within the North Coast viticultural area.

(d) *Boundaries.* The beginning point is an unnamed peak of 2788 feet elevation found in the southeast portion of Section 35, R. 11 W., T. 14 N., on the "Purdys Gardens" U.S.G.S. map:

(1) Then southwest in a straight line to the point where an unnamed unimproved road crosses the south section line of section 35, R. 11 W., T. 14 N., west of Benmore Creek;

(2) Then following the unnamed unimproved road south to the intersection with the boundary between Lake and Mendocino Counties;

(3) Then following the county boundary between Lake and Mendocino Counties east and south to the intersection with the 2800 foot contour line;

(4) Then following the 2800 foot contour line in a northerly and then southernly direction to its intersection with the boundary between Lake and Mendocino Counties on the southern edge of Section 2, R. 11 W., T. 13 N.;

(5) Then following the boundary between Lake and Mendocino Counties east to the point of intersection of Sections 1, 2, 11, and 12, R. 11 W., T. 13 N.;

(6) Then southeasterly in a straight line to an unnamed peak of 2769 feet elevation in the center of Section 12, R. 11 W., T. 13 N.;

(7) Then south in a straight line to the point where the boundary between Lake and Mendocino Counties changes from an east-west direction to a north-south direction;

(8) Then in a straight line in an easterly direction to an unnamed peak of 2883 feet elevation in the southeastern portion of Section 5, R. 10 W., T. 13 N.;

(9) Then northeast in a straight line to the easternmost peak of an unnamed ridge with four peaks in the center of Section 5, R. 10 W., T. 13 N.;

(10) Then northerly in a straight line to an unnamed peak of 2647 feet elevation near the north section line of Section 5, R. 10 W., T. 13 N.;

(11) Then westerly in a straight line to the point of intersection between Section 5, R. 10 W., T. 13 N., Section 31, R. 10 W., T. 14 N., and Section 1, R. 11 W., T. 13 N.;

(12) Then northwest in a straight line to an unnamed peak of 2904 feet elevation in the north portion of Section 1, R. 11 W., T. 13 N.;

(13) Then northwest in a straight line to an unnamed peak of 2788 feet elevation, the point beginning.

Signed: May 3, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91–11269 Filed 5–10–91; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD13 91–02]

Regatta; 1991 Bill Muncey Memorial Regatta, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish two areas of controlled navigation upon the waters of Lake Washington, Seattle, Washington, during the 1991 Bill Muncey Memorial Regatta. This event will be held on Sunday, 23 June 1991, from 8 a.m. PDT until 6 p.m. PDT. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing exclusionary zones to keep spectator vessels from interfering with the high speed boat races.

DATES: Comments must be received on or before June 27, 1991.

ADDRESSES: Comments should be mailed to LTJG D. A. Kearns, USCG Group Seattle, 1519 Alaskan Way S., Seattle, WA 98134–1192. The comments and other material referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way S., Seattle, WA 98134–1192. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. A. Kearns, Assistant Operations Officer, USCG Group Seattle, pH (206) 286–5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD13 91–02) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the

expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D. A. Kearns, project officer, and LT D. K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

The 1991 Bill Muncey Memorial Regatta consists of limited inboard, Z class hydroplane, and personal water craft races. The hydroplane and inboard races will be held on Lake Washington on a course adjacent to the U.S. Naval Air Station Sand Point recreational boat docks at Pontiac Bay, Seattle, Washington. The personal water craft races will be held on the water of Lake Washington adjacent to Magnuson Park, Sand Point, Seattle, Washington. A moderate number of spectator craft are expected to gather near the race course areas. To maintain the safety of all vessels, the Coast Guard will require non-participant vessels to remain outside the exclusionary areas.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Concerns

The proposed marine event appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impacts this proposed change may have on the human environment or potential inconsistencies with any federal, state or local law or administrative determination relating to the environment are solicited.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. There is virtually no commercial traffic in the proposed regulated areas of Lake Washington.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

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

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

2. Section 100.35–1301 is revised to read as follows:

§ 100.35–1301 Bill Muncey Regatta, Lake Washington, Seattle, WA Regulated Area

By this regulation, the Coast Guard will restrict general navigation and anchorage on the waters of:

(a) Area (1), Lake Washington in an area bounded by the following points:

(1) Latitude 47–42'11" N, Longitude 122–16'24" W;

(2) Latitude 47–41'18.5" N, Longitude 122–15'18" W;

(3) Latitude 47–41'15" N, Longitude 122–15'46" W;

(4) Latitude 47–41'44" N, Longitude 122–16'18" W;

The exclusionary area is approximately 2400 yards long and extends approximately 700 yards into Lake Washington.

(b) Area (2), Lake Washington in an area bounded by the following points:

(a) Latitude 47–40'49" N, Longitude 122–14'48" W;

(b) Latitude 47–40'45" N, Longitude 122–14'36.5" W;

(c) Latitude 47–40'32" N, Longitude 122–14'47" W;

(d) Latitude 47–40'37" N, Longitude 122–14'59" W;

The exclusionary area is approximately 500 yards long and extends approximately 350 yards into Lake Washington.

(c) Special Local Regulations:

(1) Persons or vessels (other than participant and official vessels) shall not enter or remain in the exclusionary areas described in paragraphs (a) and (b) during the hours that this regulation is in effect. The Patrol Commander is also empowered to control the movement of vessels in the exclusionary areas described in paragraphs (a) and (b) and the adjoining waters during the period of time this regulation is in effect.

(2) Patrol of the described areas will be under the direction of Commander, Coast Guard Group Seattle, who will designate a Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the exclusionary areas described in paragraphs (a) and (b) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the Patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) Effective Dates: These regulations become effective on 23 June 1991, from 8:30 a.m. to approximately 1:30 p.m. PDT for Area (1) and from 1:30 p.m. to 5:30 p.m. PDT for Area (2).

Dated: May 3, 1991.

J.E. Vorbach, RADM, USCG,

Commander, Thirteenth Coast Guard District.

[FR Doc. 91–11066 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

RIN 0905–AC27

National Institutes of Health Center Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would incorporate changes necessitated by the revision of the Public Health Service (PHS) Act by the Health Research Extension Act of 1985 (Pub. L. 99–158), the National Deafness and Other Communication Disorders Act of 1988 (Pub. L. 100–553), and the Health Omnibus Programs Extension of 1988 (Pub. L. 100–607), and changes that have occurred in programs identified in existing regulations.

EFFECTIVE DATE: Comments on these proposed regulations must be received by July 12, 1991.

ADDRESSES: Comments should be sent to: Dr. John W. Diggs, Deputy Director for Extramural Research, Office of the

Director, National Institutes of Health, Shannon Building, room 144, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Diggs, telephone (301) 496–1096.

SUPPLEMENTARY INFORMATION: Final regulations covering National Institutes of Health (NIH) Center Grants were published in the **Federal Register** on December 4, 1985 (50 FR 49692). On November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, reauthorizing the authorities and programs of the National Institutes of Health. The new law had two effects on the NIH Center Grants regulations. First, the sections of the PHS Act that authorized three center grants programs were renumbered, thus requiring a change of the legal citations in the "Authority" section of these regulations. Second, the new law authorized new center grant programs. Later laws, Public Laws 100–553 and 100–607, authorized other new center grants programs. The purpose of the proposed amendment of the NIH Center Grants regulations is to incorporate these changes into the regulations.

In issuing the NIH Center Grants regulations in 1985, it was stated that since the basic policies governing the award of financial assistance under these programs are substantially similar, the NIH Center Grants regulations would be expanded to encompass comparable center grants programs. It is proposed, therefore, to make needed technical corrections and to amend the regulations to include all center grant programs mentioned in title IV of the Public Health Service (PHS) Act, including those specifically authorized in Public Laws 99–158, 100–553 and 100–607.

In addition, it is proposed to revise the regulations in several places to incorporate language used in the legislation authorizing the National Cancer Research and Demonstration Centers and include additional relevant HHS regulations in section 52a.8. For example, subsections 52a.1(a) and 52a.2(a) would be revised to include the word "planning" which is authorized for the National Cancer Research and Demonstration Centers in § 414 of the PHS Act. In addition, § 52a.3(a)(1) would be revised to include the language "public or private non-profit" which is also specifically authorized in section 414 of the PHS Act. Finally, § 52a.8 would be revised to reference new HHS regulations at 42 CFR part 50, subpart A regarding the responsibilities of PHS awardees and applicant institutions for dealing with and reporting possible misconduct in science published on August 8, 1989 (54 FR 32446), HHS regulations at 45 CFR part 93 regarding new restrictions on lobbying published on February 26, 1990 (55 FR 6736), and HHS regulations at 45 CFR part 76, subpart F, on drug-free workplace requirements published on May 25, 1990 (55 FR 21677).

As stated in § 52a.1, these proposed regulations do not apply to grants for construction, unless specifically noted, traditional research projects, or general research support. Although certain types of research project grants have been commonly referred to as "center grants", those grants differ from the support programs authorized by the PHS Act sections stated in these proposed regulations and are governed by the research project grant regulations in 42 CFR part 52.

The proposed regulations do not repeat provisions of the authorizing legislation and thus need to be read in conjunction with the cited sections of the PHS Act, as appropriate for the particular center grants program.

Information Collection Requirements

Sections 52a.4 and 52a.6 of this proposed rule contain information collections which are subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The information collections have been approved by OMB under OMB Control No. 0925–0001. The applications (Standard Form PHS 398 Application for Public Health Service Grant and PHS 2590 Application for Continuation of Public Health Service Grant) used in the information collections specified in §§ 52a.4 and 52a.6 and the burden hours associated with the application requirements in these regulations are included with the approval of the applications in OMB Control No. 0925–0001.

Regulatory Impact and Regulatory Flexibility Analyses

These proposed regulations would extend existing policies and procedures governing the award and administration of discretionary grants to eligible institutions to support certain health research centers. While these centers would benefit those segments of the public afflicted by the health problems addressed by the centers, and physicians and other health professionals who receive training in those health areas, the centers would not have a significant economic or policy impact on a broad cross-section of the public. Therefore, the Secretary has determined that the regulations do not constitute a "major rule" under Executive Order No. 12291.

Furthermore, these regulations only affect those few institutions interested in obtaining financial assistance to carry out a center's authorized programs, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support. The regulations would not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6).

Family and Federalism Impact

This proposed rule has been reviewed under the requirements of Executive Order 12606, "The Family", and Executive Order 12612, "Federalism", and the Secretary has determined that the proposed rule would not have a significant potential negative impact on family well-being, States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* numbered programs affected by these proposed regulations are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers;
93.397 Cancer Centers Support;
93.837 Heart and Vascular Diseases Research;
93.838 Lung Diseases Research;
93.839 Blood Diseases and Resources Research;
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research;
93.847 Diabetes, Endocrinology, and Metabolism Research;
93.848 Digestive Diseases and Nutrition Research;
93.849 Kidney Diseases, Urology and Hematology Research;
93.855 Immunology, Allergic and Immunologic Diseases Research; and
93.866 Aging Research.

List of Subjects in 42 CFR Part 52a

Acquired Immunodeficiency Syndrome; Alzheimer's disease; Arthritis; Blood; Blood diseases; Blood Resources research; Cancer; Communication disorders; Diabetes; Digestive diseases; Endocrine diseases; Grant programs—Aging related diseases and disorders; Health; Health professions; Hearing disorders; Heart

diseases; Kidney diseases; Lung diseases; Medical research; Metabolic diseases; Musculoskeletal diseases; Sickle Cell Anemia; Skin diseases; and Urologic diseases.

It is proposed to amend subchapter D of title 42 of the Code of Federal Regulations by revising part 52a to read as follows:

Dated: November 9, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: April 4, 1991.

Louis W. Sullivan,

Secretary.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Sec.

52a.1 To which programs do these regulations apply?
52a.2 Definitions.
52a.3 Who is eligible to apply?
52a.4 What information must each application contain?
52a.5 How will NIH evaluate applications?
52a.6 Information about grant awards.
52a.7 For what purposes may a grantee spend grant funds?
52a.8 Other HHS regulations that apply.
52a.9 Additional conditions.

Authority: 42 U.S.C. 216, 285a–3, 285b–4, 285c–5, 285d–6, 285e–2, 285e–3, 285m–3, and 300cc–16.

§ 52a.1 To which programs do these regulations apply?

(a) These regulations apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion and operation of research and demonstration, multipurpose, and other centers. Specifically, these regulations apply to National Cancer Research and Demonstration Centers (including payments for construction), as authorized by section 414 of the Act; National Research and Demonstrations Centers for Heart, Blood Vessel, Lung, and Blood Diseases, Sickle Cell Anemia, and Blood Resources (including payments for construction), as authorized by section 422 of the Act; Research and Training Centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act; Multipurpose Arthritis and Musculoskeletal Disease Centers (including payments for alteration, but not construction), as authorized by Section 441 of the Act; Alzheimer's Disease Centers, as authorized by section 445 of the Act; Claude D. Pepper Older Americans Independence Centers, as authorized by section 445A of the Act; Multipurpose Deafness and Other Communication Disorders Centers, as authorized by section 464C of the Act; and Centers for Acquired Immunodeficiency Syndrome Research, as authorized by section 2316 of the Act; These regulations do not apply to:

(1) Grants for construction (see 42 CFR part 52b), except as noted above;

(2) Grants covered by 42 CFR part 52 (grants for research projects); or

(3) Grants for general research support under section 301(a)(3) of the Act (42 U.S.C. 241 (a)(3)).

(b) These regulations also apply to cooperative agreements made to support the centers specified in paragraph (a) of this section. When a reference is made in this part to "grants," the reference shall include "cooperative agreements."

§ 52a.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Center means:

(a) For purposes of grants authorized in section 414 of the Act, a public or private agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer.

(b) For purposes of grants authorized in section 422 of the Act, a public or private agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency medical services) for heart, blood vessel, lung, or blood diseases, including sickle cell anemia.

(c) For purposes of grants authorized in section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities, and development of model programs in diabetes mellitus and related endocrine and metabolic diseases.

(d) For purposes of grants authorized in section 441 of the Act, a facility which conducts basic and clinical research as well as research into orthopedic procedures, training, information programs for the health community and the general public.

(e) For purposes of grants authorized in section 445 of the Act, a public or private agency or institution which conducts basic and clinical research into, training in, information programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease.

(f) For purposes of grants authorized in section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of advanced diagnostic, prevention, and treatment methods for, disorders of hearing and other communication processes and complications resulting from such disorders.

(g) For the purposes of grants authorized in section 2316 of the Act, a public or private entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency.

(h) As required in a section of the Act cited in this part or at the determination of the Director of the NIH awarding organizational component, a center may use the facilities of a single institution or a consortium of cooperating institutions and, if practical, be part of an equitable geographical distribution of centers, and be part of an environment with proven research capabilities.

NIH means the National Institutes of Health and its organizational components that award grants.

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

§ 52a.3 Who is eligible to apply?

(a) Any public or private non-profit agency, institution, or consortium of agencies or institutions is eligible to apply for a grant under sections 414, 422, 441, 445, 445A and 2316 of the Act.

(b) Any public or private non-profit or for-profit agency, institution or consortium of agencies or institutions is eligible to apply for a grant under sections 431 and 464C of the Act.

(c) Any applicant under this part must be located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

§ 52a.4 What information must each application contain?

Each application under this part must include detailed information as to the following:

(a) The personnel, facilities, and other resources available to the applicant with which to initiate and maintain the proposed center grants program;

(b) Any research, training, demonstration, or information dissemination activities in which the applicant is currently engaged; the sources of funding for these activities; and the relevance of these activities to the proposed center grants program;

(c) Proposed research, training, demonstration, and information dissemination activities;

(d) The proposed organizational structure of the center and the relationship of the proposed center to the applicant organization(s);

(e) The names and qualifications of the center director and key staff members who would be responsible for conducting the proposed activities;

(f) Proposed methods for monitoring and evaluating individual activities and the overall center program;

(g) Proposed methods for coordinating the center's activities, where appropriate, with similar efforts by other public and private organizations;

(h) The availability of any community resources necessary to carry out proposed activities;

(i) Efforts to be made to generate and collect income from sources other than NIH to be used to further the purposes of the center program. NIH encourages these efforts. Income may include, but is not limited to, that generated from the sale or rental of products or services produced by grant-supported activities, such as laboratory tests, computer time, and payments received from patients or third parties, where appropriate (the disposition of grant-related income is governed by 45 CFR 74.40–74.47 and 45 CFR 92.25);

(j) The proposed budget for the center and a justification for the amount of the grant funds requested; and

(k) Any other information that the Director of the awarding institute may request.

(Approved under OMB Control Number 0925–0001)

§ 52a.5 How will NIH evaluate applications?

(a) NIH considers the following in evaluating Center grant applications:

(1) The scientific and technical merit of the proposed program;

(2) The qualifications and experience of the center director and other key personnel;

(3) The statutory and program purposes to be accomplished;

(4) The extent to which the various components of the proposed program would be coordinated into one multidisciplinary effort within the center;

(5) The extent to which the center's activities would be coordinated with similar efforts by other organizations;

(6) The administrative and managerial capability of the applicant;

(7) The reasonableness of the proposed budget in relation to the proposed program; and

(8) Other factors which the awarding institute, center, or division considers appropriate in light of its particular statutory mission.

(b) Where required by statute or NIH policy, applications are reviewed by appropriate national advisory councils or boards before awards are made. NIH grants may be awarded generally only after approval recommendations from both appropriate scientific peer review groups and national advisory councils or boards.

§ 52a.6 Information about grant awards.

(a) The notice of grant award specifies how long NIH intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 1–5 years.

(b) Generally, the grant will initially be for one year, and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the NIH that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(Approved under OMB Control Number 0925–0001)

§ 52a.7 For what purposes may a grantee spend grant funds?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, the terms and conditions of the award, the applicable cost principles prescribed in subpart Q of 45 CFR part 74 and 45 CFR 92.22, and the regulations of this part.

§ 52a.8 Other HHS regulations that apply.

Several other regulations and policies apply to this part. These include, but are not necessarily limited to:

42 CFR part 50, subpart A: Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR part 50, subpart D: Public Health Service grant appeals procedures

45 CFR part 16: Procedures of the Departmental Grant Appeals Board

45 CFR part 46: Protection of human subjects

45 CFR part 74: Administration of grants

45 CFR part 75: Informal grant appeals procedures

45 CFR part 76: Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80: Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR part 81: Practice and procedure for hearings under part 80 of this title

45 CFR part 84: Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 86: Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91: Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR part 92: Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR part 93: New restrictions on lobbying

51 FR 16958 or successor: NIH Guidelines for Research Involving Recombinant DNA Molecules

Public Health Service Policy on Humane Care and Use of Laboratory Animals

§ 52a.9 Additional conditions.

NIH may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in NIH's preferred judgement, the conditions are necessary to assure or protect advancement of the approved program, the interests of the public

health, or the conservation of grant funds.

[FR Doc. 91–11219 Filed 5–10–91; 8:45 am]
BILLING CODE 4140–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91–72; FCC 91–87]

Emergency Medical Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: To improve the communications capabilities of entities engaged in the provision of life support activities, the Commission proposes to assign specific frequencies for use in a new Emergency Medical Radio Service (EMRS). In addition, the Commission proposes certain policies and rules intended to promote more efficient and effective licensing of private land mobile radio users eligible in the EMRS. This action will benefit the public interest by enhancing the quality and reliability of emergency medical service communications and promoting effective operation on EMRS frequencies.

DATES: Comments may be filed with the Secretary of the Commission no later than June 6, 1991, and reply comments no later than June 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, Land Mobile and Microwave Division, Private Radio Bureau (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in PR Docket 91–72, FCC 91–87, adopted March 20, 1991, and released April 16, 1991. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this notice of proposed rulemaking may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422.

Summary of Notice of Proposed Rulemaking

1. Under the Commission's existing rules, entities engaged in the rendition of emergency medical care are ordinarily licensed in the Special Emergency Radio Service (SERS). Frequencies in the SERS are shared by ten categories of eligible users including medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities and emergency repair of public communications. Emergency medical service communications are generally encompassed in the broader category of medical services within the SERS. This category is shared by certain hospitals, institutions and organizations regularly engaged in providing medical care.

2. In their Petition for Rule Making filed in the instant proceeding, the International Municipal Signal Association and the International Association of Fire Chiefs, Inc. pleaded that the rapid increase in the number of EMS and SERS transmissions has overburdened available spectrum, hindering the quality and reliability of EMS communications to an extent that poses a threat to human life and safety. Likewise, in response to similar concerns, several Members of Congress have urged the Commission to study the available channels for communications between ambulances and hospitals and to develop a plan to ensure that sufficient frequencies are allocated for EMS purposes. In an effort to remedy the problems plaguing EMS providers, IMSA/IAFC request the Commission to establish a separate Emergency Medical Radio Service (EMRS) encompassing the emergency medical communications transmitted by licensees in each of the various categories under the existing regulatory arrangement. IMSA/IAFC request the Commission to assign certain frequencies derived primarily from the Special Emergency Radio Service to the EMRS and to amend the Commission's rules to enhance the utility of the proposed EMRS frequency assignments.

3. After carefully reviewing the record, including the comments and reply comments filed in response to the IMSA/IAFC petition, the Commission proposed to amend its rules to establish a separate Emergency Medical Radio Service. The Commission proposed to limit eligibility in the EMRS to persons or entities that provide basic or advanced life support services on an ongoing basis, stating that this limitation, in conjunction with restrictions upon the use of EMRS frequencies, will keep congestion on this spectrum to a minimum. In addition, the Commission proposed to designate the EMRS as a sub-category of the Public Safety Radio Services, noting that the safety of life and property aspects of the Public Safety Radio Services and EMS entities presently licensed in the SERS make these two groups uniquely compatible.

4. Under the Commission's proposal, the principal source of spectrum for the EMRS is the existing SERS frequencies limited primarily for EMS communications. This includes the ten MED channels, the five VHF frequencies available for use by medical services SERS licensees, and certain other SERS spectrum. The Commission stated that these frequencies are especially suitable for the EMRS because the majority thereof are already designated for emergency medical communications and because the current limitations on the use of most of these frequencies make their removal least disruptive to the remaining SERS licensees. Relatedly, the Commission stated that adequate resources exist to accommodate SERS licensees displaced from these frequencies. In addition to the above frequencies, the Commission proposed assigned five channels pair in the 220–222 MHz band to the EMRS.

Initial Regulatory Flexibility Analysis

5. The Commission believes that its rules governing the transmission of emergency medical communications should be amended to establish a discrete Emergency Medical Radio Service. The proposed action would help alleviate the congestion and interference currently hampering EMS communications by restricting access to the available frequencies and by assigning additional spectrum for EMS use.

Paperwork Reduction Act Statement

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours imposed on the public.

List of Subjects in 47 CFR Part 90

Special Emergency Radio Service, Public Safety Radio Services, Emergency Medical Radio Service.

Rule Changes

Part 90 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303.

2. A new § 90.27 is added to subpart B to read as follows:

§ 90.27 Emergency Medical Radio Service.

(a) *Eligibility.* Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis are eligible to hold authorizations in the Emergency Medical Radio Service to operate stations for transmission of communications essential for the delivery or rendition of emergency medical services to the extent that such services include the provision of basic or advanced life support. Applications submitted by persons or organizations other than governmental entities must be accompanied by a statement prepared by the governmental body having legal jurisdiction over the area to be served indicating that the applicant is included in the state's emergency plan or otherwise supporting the application.

(b) *Frequencies available.* The following table indicates frequencies available for assignment to stations in the Emergency Medical Service, together with the class of station(s) to which they are normally assigned and the specific assignment limitations explained in paragraph (c) of this section. (Frequencies below 450 MHz indicated for base or mobile stations may be authorized to fixed stations on a secondary basis to stations in the mobile service):

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
72.00 to 76.00.	Operational-fixed.	1.
150–170	Base or mobile	2.
150.775	Mobile	
150.790	do	
155.325	Base or mobile	3, 4.
155.340	do	4, 5.
155.355	do	3, 4.
155.385	do	3, 4.
155.400	do	3, 4.
169–172	Mobile	6.
220.9025	Base	25.
220.9075	do	25.
220.9125	do	25.
220.9175	do	25.
220.9225	do	25.
221.9025	Mobile	25.
221.9075	do	25.
221.9125	do	25.
221.9175	do	25.
221.9225	do	25.
450 to 470	Fixed	7.
453.025	Base	19, 22.
453.050	Base or mobile	8.
453.075	Base	19, 22.
453.100	Base or mobile	8.
453.125	Base	19, 22.
453.150	Base or mobile	8.
453.175	Base	19, 22.
453.200	Base or mobile	8.
453.250	do	8.
453.300	do	8.
453.350	do	8.

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
453.400	do	8.
453.450	do	8.
453.500	do	8.
453.550	do	8.
453.600	do	8.
453.650	do	8.
453.700	do	8.
453.750	do	8.
453.800	do	8.
453.850	do	8.
453.900	do	8.
453.950	do	8.
458.025	Mobile	19, 22.
458.050	do	8.
458.075	do	19, 22.
458.100	do	8.
458.125	do	19, 22.
458.150	do	8.
458.175	do	19, 22.
458.200	do	8
458.250	do	8.
458.300	do	8.
458.350	do	8.
458.400	do	8.
458.450	do	8.
458.500	do	8.
458.550	do	8.
458.600	do	8.
458.650	do	8.
458.700	do	8.
458.750	do	8.
458.800	do	8.
458.850	do	8.
458.900	do	8.
458.950	do	8.
460.525	Base or mobile	10.
460.550	do	10.
462.950	do	3, 11, and 12.
462.975	do	3, 11, and 12.
463.000	do	9, 13, and 20.
463.025	do	9, 13, and 20.
463.050	do	9, 13, and 20.
463.075	do	9, 13, and 21.
463.100	do	9, 13, and 21.
463.125	do	9, 13, and 21.
463.150	do	9, 13, and 21.
463.175	do	9, 13, and 21.
465.525	Mobile	10.
465.550	do	10.
467.950	do	3, 11, and 12.
467.975	do	3, 11, and 12.
468.000	do	9, 13, and 20.
468.025	do	9, 13, and 20.
468.050	do	9, 13, and 20.
468.075	do	9, 13, and 21.
468.100	do	9, 13, and 21.
468.125	do	9, 13, and 21.
468.150	do	9, 13, and 21.
468.175	do	9, 13, and 21.
470 to 512	Base or mobile	14.
806 to 824	Mobile	15.
851 to 869	Base or mobile	15.
928 and above.	Operational-fixed.	16.
929 to 930	Base only	24.
1427 to 1435.	Operational-fixed base or mobile.	17.
2450 to 2500.	Base or mobile	18.
10,550 to 10,680.	do	23.

(c) Explanation of assignment limitations appearing in the frequency table of paragraph (b) of this section:

(1) The frequencies available for use at operational-fixed stations in the band 72–76 MHz are listed in § 90.257(a)(1) of this part. These frequencies are shared with other services and are available only in accordance with the provisions of § 90.257 of this part.

(2) Rules concerning the use of this band for narrowband operations are set forth in § 90.271 of this part.

(3) A licensee regularly conducting two-way communications operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(4) In addition to other authorized uses, the use of F1B, F1D, F2B or F2D emission is permitted on this frequency for the operation of biomedical telemetry systems subject to the following limitations: (i) New York, N.Y.-Northeastern New Jersey; Los Angeles-Long Beach, Calif.; Chicago, Ill.-Northwestern Indiana; Philadelphia, Pa.-N.J.; Detroit, Mich.; San Francisco-Oakland, Calif.; Boston, Mass.; Washington, D.C.-Md.-Va.; Cleveland, Ohio; St. Louis, Mo.-Ill.; Pittsburgh, Pa.; Minneapolis-St. Paul, Minn.; Houston, Tex.; Baltimore, Md.; Dallas, Tex.; Milwaukee, Wis.; Seattle-Everett, Wash.; Miami, Fla.; San Diego, Calif.; Atlanta, Ga.; Cincinnati, Ohio-Ky.; Kansas City, Mo.-Kans.; Buffalo, N.Y.; Denver, Colo.; San Jose, Calif.; New Orleans, La.; Phoenix, Ariz.; Portland, Oreg.-Wash.; Indianapolis, Ind.; Providence-Pawtucket-Warwick, R.I.-Mass.; Columbus, Ohio; San Antonio, Tex.; Louisville, Ky.-Ind.; Dayton, Ohio; Fort Worth, Tex.; Norfolk-Portsmouth, Va.; Memphis, Tenn.-Miss.; Sacramento, Calif.; Fort Lauderdale-Hollywood, Fla.; Rochester, N.Y.; Tampa-St. Petersburg, Fla.

(ii) The continuous carrier mode of operations may be used for telemetry transmissions on this frequency for periods up to two-minutes duration; following which there must be a break in the carrier for at least a one-minute period.

(iii) Georgraphical coordinations for the above—listed urbanized areas may be found at Table 1 of § 90.635 of this part.

(5) This frequency may be designated by common consent as an intersystem mutual assistance frequency under an area-wide medical communications plan.

(6) Frequencies in this band will be assigned for low power wireless microphones in accordance with the provisions of § 90.265 of this part.

(7) The frequencies available for use at fixed stations in this band and the

requirements for assignment are set forth in § 90.261 of this part. Operation on these frequencies is secondary to stations in the Industrial and Land Transportation Radio Service where they are assigned for land mobile operations.

(8) This frequency is available in this service on a shared basis with all other Public-Safety Radio Services.

(9) The continuous carrier mode of operation may be used for telemetry transmission on this frequency.

(10) This frequency is shared with the Police and Fire Radio Services. This frequency may be designated by common consent for intra-system and inter-system mutual assistance purposes and is subject to the coordination requirements specified in § 90.175 of this part.

(11) This frequency is primarily authorized for use in the dispatch of medical care vehicles and personnel for the rendition or delivery of medical services. This frequency may also be assigned for intra-system and inter-system mutual assistance purposes. For uniformity in usage, the frequency pairs 462.950/467.950 and 462.975/467.975 MHz may be referred to as MED–9 and Med–10, respectively.

(12) This frequency is shared with Police Radio Service licensees authorized prior to April 16, 1976. This frequency is available on a primary basis to operations by licensees in the Emergency Medical Radio Service.

(13) For applications for new radio systems received after August 15, 1974, the eight frequency pairs listed below will be assigned in a block for shared operation under § 90.27(a) subject to the following:

(i) For uniformity in usage, these frequency pairs may be referred to by channel name as follows:

Frequencies base and mobile	Mobile only (MHz)	Channel name
Megahertz:		
463.000	468.000	MED–1
463.025	468.025	MED–2
463.050	468.050	MED–3
463.075	468.075	MED–4
463.100	468.100	MED–5
463.125	468.125	MED–6
463.150	468.150	MED–7
463.175	468.175	MED–8

(ii) Except as provided in paragraphs (c)(13) (iii) and (iv) of this section, mobile or portable stations must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of these eight frequency pairs with transmitters operated on the 468 MHz frequencies.

(iii) Portable (hand-held) units operated with a maximum output power of 2.5 watts are exempted from the multi-channel equipment requirements specified in paragraph (c)(13)(ii) in this section.

(iv) Stations located in areas above line A, as defined in § 90.7 of this section will be required to meet multi-channel equipment requirements only for those frequencies up to the number specified in paragraph (c)(13)(ii) of this section that have been assigned and coordinated with Canada in accordance with the applicable U.S.-Canada agreement.

(14) Subpart L of this part contains rules for assignment of frequencies in the 470–512 MHz band.

(15) Subpart S of this part contains rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

(17) This frequency band is available in this service subject to the provisions of § 90.259 of this Part.

(18) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

(19) Paging licensees as of March 20, 1991 may continue to operate on a primary basis until [5 years from adoption of R & O in this proceeding].

(20) This frequency is authorized for use only for operations in biomedical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D and G3E emissions may be authorized. Entities eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(21) This frequency is authorized for use only in communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. Entities eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(22) Local government highway radio call box operations first licensed prior to 3/31/80 on this frequency may continue to operate in accordance with § 90.17(c)(11) of this part.

(23) This band is available for Digital Termination Systems and for associated intermodal links under part 94 of this chapter. No new licenses will be issued under this subpart but current licenses will be renewed.

(24) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494 of this part.

(25) Rules concerning the use of this frequency are set forth in subpart T of this part.

3. Section 90.53 is amended by revising the table in paragraph (a) and by revising paragraphs (b) (7), (9) and (26) and removing and reserving paragraphs (b) (10), (13)–(20), (29), (32), and (34) to read as follows:

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
2000–3000	Fixed	1.
2726	Base or mobile	2.
3201	do	
Megahertz:		
33.02	do	3, 25.
33.04	do	25.
33.06	do	3, 25.
33.08	do	25.
33.10	do	3,25.
35.02	Mobile	27.
35.64	Base	4.
35.68	do	4.
37.90	Base or mobile	3, 25.
37.94	do	3, 25.
37.98	do	3, 25.
43.64	Base	4, 28.
43.68	do	4.
45.92	Base or mobile	25.
45.96	do	25.
46.00	do	25.
46.04	do	25.
47.42	do	5, 25.
47.46	do	25.
47.50	do	25.
47.54	do	25.
45.58	do	25.
47.62	do	25.
47.66	do	25.
72.00 to 76.00	Operational-fixed	6.
150–170	Base or mobile	30.
152.0075	Base	4, 31.
155.160	Base or mobile	25.
155.175	do	25.
155.205	do	25.
155.220	do	25.
155.235	do	25.
155.265	do	25.
155.280	do	25.
155.295	do	25.

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
157.450	Base	4, 11.
163.250	....do	4
169–172	Mobile	33.
450 to 470	Fixed	12.
453.025	Base	26.
453.075	....do	26.
453.125	....do	26.
453.175	....do	26.
458.025	Mobile	26.
458.075	....do	26.
458.125	....do	26.
458.175	....do	26.
806 to 824	Mobile	21.
851 to 869	Base or mobile	21.
928 and above	Operational-fixed	22.
929 to 930	Base only	7.
1427 to 1435	Operational-fixed, base or mobile.	23.
2450 to 2500	Base or mobile	24.
10,550 to 10,680.	....do	9.

(b) * * *

(7) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494 of this part.

* * * * *

(9) This band is available for Digital Termination Systems and for associated internodal links under Part 94 of this Chapter. No new licenses will be issued under this subpart but current licenses will be renewed.

(10) [Reserved]

* * * * *

(13) [Reserved]

(14) [Reserved]

(15) [Reserved]

(16) [Reserved]

(17) [Reserved]

(18) [Reserved]

(19) [Reserved]

(20) [Reserved]

* * * * *

(26) Paging licensees as of March 20, 1991 may continue to operate on a primary basis until (5 years from adoption of R&O in this proceeding).

* * * * *

(29) [Reserved]

* * * * *

(32) [Reserved]

* * * * *

(34) [Reserved]

* * * * *

4. Section 90.55 is amended by revising the first sentence of the introductory text to read as follows:

§ 90.55 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of §§ 90.53(b)(4), (25) and (26) of this part. * * *

* * * * *

5. Section 90.176 is revised to read as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) Entities eligible in the Public Safety Radio Services governed by this rule part may apply to use any of the above-mentioned frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(b) Entities eligible in the Special Emergency Radio Service or the Industrial and Land Transportation Radio Services governed by this rule part may apply to use any of the above-mentioned frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(c) Applications for frequencies available under this rule must be accompanied by:

(1) A determination by the applicable frequency coordinator that there are no satisfactory frequencies available within the applicant's own radio service in the area of desired operation;

(2) A demonstration that the frequency(ies) requested in another radio service are not assigned in that radio service in the area of desired operation;

(3) A statement from the frequency coordinator having responsibility for coordination in the radio service or group in which the frequency is assigned concurring in its assignment in the manner requested. In cases where concurrence is not given, the coordinator must provide an explanation why the requested sharing is inappropriate;

(4) A statement or showing that the proposed use of the assignment will not violate any of the technical limitations applicable in the service or services to which the frequency is regularly allocated.

6. The table in § 90.311(a) is amended by revising the column heading under "Public Safety Pool" to read "Fire, Police, Local Government, Highway Maintenance, Forestry Conservation and Emergency Medical Radio Services."

7. Section 90.555 is amended by revising the "Public Safety Services" list in paragraph (a), by revising the frequencies listed below in paragraph (b), and by adding the frequencies 220–220.9000 through 221.9250–222 MHz in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

(a) * * *

Public Safety Services

PF—Fire.

PH—Highway maintenance.

PL—Local government.

PO—Forestry-conservation.

PP—Police.

PS—Special Emergency.

PM—Emergency Medical.

(b) Combined frequency list.

Frequency	Services	Special limitations
*	*	*
150.775	PM	Mobile.
150.790	PM	Do.
*	*	*
155.325	PM	Base or Mobile.
155.340	PM	Do.
155.355	PM	Do.
*	*	*
155.385	PM	Base or Mobile.
155.400	PM	Do.
*	*	*
220–220.9000	All Svce. Exc. RS.	Subpart T.
220.9000–220.9250.	PM	Base.
220.9250–221.9000.	All Svcs. Exc. RS.	Subpart T.
221.900–221.9250.	PM	Mobile.
221.9250–222	All Svcs. Exc. RS.	Subpart T.
*	*	*
453.025	PM	
453.050	PL, PP, PF, PH, PO, PM.	
453.075	PM	
453.100	PL, PP, PF, PH, PO, PM.	
453.125	PM	
453.150	PL, PP, PF, PH, PO, PM.	
453.175	PM	
453.200	PL, PP, PF, PH, PO, PM.	
*	*	*
453.250	PL, PP, PF, PH, PO, PM.	
*	*	*
453.300	PL, PP, PF, PH, PO, PM.	
*	*	*
453.350	PL, PP, PF, PH, PO, PM.	
*	*	*
453.400	PL, PP, PF, PH, PO, PM.	
*	*	*
453.450	PL, PP, PF, PH, PO, PM.	
*	*	*
453.500	PL, PP, PF, PH, PO, PM.	
*	*	*
453.550	PL, PP, PF, PH, PO, PM.	
*	*	*
453.600	PL, PP, PF, PH, PO, PM.	
*	*	*
453.650	PL, PP, PF, PH, PO, PM.	
*	*	*
453.700	PL, PP, PF, PH, PO, PM.	
*	*	*
453.750	PL, PP, PF, PH, PO, PM.	

Frequency	Services	Special limitations
* * * * *		
453.800	PL, PP, PF, PH, PO, PM.	
* * * * *		
453.850	PL, PP, PF, PH, PO, PM.	
* * * * *		
453.900	PL, PP, PF, PH, PO, PM.	
* * * * *		
453.950	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.025	PM	
458.050	PL, PP, PF, PH, PO, PM.	
458.075	PM	
458.100	PL, PP, PF, PH, PO, PM.	
458.125	PM	
458.150	PL, PP, PF, PH, PO, PM.	
458.175	PM	
458.200	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.250	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.300	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.350	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.400	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.450	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.500	PL, PP, PF, PH, PO, PM.	
* * * * *		
458.550	PL, PP, PF, PH, PO, PM.	
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458.600	PL, PP, PF, PH, PO, PM.	
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458.650	PL, PP, PF, PH, PO, PM.	
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458.700	PL, PP, PF, PH, PO, PM.	
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458.750	PL, PP, PF, PH, PO, PM.	
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458.800	PL, PP, PF, PH, PO, PM.	
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458.850	PL, PP, PF, PH, PO, PM.	
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458.900	PL, PP, PF, PH, PO, PM.	
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458.950	PL, PP, PF, PH, PO, PM.	
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460.525	PP, PF, PM	
460.550	PP, PF, PM	
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462.950	PM	Med 9.
462.975	PM	Med 10.
463.000	PM	Med 1.
463.025	PM	Med 2.
463.050	PM	Med 3.
463.075	PM	Med 4.
463.100	PM	Med 5.
463.125	PM	Med 6.
463.150	PM	Med 7.
463.175	PM	Med 8.
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465.525	PP, PF, PM	
465.550	PP, PF, PM	
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467.950	PM	Med 9.
467.975	PM	Med 10.
468.000	PM	Med 1.
468.025	PM	Med 2.
468.050	PM	Med 3.
468.075	PM	Med 4.
468.100	PM	Med 5.
468.125	PM	Med 6.
468.150	PM	Med 7.
468.175	PM	Med 8.
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Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-11268 Filed 5-10-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 92
Monday, May 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's final rule amending the Forest Service administrative appeal procedures, which was signed on December 5, 1990 and was published in the **Federal Register** on February 6, 1991 (56 FR 4914). The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 15, 1991. The list of newspapers will remain in effect until October 1991 when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, PO Box 3623, Portland, OR 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: On December 5, 1990 the Deputy Secretary of Agriculture signed a final rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Big Summit decisions:
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon
The Oregonian, Portland, Oregon
Register-Guard, Eugene, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspaper providing additional notice of Powers decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Umpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Democratic Herald, Baker City, Oregon
Baker District Ranger decisions:
Democrat Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decision:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Democrat Herald, Baker City, Oregon
Unity District Ranger decisions:
Democrat Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of McKenzie decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany Oregon

Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Rigdon decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Home decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Klamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Statesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mt Saint Helens National Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions:
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest Supervisor decisions:
Daily Olympian, Olympia, Washington
Newspapers providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Pennisula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilicene District Ranger decisions:
Pennisula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions:
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: May 6, 1991.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 91-11298 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-11-M

Hen Moose Timber Sale, Willamette National Forest, Linn County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement on a proposal to harvest and regenerate timber, and to construct and reconstruct

roads in the Hensley subdrainage. The legal description of the planning area is: T.13S., R.3E., sections 11–15, 22–27; T.13S., R.4E., sections 7, 18–19. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of this area. This proposal is tentatively planned for fiscal year 1992.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by May 31, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Karen Barnette, District Ranger, Sweet Home Ranger District, Sweet Home, Oregon 97386.

FOR FURTHER INFORMATION: Direct questions about the proposed action and environmental impact statement to Donna Short, Plans/Presale Forester or Ken Schuetz, Project Coordinator (telephone: (503) 367–5168).

SUPPLEMENTAL INFORMATION: The proposal includes harvesting timber and constructing road under the Hen Moose Timber Sale. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest approximately 7.0 million board feet of timber from approximately 140 acres. Anticipated road construction is 0.8 miles. The analysis area is defined by the 4700-acre Hensley subdrainage.

The Forest Service is the Lead Agency. Forest Supervisor, Willamette National Forest, is the responsible official.

The EIS will tier to the Forest Plan. The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for various lands on the Forest. This direction will be used in developing alternatives during the course of this analysis. The Hen Moose planning area has been allocated to the following Management Areas:

70 percent is in General Forest (MA 14a). This allocation emphasizes the production of optimum and sustainable levels of timber which are compatible with multiple use objectives and environmental requirements for soil, water, air and wildlife habitat quality.

18 percent is in Scenic—Modification Middleground (MA 11a). Emphasis is placed on maintaining the visual quality of the forest landscape as viewed from State Road 20.

7 percent is in Marten Habitat Area (MA 9c). Goals are to protect mature and old-growth habitat for the pine marten and all other plant and animal species dependant upon this habitat.

5 percent is in Riparian Areas (MA 15). Emphasis is placed on maintaining the role and function of rivers, streams, wetlands and lakes in the landscape ecology.

The proposed project area lies in a "high emphasis deer and elk management area" as identified by Oregon Department of Fish and Wildlife (ODFW) and Forest Service biologists. The project area also includes a portion of the Moose Lake Roadless Area, which was considered but not selected for wilderness designation.

Preliminary issues identified are roadless area quality, big game winter range, and water quality and fisheries habitat.

Initial scoping began in March of 1989. Preliminary analysis and alternative formulation are currently being conducted. The Forest Service will be seeking additional information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help identify key issues and develop alternatives. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identification of potential issues;

2. Identification of issues to be analyzed in depth;

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;

4. Exploration of additional alternatives based on the issues identified during the scoping process; and

5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 1991. The comment period on the draft EIS will be 45 days from the date the EPA 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, a reviewer of a draft EIS 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 EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *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 objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS 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 EIS 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 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal Regulations (36 CFR 217).

Dated: May 6, 1991.

John A. Nelson,

Acting Forest Supervisor.

[FR Doc. 91-11299 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Notice of Intent To Prepare a Draft Environmental Impact Statement and Conduct Public Scoping Meetings

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare a draft environmental impact statement and conduct public scoping meetings.

SUMMARY: The Rural Electrification Administration (REA) intends to prepare a Draft Environmental Impact Statement (DEIS) and conduct public scoping meetings in connection with a project proposed by Public Service Company of New Mexico (PNM) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), both of Albuquerque, New Mexico. The project will consist of the construction, operation and maintenance of approximately 100–150 miles of 230 kV transmission line. The transmission line will interconnect either Plains' Escalante Generating Station near Prewitt, New Mexico, or PNM's Ambrosia Lake Substation near Grants, New Mexico, with Salt River Project Agricultural Improvement Power District's (SRP) Coronado Generating Station near St. Johns, Arizona.

DATES: REA will conduct the public scoping meetings as follows:

Tuesday, June 11, 1991, 6 p.m.—Courthouse, room 20, 201 West Hill, Gallup, New Mexico.

Wednesday, June 12, 1991, 1 p.m.—Nahat 'a' Dzill Navajo, Chapter Community Center, Sanders, Arizona.

Wednesday, June 12, 1991, 6 p.m.—4-H Community Center, 395 South First West, St. John, Arizona.

Thursday, June 13, 1991, 6 p.m.—Ramah Navajo Chapter House, Mountain View, New Mexico.

Thursday, June 13, 1991, 6 p.m.—Ramah, Fire Station, Ramah, New Mexico.

Friday, June 14, 1991, 1 p.m.—Thoreau Fire House, 1st Street, Thoreau, New Mexico.

Friday, June 16, 1991, 6 p.m.—Grants Convention Center, 515 West High, Grants, New Mexico.

ADDRESSES: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meetings in order for the comments to be part of the final record. Comments should be sent to Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Rankin, above address, telephone (202) 382–8932 or FTS 382–8931.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500) and REA Environmental Policy and Procedures (7 CFR part 1794), intends to conduct public scoping meetings in connection with the preparation of an environmental impact statement. This notice is in connection with a potential request for a lien accommodation from REA by Plains for its share of the construction of the proposed transmission facilities. In addition, the Forest Service may be required to amend the Cibola Forest Management Plan depending on the final corridor selected. Several alternative corridors have been identified in McKinley and Cibola Counties, New Mexico, and Apache County, Arizona.

The overall purpose of the proposed project is to expand the power transfer capability of the transmission systems between SRPO in Arizona and Plains and PNM in New Mexico. Plains, a one third participant, needs to acquire additional capacity to serve its Arizona member cooperative, Navopache Electric Cooperative, Inc. PNM, a two thirds participant, needs to market excess power created by the loss of uranium mining operation loads. SRP, a non-participating beneficiary, will gain transmission access to the Four Corners area. The line will also provide additional emergency support for Plains, PNM and SRP in the event of a major operating problem.

Alternatives to be considered by REA include, among other options: No action; use of existing transmission facilities; alternative interconnection points; alternative voltages; and alternative routes.

The public scoping meetings to be conducted by REA will be held to solicit public input and comments including, but not limited to, the nature of the project, its possible location, alternatives and any significant issues and environmental concerns that should be addressed in the DEIS.

Requests for additional information concerning the meetings may be directed to REA at the address shown above. Copies of the Ambrosia-Coronado 230 kV Transmission Project Alternative Evaluation and Macro Corridor Analysis are available for public review at the offices of REA; Plains, 2401 Aztec Road, NW., Albuquerque, New Mexico; PNM, Alvarado Square, 5th Floor Document Control Center, Fourth and Silver, SW., Alburquerque, New Mexico, and at public libraries in McKinley and Cibola Counties, New Mexico and Apache County, Arizona.

Any REA approval will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA.

Dated: May 7, 1991.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 91-11318 Filed 5-10-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625.

Agency Approval Number: 0607–0189.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 11,125 hours.

Number of Respondents: 44,500.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census uses the quarterly Business and Professional Classification Report to collect information from a sample of newly established retail, wholesale, and service firms on sales size, type of operation, company organization, taxable or tax-exempt status, wholesale inventories and other wholesale inquiries, and to assign a new or more detailed Standard Industrial Classification (SIC) code for those firms. Businesses are asked to report only once in this survey. The Bureau uses the information collected to update the samples used in its retail, wholesale, and service surveys.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations

Frequency: Quarterly.

Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–11265 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[(A–533–801); (A–570–809); (A–583–811); (A–549–805)]

Postponement of Final Antidumping Duty Determinations: Steel Wire Rope From India, the People's Republic of China, Taiwan, and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from the respondents in each of the above-referenced antidumping duty investigations to postpone the final determinations, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)). Based on these requests, we are postponing our final determinations as to whether sales of steel wire rope from India, the People's Republic of China (PRC), Taiwan, and Thailand have been made at less than fair value until not later than September 4, 1991.

EFFECTIVE DATE: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377–1769.

SUPPLEMENTARY INFORMATION: In all of the above-referenced proceedings, we received requests, from respondents believed to export a significant proportion of the subject merchandise, that the Department postpone the final determinations until not later than 135 days after the publication date of the preliminary determinations, in accordance with section 735(a)(2) of the Act. The dates that we received the requests are as follows: April 22, 1991, (India); April 23, 1991, (Taiwan and Thailand); April 29, 1991, (PRC). Accordingly, we are postponing the final determinations until not later than September 4, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments and rebuttal briefs in at least ten copies must, respectively, be submitted to the Assistant Secretary for Import Administration no later than July 18, 1991, and July 25, 1991 (India); July 19, 1991, and July 26, 1991 (PRC); August 1, 1991, and August 8, 1991 (Taiwan); July 31, 1991, and August 7, 1991 Thailand). In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold separate public hearings with respect to each investigation, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The dates that the hearings will be held are as follows: July 29, 1991, 10 a.m. (India); July 30, 1991, at 10 a.m. (PRC); August 9, 1991, 2 p.m. (Thailand); August 12, 1991, 10 a.m. (Taiwan). All hearings will take place at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to participate in any of the hearings must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: May 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–11319 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–DS–M

Travel and Tourism Administration

[Docket No. 910247–1047]

Catalog of Domestic Financial Assistance No. 11.952; Disaster Relief Tourism Promotion Financial Assistance; Financial Assistance for International Travel Promotion Projects for States Whose International Tourism Promotion Needs Have Increased Due to Disasters

AGENCY: United States Travel and Tourism Administration (USTTA), Department of Commerce.

ACTION: Notice of availability of financial assistance, limitations, and criteria.

SUMMARY: Funds are available from the USTTA to States, their political subdivisions, and combinations thereof, and to private or public nonprofit organizations and associations to assist international tourism promotion projects for States whose international tourism promotion needs have increased due to disasters. Pursuant to title I of Public Law No. 101–515, a total of $5,000,0000 is available to be awarded in accordance with the requirements of section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, subject to all Federal Government-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth below.

DATES: Applications for an award of these funds will be accepted and considered on a quarterly basis beginning (April 1–June 30, 1991) and ending (July 1–September 30, 1991). Applications must be postmarked by the quarter closing date to be eligible for consideration in that quarter. Applicants will be advised of the success or failure of their applications, and awards will be made within three months from the quarter closing date. Applications failing to win awards in one quarter will not be considered for award in subsequent quarters unless formally resubmitted.

ADDRESSES: Application forms (Standard Forms 424 (Rev. 4–88), 424A, and 424B) are available from, and to be considered, one signed original and four copies together with the original and four copies of the information specified under the limitations and criteria set forth below, must be submitted to, the Office of the Assistant Secretary for Tourism Marketing, United States Travel and Tourism Administration, room 1862, Herbert C. Hoover Building,

14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Cardran, (202) 377–4752.

SUPPLEMENTARY INFORMATION: Notice is hereby given to States, their political subdivisions, and combinations therefore, and to private or public nonprofit organizations and associations, that pursuant to title I of Public Law No. 101–515, a total of $5,000,000 is available from the USTTA to assist international tourism promotion projects for States whose international tourism promotion needs have increased due to disasters.

Applications for an award of these funds will be accepted and considered on a consecutive calendar quarterly basis beginning (April 1–June 30, 1991). Applications must be postmarked by the quarter closing date to be eligible for consideration in that quarter. Applicants will be advised of the success or failure of their applications and awards will be made within three months from the quarter closing date. Applications failing to win awards in one quarter will not be considered for awards in subsequent quarters unless formally resubmitted.

Application forms (Standard Forms 424 (Rev. 4–88), 424A, and 424B) are available from, and to be considered, one signed original and four copies together with the original and four copies of the information specified under the limitations and criteria set forth below, must be submitted to the address set forth in the address section above.

In no event will the amount of any Federal funds awarded for any international tourism promotion project for a State whose international tourism promotion needs have increased due to disasters exceed 50 percent of the cost of such project. Funds will be awarded in accordance with the requirements of section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, subject to all Federal Governement-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth below.

Where it is anticipated that the USTTA will be substantially involved in the implementation of the international tourism promotion project for which as award is to be made, consideration will be given to dispersing funds through use of a cooperative agreement.

Selection for award will be by the total final evaluation score. The final evaluation score for each application will be calculated by combining the component scores from the three evaluation criteria set forth under II, below (A. needs and effect evaluation criteria; B. general evaluation criteria; and C. project evaluation criteria), multiplied by the weights assigned in II for these criteria, below (0.4. for the needs and effect evaluation criteria; 0.2 for the general evaluation criteria; and 0.4 for project evaluation criteria). Applications will be reviewed and judged independently and objectively by a panel of four qualified individuals. Only applications with a final evaluation score in excess of 80 will be eligible for award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 80.

The ward of financial assistance in Fiscal Year 1991 is subject to the following limitations and criteria:

I. Limitations

A. Financial assistance will be awarded only to States, their political subdivisions, and combinations thereof, and to private or public nonprofit organizations and associations, [1] and for the purpose of providing assistance for States [2] whose international tourism promotion needs have increased due to disasters. Funds must be used for tourism promotion projects that facilitate or encourage travel to the United States by residents of foreign countries.

B. In order to be considered as a disaster causing increased tourism promotion needs, a catastrophic event must have occurred triggering implementation of the appropriate response mechanisms of the State's emergency plan and the Under Secretary of Commerce for Travel and Tourism must find that the state is currently experiencing substantial loss of visitation and tourism-related employment as a result of the disaster, and that there is a realistic prospect for long-term revitalization of the tourism product. Applicants who have experienced a disaster for which the negative impact on tourism has already been entirely mitigated are not eligible for assistance. The application must include adequate verifiable documentation to support the requisite findings by the Under Secretary.

C. An applicant is eligible to receive only one award for any one disaster. The application must include documentation demonstrating that all programs to be considered in the application are effectively coordinated with other affected entities in the State.

D. The application must include a marketing plan that contains clearly stated objectives covering an appropriate period of time. The marketing plan must be targeted and integrated (in terms of multiple activities) with a generally cohesive approach. The marketing plan must contain procedures for credible evaluation and tracking.

E. Applications must include components of two or more of the following international promotion initiatives as defined in II, below: (1) Media Product Information; (2) Market Development; (3) Cooperative Advertising; (4) Trade Development; and (5) Consumer and Trade Literature.

General evaluation criteria and criteria for evaluating each specific type of proposed project and needs and effects are set forth under II, below.

F. Projects must be aimed at international market(s) in which: (1) The applicant is currently involved; or (2) if the applicant is not currently involved, that have greater potential than current markets for mitigating the tourism-related negative effects of the disaster. The application must include credible market research to support a market's potential.

G. The maximum amount an applicant may be awarded annually is $800,000. The minimum amount for which an applicant may apply is $50,000. Financial assistance provided to any State annually cannot exceed an aggregate of $1,200,000 for all recipients. In no event may the amount of any award for any project exceed 50 percent of the cost of such project. Financial assistance wil not be awarded unless it is determined that matching funds for available from State or other non-Federal sources.

H. Financial assistance will be awarded on a one-year basis. However, applicants filing long-term program plans and receiving awards may be eligible to reapply for up to two additional years of support. Applications for the second and third years of support will be reviewed competitively with all other applications. Awards for subsequent years are subject to the availability of funds. Long-term plans must reflect the ability of the applicant to carry out the

[1] As used in this notice, "private or public non-profit organizations or associations" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

[2] As used in this notice, the terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

program in consecutive years without additional Federal funds. Support for a second or third year will only be considered upon receipt of an application supported by a long-term market development program plan prepared by the applicant. The plan must be approved by USTTA and, for renewal consideration, must be deemed successful upon review at the conclusion of the preceding year grant period.

I. Recipients/applicants who have outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

J. Awards of financial assistance are subject to the requirements of Executive Order No. 12372, "Intergovernmental Review of Federal Programs."

K. False information on an application can be grounds for denying or terminating funds and grounds for possible punishment by fine or imprisonment.

L. 15 CFR Part 24, or Office of Management and Budget (OMB) Circular A–110 applies, along with OMB Cost Principles.

M. Section 319 of Public Law No. 101–121 generally prohibits recipients of Federal contracts, grants and loans from using appropriated funds to lobby the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, or loan. A "Certification of Contracts, Grants, Loans and Cooperative Agreements" and a SF–LLL, "Disclosure of Lobbying Activities," (if applicable), are required.

N. Awards are subject to 15 CFR part 26, Government-wide nonprocurement debarment and suspension regulations.

O. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. Noncompliance subjects recipients to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

II. Criteria

Each application for financial assistance will be reviewed for completeness upon receipt. The applicant will be contacted if the application is deemed incomplete. If the required information is not received within 10 working days from the date of notification, the application will not be considered further.

The final evaluation score for each application will be calculated by combining the component scores from the three evaluation criteria set forth herein (A. needs and effect evaluation criteria; B. general evaluation criteria; and project evaluation criteria), multiplied by the assigned weight for that criteria set forth herein (0.4 for the needs and effect evaluation criteria; 0.2 for the general evaluation criteria; and 0.4 for the project evaluation criteria). Only applications with a final evaluation score in excess of 80 shall be eligible for award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 80.

A. Needs and Effect Evaluation Criteria (assigned weight—0.4).

Application demonstrates the need of affected area and the ability of the project to directly counteract the negative impact on tourism of the disaster.

(1) Application clearly reflects ability of project to offset negative impacts of the disaster which have not been largely mitigated by other aid. (40 points)

(2) Application includes documentation from State, local or Federal sources demonstrating the current degree of need. This must include documentation showing the: (a) current loss of visitation and tourism-related employment; (b) level of tourism prior to the disaster; (c) current level of tourism; (d) impact of tourism on the area economy versus other industries (*i.e.*, employment and income), and (e) extent to which the negative impact of the disaster on tourism has been mitigated. (60 points)

B. General Evaluation Criteria (assigned weight—0.2).

Application clearly states objectives that respond directly to the specialized international tourism promotion needs of the impacted area.

(1) Application states clear and achievable objectives to be carried out over an appropriate length of time. For multi-year initiatives, the application must demonstrate that the second or third year of the project can be funded without Federal assistance. (25 points)

(2) Application demonstrates that project is aimed at international markets that have been identified using credible market research. (25 points)

(3) Application demonstrates that project is fully integrated (in terms of multiple activities) with a generally cohesive approach. (25 points)

(4) Application demonstrates that applicant has the organizational quality and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: Name, address, phone number, background and other qualifying experience for the project; a list of other key personnel, consultants, etc. engaged in the project, which includes names, training and background. For non-profit organization applications, the application must include a copy of the articles of incorporation, charter, trust statement or other similar document which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status. (25 points)

C. Project Evaluation Criteria (assigned weight—0.4).

The project evaluation score will be determined by averaging the score(s) in each of the relevant project areas set forth below.

1. Media Product Information

Media product information projects are those that include the development of journalist familiarization tours and dissemination of product information on the destination.

The applicable criteria are:

a. Correlation of media programs with applicant's overall international tourism marketing strategy. (30 points)

b. Program timing and content, and potential acceptance by the target media. (25 points)

c. Project cost versus media space/time return (a minimum 10 to 1 return on investment is suggested). (20 points)

d. Measurement plan to assess program effectiveness. (25 points)

2. Market Development

Market development projects are those designed to develop increased travel to the impacted area from primary international markets of opportunity. Criteria are set forth for the following three types of such projects:

a. Operator/Agent Familiarization Tours.

1. Preliminary planning and packaging of the familiarization tour(s) to cities, States or regions for tour operators to introduce the touristic product for

marketing to the foreign consumer. (30 points)

2. Plans for subsequent implementation of the familiarization tour program in coordination with USTTA or VISIT USA Committees. (45 points)

3. Measurement plan to assess project return versus outlay. (25 points)

b. Tour Package Development.

1, Preliminary planning for and packaging of tour development program, *i.e.,* selection of target market and components. (30 points)

2. Plans for subsequent implementation of the program in conjunction with tour wholesalers, etc. (45 points)

3. Measurement to assess program effectiveness. (25 points)

c. Special Travel Shows/Workshops.

1. Preliminary planning and packaging of product primarily in support of market development efforts in foreign markets. (30 points)

2. Plans for subsequent follow-up and implementation of the project. (45 points)

3. Measurement of project effectivness. (25 points)

3. Cooperative Advertising

Applications for advertising projects should include planned campaign details, including program narrative, description of proposed layouts, copy and specific media plans. If a complete media schedule is not available at the time application is made an outline of media plans will be accepted, provided that specific campaign details are forwarded to the Financial Assistance Office prior to the actual placement of the advertising in the media.

The applicable criteria are:

a. Basic marketing approach and objectives. (20 points)

b. Correlation with existing USTTA initiatives in this marketplace. (20 points)

c. Evidence that economic, marketing and statistical data necessary to develop marketing and advertising strategy is available. (10 points)

d. Creative interpretation of this strategy. (20 points)

e. Expected reach of the advertising campaign in relation to its cost and short-term impact on the market. (15 points)

f. Measurement plan to assess program cost/return effectiveness. (15 points)

4. Trade Development

Trade development projects are those which complement ongoing VISIT USA marketing programs directed toward the members of the travel trade in foreng markets. Target markets include: Argentina, Australia, Belgium, Brazil, Canada, Colombia, Ecuador, France, Germany, Hong Kong, Italy, Japan, Korea, Mexico, Nordic countries, the Netherlands, New Zealand, Spain, Switzerland, Taiwan, United Kingdom, and Venezuela. For application purposes, trade development projects are not concerned with either the development or promotion of tour packages.

Such projects may include: Trade-oriented travel missions, on-site training workshops/seminars, in-country training workshops/seminars, trade advertising, familiarization tours for foreign retail travel agents, and participation in foreign travel trade shows in which USTTA participates or serves as United States coordinator.

The applicable criteria are:

a. Techniques used to create an awareness and encourage selling of the destination by foreign travel trade. (25 points)

b. Implementation time and anticipated project benefits derived after grant expiration. (25 points)

c. Goals of project and methods used to measure program results. (50 points)

5. Consumer and Trade Literature

Consumer and trade literature must be designed specifically for use in foreign countries. Special attention should be devoted to designing literature to meet the needs of the target market.

The applicable criteria area:

a. Preliminary planning for design and content of brochures. (15 points)

b. Evidence that market planning research has been utilized to identify visitor preferences and information needs. (15 points)

c. Correlation between literature program and overall marketing plan. (25 points)

d. Strategy for distribution of literature. (25 points)

e. Measurement plan to assess program effectiveness. (25 points)

Classification: This notice of availability of financial assistance is issued under the authority of title I of Public Law No. 101–515 and section 202 (a)(5) and (c) of the International Travel Act of 1961, as amended.

This notice does not constitute a major rule within the meaning of section 1(b) fo Executive Order 12291 because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs of prices for consumers, individual industries, Federal, State, or local govenrment agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly a Regulatory Impact Analysis was not required or prepared.

The requirements of section 553 of the Adminstrative Procedure Act (5 U.S.C. 553) including having to give notice and an opportunity for comment do not apply to this notice because the notice relates to grants, benefits, or contracts. Since notice and an opportunity to comment is not required under any other statute, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act and was not prepared.

The Department has determined that the Federal assistance covered by this notice will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

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

All information collection requirements under this notice are consistent with those covered in Office of Management and Budget Circular A–110.

Linda M. Mysliwy,

Acting Deputy Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 91–11286 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–11–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council and its Committees will hold a public meeting on May 16–17, 1991, at the Quality Inn, 291 Jones Road, Falmouth, MA., (telephone: 508–540–2000). The Council will begin its meeting at 10: a.m., on May 16. The meeting will reconvene on May 17 at 9: a.m.

On the first day, the Committee will hear a Lobster Committee report, conduct a public hearing on Amendment #4 to the Lobster Fishery Management Plan, and hear a report from the Scallop Committee during the afternoon. On the second day, the Groundfish Committee

will discuss Amendment #4 to the Northeast Multispecies Fishery Management Plan (FMP), the prohibition of net strengtheners and the National Marine Fisheries Service (NMF) recommendations on the Exempted Fisheries Program. There will also be a presentation from NMFS on the status of the Surf Clam and Ocean Quahog Fishery Management Plan, followed by a discussion on the Council's use of Plan Development Teams.

FOR MORE INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: May 7, 1991.

David S. Crestin,

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

[FR Doc. 91–11255 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee will hold a public meeting on May 13–14, 1991, in Juneau, AK. The meeting will begin on May 13 at 1 p.m., at the University of Alaska's Hendrickson Building, 11120 Glacier Highway, room 206, Juneau, AK.

The Bycatch Committee will review the Council's vessel incentive program and continue development of future bycatch control measures.

FOR MORE INFORMATION CONTACT: Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: May 7, 1991.

David S. Crestin,

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

[FR Doc. 91–11253 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a public meeting on May 13, 1991, from 6:30 p.m., until 9 p.m., at the McCoy Pavilion, Ala Moana Beach Park, Honolulu, HI.

The Council is providing an opportunity for public input on the following issues:

Moratorium on New Entry into the Longline Fishery. Should longline vessels which do not meet the Hawaii limited entry permit criteria and fish exclusively outside the 200 mile Exclusive Economic Zone be allowed to land their catch in Hawaii?

Longline Area Closures. Should the area closure provisions around the Main Hawaiian Islands be modified during development of an amendment to allow for: (1) Exemptions for smaller vessels; (2) smaller or larger area closures for any given area; (3) seasonal openings?

What criteria should be used to define "indigenous fishermen" when making exemptions based on preferential fishing rights for indigenous fishermen?

Other fishery issues may also be discussed.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: May 7, 1991.

David S. Crestin,

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

[FR Doc. 91–11254 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Modification; Dr. Thomas Albert (P282)

Notice is hereby given that Dr. Thomas Albert, Senior Scientist, North Slope Borough, Department of Wildlife Management, P.O. Box 69, Barrow, Alaska 99723, requested a modification of Permit No. 519 issued on (50 FR 35186), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit, as modified, authorizes the Holder to collect, export and re-import specimen materials from bowhead whales (*Balaeana mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), bearded seals (*Erignathus barbatus*) and ringed seals (*Phoca hispida*) taken during the Alaska Eskimo subsistence harvest or that are beached.

The Holder requests further modification to take sample 10 additional beluga whales. This would allow the number of sampled belugas to increase from 30 to 40. The animals sampled will be those taken in the subsistence hunt by Eskimo hunters from the village of Point Lay, Alaska. The animals to be sampled would be among the largest of those taken (ages to be determined through examination of teeth). Suitable tissues (blubber, liver, kidney, intra=abdominal fat, muscle) will be taken from all 10 in support of the tissue pollutant level study. The lungs, trachea and larynx from at least five will be collected in support of the respiratory tract morphology study. A complete skeleton will be collected from at least two animals in support of the bone morphology study. The Holder also requests a 1-year extension.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

BY APPOINTMENT: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20901 (301/427–2289).

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802 (907/586–7221).

Dated: May 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–11261 Filed 5–13–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification: NMFS, Southwest Fisheries Science Center (P77#40)

Notice is hereby given that pursuant to the provisions of § 217.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and Section 220.24 of the regulations on endangered species (50 CFR parts 217–222), Scientific Research Permit No. 707 issued to the Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038, on May 31, 1990 (55 FR 23268) is modified in the following manner:

Section A.1.a. is replaced by:

"a. 300 weaned and immature pups may be captured, weighed, measured, and released; 150 of these may be temporarily bleach marked;"

Section B.1 is replaced by:

"1. This research effort shall be conducted by the means, in the areas, and for the purposes set forth in the application and the modification request."

This modification becomes effective May 7, 1991.

Documents pertaining to the Permit and modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7451 (213/514–6196); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396 (808/955–8831).

Dated May 7, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–11262 Filed 5–10–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application Denied; Clarrison's Sealions (P441)

On April 9, 1989, notice was published in the **Federal Register** (54 FR 13932) that an application had been filed by Clare and Peter Harrison, dba Clarrison's Sealions, 401 N. Oxford Drive, Englewood, Florida 34223, to take four (4) California sea lions *Zalophus californianus)* from captive-born stocks for public display.

Notice is hereby given that on May 7, 1991, the National Marine Fisheries Service denied Clare and Peter Harrison, dba Clarrison Sealions, a Permit based on inadequate information to determine compliance with the criteria for issuance of public display permits as set forth in the Marine Mammal Protection Act amendments and the National Marine Fisheries Service interim Policy on education and conservation programs. Specifically, that "A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that * * * is acceptable to the Secretary * * *" (sec. 104(c)(2); Pub. L. 100–711 November 23, 1988).

The application and supporting documentation are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, suite 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, Naticnal Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 7, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–11263 Filed 5–10–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Fourth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Agricultural Advisory Committee." The Commission certifies that renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee.

Commissioner Kalo A. Hineman serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC this 6th day of May, 1991 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–11224 Filed 5–10–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Texas Equal Opportunity Plan for Higher Education; Report Availability

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Office for Civil Rights' proposed factual report on the implementation by the State of Texas of the Texas Equal Educational Opportunity Plan for Higher Education is available for inspection by the public from 9 a.m. to 4 p.m., Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location: U.S. Department of Education, Switzer Building, 330 C Street, SW., Room 5332, Washington, DC.

This action is taken to obtain public comments on the report before a final decision is made on compliance with Title VI of the Civil Rights Act of 1964.

This State's equal educational opportunity plan for higher education expired in June 1988.

DATES: Comments on the proposed factual report will be accepted until July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon H. McCoy at 202–732–1691 or TDD at 202–732–1663.

Dated: May 6, 1991.

Michael L. Williams,

Assistant Secretary for Civil Rights.

[FR Doc. 91–11226 Filed 5–10–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Echo Lake Substation Record of Decision

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Record of decision (ROD).

SUMMARY: BPA has decided to build its Echo Lake Substation (originally called the Snoqualmie Substation), south of Snoqualmie, Washington. This substation project was evaluated in the Supplement to the Environmental Statement, Fiscal Year 1975 Proposed Program, Maple Valley 500-kilovolt (kV) Transmission Line (1974). Alternative transmission line routes and substation sites were evaluated in the 1974 Environmental Statement. The transmission portion of the project has been built. A 130-acre substation site was selected, purchased, and cleared, but construction of the substation was delayed because the anticipated electrical load growth in the area did not materialize. Because loads have increased recently, the substation is needed now to help provide adequate voltage support in the Puget Sound area.

When the Maple Valley 500-kV Transmission Line Environmental Statement was written and decisions were made, a ROD was not required. The alternative substation sites discussed in the Environmental Statement were eliminated from reasonable consideration when the transmission line was built, and the proposed substation site was bought. To be consistent with present regulations, BPA has prepared this ROD, which focuses on the decision today: Whether or not to construct the substation.

FOR FURTHER INFORMATION CONTACT: John Taves, Environmental Coordinator, Division of Facilities Engineering, Bonneville Power Administration, P.O. Box 3621–EFBG, Portland, Oregon 97208 (503) 230–4995. Copies of the ROD are being sent to interested and affected agencies, organizations, and individuals.

SUPPLEMENTARY INFORMATION:

I. Alternatives. In arriving at a decision to proceed with the construction of the substation, BPA considered two alternatives:

A. No Action.

B. Build the substation on the site purchased for the project after the Final Environmental Statement (1974) was issued.

II. Decision Factors. In making its decision, BPA considered the following factors:

A. Ability to Meet the Need—Only the construction alternative meets the need to help provide adequate voltage support in the Puget Sound area. (This project is not one of the long-range alternatives associated with the Puget Sound Area Electrical Reliability Plan.).

B. Environmental Effects—Constructing and operating the substation would have little environmental impact.

The following documents relate to the project:

Supplement to the Environmental Statement, Fiscal Year 1975 Proposed Program, Maple Valley 500-kV Transmission Line. BPA. November 11, 1974.

Environmental Statement, Fiscal Year 1975 Proposed Program. BPA. August 23, 1974.

In response to the approximately 15-year delay of action from the original proposal, DOE prepared an analysis to determine whether a supplement to the existing EIS was required. On April 8, 1991, DOE determined that proceeding with the proposal to build the Echo Lake Substation does not present significant new circumstances or information relevant to environmental concerns, and thus an EIS supplement was not prepared.

C. Public Issues—Opportunities for public comment were provided through newspaper advertisements, a public meeting, and one-on-one contacts with persons in the community. There were no public concerns expressed about the project.

III. Environmentally Preferred Alternative. The No Action alternative is the environmentally preferred alternative, but it does not meet the need. The substation alternative would require about 12 acres of fenced area, and about 25 acres, total, of vegetation clearing. The substation would not affect endangered or threatened species, critical habitat, cultural resources, coastal zones, floodplains, wetlands, Prime or Unique farmland, or other sensitive environmental resources.

IV. Mitigation. No specific mitigation measures relevant to this substation were identified in the 1974 Environmental Statement, or through the recent analysis and review of the project. However, BPA applies standard mitigation measures to all projects to reduce impacts (such as keeping construction equipment properly maintained and operated to reduce exhaust fumes, keeping the vegetation clearing to the minimum necessary, using clearing techniques that reduce erosion potential and fire hazards, etc.). Implementation of the standard mitigation measures will be assured by including them in the construction specifications, with construction inspectors monitoring and enforcing those measures.

The Federal decisionmaker, by signing on original copy of this Record of Decision, is making a decision consistent with the agency's jurisdiction, which includes the Bonneville Project Act, 16 U.S.C. 832a(b).

Issued in Portland, Oregon, on April 26, 1991.

James J. Jura,

Administrator.

[FR Doc. 91–11317 Filed 5–10–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–393–000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 2, 1991.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER91–393–000]

Take notice that on April 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled/short-term firm interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1990 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange agreements and in all previous annual revisions.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange agreements with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER91-394-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on April 22, 1991, tendered for filing an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport) dated April 11, 1991 providing for certain transmission services to Lockport. Niagara Mohawk states that this agreement provides for the transmission and delivery by Niagara Mohawk of specified quantities of power produced by Lockport to be sold by Lockport to New York State Electric & Gas Corporation (NYSEG) under separate agreement. Firm services under this agreement are proposed to commence as of the commercial operation date of Lockport's Production Facility, as that term is defined in the Lockport-NYSEG power purchase agreement. (The commercial operation data is currently projected by Lockport to be July 1992).

Niagara Mohawk requests waiver of the Commission's notice requirements, 18 CFR 35.3(b), 35.11.

Copies of this filing were served upon Lockport and the New York State Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Service Company

[Docket No. ER90-450-001]

Take notice that on April 25, 1991, New Power Service Company on behalf of the New England Hydro-Transmission Corp. and New England Hydro-Transmission Electric Co., Inc. tendered for filing its Compliance Refund Report in compliance with the Commission's letter order issued on January 23, 1991 in this docket.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER91-392-000]

Take notice that on April 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreement to provide qualifying facility transmission service for Royster Company (Royster) designated as Tampa Electric's Rate Schedule No. 28. Tampa Electric states that the recalculated transmission service rates are based on 1990 Form No. 1 data, and are developed by the same method that was utilized in the cost support schedules accompanying the initial filing of the transmission service agreement and in prior annual revisions.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon Royster and the Florida Public Service Commission.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER91-390-000]

Take notice that on April 19, 1991, Idaho Power Company (IPC) tendered for filing two letter agreements regarding transmission service and a Transmission Service Agreement executed December 21, 1990 between Bonneville Power Administration (BPA) and Idaho Power Company. These three agreements apply to the provision of transmission service by IPC to BPA for the supply of power by BPA to the Oregon Trail Electric Consumer Cooperative, Inc. The two interim transmission service agreements apply to service provided by IPC to BPA from June 1, 1990 to December 20, 1990. An effective date of December 21, 1990 is requested for the Transmission Service Agreement. Unless extended, the TSA would terminate December 31, 2002.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit these Agreements to become effective upon their respective execution dates.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91-295-000]

Take notice that on April 29, 1991, PacifiCorp Electric Operations ("PacifiCorp"), tendered for filing an amendment to its filing for the Third Amendment to Interconnection Agreement with Sierra Pacific Power Company.

PacifiCorp renews its request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on May 1, 1991.

Copies of this filing amendment have been supplied to Sierra Pacific Power Company, the Public Service Commission of Nevada and the Public Utility Commission of Oregon.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER91-405-000]

Take notice that on April 29, 1991, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Agreement for the sale of Capacity and Energy between The Washington Water Power Company (WWP) and Public Utility District No. 1 of Pen Oreille County. WWP requests that the Commission accept the Agreement for filing, effective as of July 1, 1991.

A copy of the filing was served upon Public Utility District No. 1 of Pend Oreille Company.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER91-352-000]

Take notice that on April 19, 1991, Portland General Electric Company (PGE), tendered for filing an Amendment to Portland General Electric Company and Pacific Gas and Electric Company Short-Term Power Sale Agreement dated March 27, 1991.

Copies of this amendment have been served on the persons named on the distribution list, as included in this filing.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Company

[Docket No. ER91-404-000]

Take notice that on April 26, 1991, Iowa Public Service Company tendered for filing an executed Firm Power Interchange Service Agreement whereby Iowa Public Service Company (IPS) will provide to Union Electric Company (UE) firm electric capacity and associated energy for the ten-year period June 1, 1991 through May 31, 2001 according to a specific schedule, but not less than 50 MW or more than 115 MW.

IPS requests a June 1, 1991 effective date, and therefore requests waiver of

the notice requirements if FERC acceptance is not obtained prior to June 1, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. El Paso Electric Company

[Docket No. ER91-1-000]

Take notice that on April 25, 1991, El Paso Electric Company ("El Paso") tendered for filing additional explanatory materials in support of its firm transmission service agreement with Salt River Project Agricultural Improvement and Power District. The original filing was made on October 1, 1990, and Supplemental information has been supplied previously on October 29, 1990 and January 25, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER91-400-000]

Take notice that on April 22, 1991, Otter Tail Power Company (Otter Tail) tendered for filing an agreement between Otter Tail and Manitoba Hydro Electric Board (MHEB). Otter Tail states that the Agreement is for the sale of demand and energy from MHEB to Otter Tail for the months of May through October for 1991 and 1992.

Otter Tail requests a waiver of the Commission's notice requirements to allow this schedule to become effective on May 1, 1991.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas Gas and Electric Company

[Docket No. ER91-391-000]

Take notice that Kansas Gas and Electric Company on April 19, 1991, tendered for filing a proposed change in its FERC Electric Service Tariff No. 160. The proposed KCP&L Letter of Intent specifies voiding certain notices of both parties and continues the Lease Agreement throughout the operating life of the Wolf Creek Generating Station.

The Letter of Intent is required to outline an agreement between the parties and amend certain provisions of the Lease Agreement.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Cogen Technologies Baltimore, Inc.

[Docket No. QF91-123-000]

On April 26, 1991, Cogen Technologies Baltimore, Inc. of 1600 Smith Street, Suite 5000, Houston, Texas 77002, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baltimore, Maryland at the site of FMC Corporation's (FMC) Agricultural Chemical complex, and will consist of two combustion turbine generating units, two waste heat recovery boilers, one or two extraction steam turbine generating unit(s) and a 3.7 miles 230 kV transmission line. Steam recovered from the facility will be used by FMC in the production of various agricultural chemicals (*e.g.*, insecticides, herbicides and fungicides), and by Vista Chemical Company in the production of various industrial chemicals (*e.g.*, plasticizers, solvents and resins). The maximum net electric power production capacity of the facility will be about 433 MW. The primary energy source will be natural gas. Installation of the facility is expected to begin by January, 1992.

Comment date: June 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER91-403-000]

Take notice that Florida Power & Light Company (FLP) on April 26, 1991, tendered for filing revised Cost Support Schedules C, F and G (together with Cost Support Schedule F Supplements) that: (1) Support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, Utility Board of City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and (2) support the revised Capacity Reservation Charges for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach, City of Lake Worth and Utility Board of City of Key West and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short-Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B-S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 16, 1991 in accordance with Standard Paragraph E at the end of this notice.

15. Philadelphia Electric Company and Public Service Electric and Gas Company

[Docket No. ER91-396-000]

Take notice that on April 23, 1991, Philadelphia Electric Company (PE) on behalf of itself and Public Service Electric and Gas Company (PS) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and PS dated March 18, 1991.

PE states that the Agreement sets forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time and the purchase of which will be economically advantageous to the other party. The rates for these services are negotiated but will not exceed $5.50 per MWh. In order to optimize the economic advantages to both PE and PS, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on April 29, 1991.

PE states that a copy of this filing has been sent to PS and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: May 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11228 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 3, 1991.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 2788-009.

c. Date Filed: April 22, 1991.

d. Applicant: F.W.E. Stapenhorst Inc. (licensee), Hydro Development Group Inc. (transferee).

e. Name of Project: Colliersville Hydroelectric Project.

f. Location: On the North Branch of the Susquehanna River in the Town of Milford, Otsego County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert G. Fitzgibbons, Hunton & Williams, P.O. Box 19230, 2000 Pennsylvania Ave., Washington, D.C. 20006, (202) 778-2201.

i. FERC Contact: Michael Dees (202) 219-2807.

j. Comment Date: May 28, 1991.

k. Description of Project: On April 22, 1991, the licensee and transferee filed a joint application to transfer the license for the Colliersville Hydroelectric Project No. 2788. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to comply with a stipulation and consent agreement between the licensee and transferee, and the Commission.

l. This notice also consists of the following standard paragraphs: B, and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11232 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1913-000, et al.]

United Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipeline Company

[Docket No. CP91-1913-000]

May 1, 1991

Take notice that on April 14, 1991, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1913-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a four-inch meter station, 3250 feet of four-inch pipeline and related facilities, in Rankin County, Mississippi, pursuant to United's blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed meter station, pipeline and related facilities will enable it to transport an estimated maximum of 5000 Mcf/d of natural gas for Harbert Oil and Gas Oil and Gas to serve Birmingham Steel Corporation under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket Nos. CP91-1865-000, CP91-1866-000, CP91-1867-000, CP91-1868-000]

May 1, 1991

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

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[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1865-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	North Atlantic Utilities, Inc.	30,000 30,000 10,059,000	Offshore LA, TX, IN, IL, TN.	OH	PT, Interruptible, 3/01/91.	CP86-586-000, ST91-7728-000.
CP91-1866-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	Tex/Con Gas Marketing Company.	50,000 50,000 18,250,000	IN, IL, TN, Offshore LA, TX.	OH	PT, Interruptible, 3/01/91.	CP86-586-000, ST91-7844-000.
CP91-1867-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	Coast Energy Group, Inc.	35,000 35,000 12,775,000	Offshore LA, TX, IL, TN.	LA	PT, Interruptible, 3/19/91.	CP86-586-000, ST91-91-000.
CP91-1868-000 4/18/91	Trunkline Gas Company, P.O. Box 642, Houston, TX 77251.	EnTrade Corporation.	200,000 25,000 9,125,000	Offshore TX, LA	Offshore TX	PT, Interruptible, 3/07/91.	CP86-586-000, ST91-8006-000.

[1] Quantities are shown in MMBTU unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Trunkline Gas Company

[Docket No. CP91-1918-000]

May 1, 1991.

Take notice that on April 29, 1991,[2] Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to implement a transportation agreement with Seagull dated July 31, 1989, providing for a maximum transportation volume of 30,000 Mcf per day. It is indicated that Trunkline would receive the gas at specified points located in Tennessee, Illinois, and the onshore and offshore areas of Texas and Louisiana and redeliver the gas, less fuel and unaccounted for line loss, to Mississippi River Transmission Corporation in Clay County, Illinois. Trunkline estimates peak day, average day, and annual volumes of 30,000 Mcf, 30,000 Mcf, and 10,950,000 Mcf, respectively. It is stated that Trunkline initiated a 120-day transportation service for Seagull on January 1, 1990, as reported in Docket No. ST91-8264-000.

Trunkline states that no new facilities would be required to implement the service and that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP91-1911-000]

May 2, 1991.

Take notice that on April 24, 1991, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP91-1911-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate additional points of delivery for existing wholesale customers, under Columbia's blanket certificates issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate facilities necessary to provide twelve additional points of delivery for Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Dayton Power & Light Company and Mountaineer Gas Company.

Columbia states that the additional points of delivery have been requested by Columbia's wholesale customers for residential and/or commercial service. It is said that the quantities to be provided through the delivery points are within Columbia's currently authorized level of service and would be within existing peak day and annual proposed Seasonal Entitlements of such customers. It is further said that the sales to be made through the proposed points of delivery would be under Columbia's currently effective Service Agreements with such customers under Rate Schedule CDS.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP91-1933-000]

May 2, 1991.

Take notice that on April 29, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1933-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a 12-inch tap, 1.5 miles of 12-inch pipeline, a dual 8-inch meter station, a flow computer and related facilities in Calcasieu Parish, Louisiana, under its blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the proposed meter station, tap, pipeline, flow computer and related facilities will enable United to transport an estimated maximum of 55,000 Mcf of natural gas per day of firm capacity for Arcadian Gas to be delivered to the Arcadian Plant in

[2] The request was tendered on April 25, 1991; however, the fee required by § 381.208 of the Commission's Rules (18 CFR 381.208) was not until April 29, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Calcasieu Parish, Louisiana, under United's Rate Schedule ITS. United estimates the cost of Constructing the proposed facilities to be $1,156,000.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP91–1932–000]

May 2, 1991.

Take notice that on April 29, 1991, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP91–1932–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a sales tap in order to deliver gas to Conoco Inc. (Conoco), for use in the operation of its offshore production platform in Main Pass Block 311, Offshore Louisiana, under its blanket certificate issued in Docket No. CP82–496–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to construct and operate a sales tap in order to deliver gas, as necessary, to Conoco for use as start-up and emergency fuel use gas on Conoco's platform in Main Pass Block 311, Offshore Louisiana. Southern estimates the cost of constructing the facilities to be $76,300, which will be reimbursed by Conoco.

Southern states that it will deliver the gas to Conoco pursuant to an existing service agreement between Southern and Sonat Marketing Company (Sonat) dated March 28, 1988, wherein Southern agreed to transport, on an interruptible basis, up to a maximum of 4,000 MMBtu of natural gas per day on behalf of Sonat to Conoco. Southern states that it is currently providing the subject transportation service pursuant to the authority granted to Southern in its part 284, subpart G blanket certificate of public convenience and necessity issued in Docket No. CP88–316–000. It is stated that on March 14, 1991, Southern amended Exhibit B of the service agreement to provide for the delivery, on an interruptible basis, of natural gas to Conoco at its platform in Main Pass Block 311, Offshore Louisiana. Southern further states that upon completion of construction of the sales tap, Southern will provide the transportation service to the new point of delivery pursuant to the terms and conditions of the service agreement, Southern's Rate Schedule IT and the General Terms and Conditions thereto. It is stated that Conoco anticipates requesting up to 2,000 MMBtu of natural gas per day at the proposed facilities.

Comment date: June 17, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Williston Basin Interstate Pipe Line Company

[Docket No. CP91–1897–000]

May 2, 1991.

Take notice that on April 23, 1991, Williston Basin Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91–1897–000, an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct, install and operate approximately 49.3 miles of 8⅝-inch diameter pipeline, an 1,100 horsepower reciprocal compressor unit, measuring, regulating and appurtenant facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Williston Basin states that, on February 22, 1991, it executed both firm transportation and sales service agreements with Northern States Power Company (NSP) and that these agreements provide for the construction of the transmission facilities proposed herein. It is stated that the pipeline facilities would extend from a point on Williston Basin's existing transmission system near Valley City, Barnes County, North Dakota to a point near Mapelton, Cass County, North Dakota and that the compression facilities would be located 3 miles west of Cleveland, Stutsman County, North Dakota. Initial annual and daily deliveries to NSP are expected to be 2,920 MMcf and 8.0 MMcf, respectively.

The total cost to construct the facilities is estimated to be $7,644,716 and Williston Basin anticipates financing this cost with internally generated funds and/or short term bank loans. Williston Basin asserts that the total payments by NSP, as determined by Williston Basin's proposed Rate Schedule X–13 which is comprised of the aforementioned service agreements, would be no less than the total cost of service incurred by Williston Basin to provide the firm transportation service to NSP. Williston Basin further asserts that performing the proposed transportation service under proposed Rate Schedule X–13 would result in its existing customers being fully protected from the incurrence of any increases in system costs stemming from the operation of the new facilities proposed herein.

Comment date: May 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

8. Great Lakes Gas Transmission Limited Partnership

[Docket Nos. CP91–1872–000, CP91–1873–000, CP91–1874–000, CP91–1875–000]

May 3, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 248.223 of the Commission's Regulations under the National Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89–2198–000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual, Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1872-000 (4-18-91)	Michigan Consolidated Gas Company (LDC).	200,000 200,000 73,000,000	MI, MN	MI	10-23-90, IT Interruptible.	ST91-7805-000, 2-22-91.
CP91-1873-000 (4-18-91)	ProGas U.S.A. Inc. (Marketer).	275,000 275,000 100,375,000	MN	MI, MN	10-31-90, IT Interruptible.	ST91-7806-000, 2-25-91.
CP91-1874-000 (4-18-91)	Tarpon Gas Marketing Ltd. (Marketer).	200,000 200,000 73,000,000	MI, MN	MI, MN	10-22-90, IT Interruptible.	ST91-7900-000, 3-1-91.
CP91-1875-000 (4-18-91)	Poco Petroleums Ltd. (Producer).	300,000 300,000 109,500,000	MI, MN	MI, MN	10-25-90, IT Interruptible.	ST91-7899-000, 3-1-91.

9. Transcontinental Gas Pipe Line Corporation, et al.

[Docket Nos. CP91-1934-000, CP91-1935-000, CP91-1937-000]

May 3, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related[2] dockets
				Receipt	Delivery		
CP91-1934-000 4-30-91	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	Coast Energy Group.	650,000 100,000 36,000,000	TX, LA, Off LA, MS, MD, VA, NJ, PA.	NJ, MD, MS, PA, VA, LA, TX.	3-21-91, IT	CP88-328-000, ST91-8225-000.
CP91-1935-000 4-30-91	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	Citizens Gas Supply Corporation.	225,000 225,000 82,125,000	TX, Off TX, LA, Off LA, MS, NJ, PA.	NJ, LA	3-01-91, IT	CP88-328-000, ST91-7987-000.
CP91-1937-000 4-30-91	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.	Chevron U.S.A., Inc.	60,000 10,000 2,000,000	WY, KS, OK	OK	8-02-91, IT	CP86-589-000, ST91-4402-000

[1] Quantities are shown in dekatherms, except Docket No. CP91-1937-000, which volumes are shown in Mcf.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. Viking Gas Transmission Company, et al.

[Docket Nos. CP91-1938-000, CP91-1939-000, CP91-1940-000]

May 3, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificates pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, have been provided by Applicants and are summarized in the attached appendix.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms

[5] These prior notice requests are not consolidated.

and conditions of the referenced transportation rate schedules.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice

Docket No. (date filed)	Shipper name (type)	Peak day, average, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-1938-000 (04-30-91)	Cibola Corporation (Marketer).	[1] 100,000 100,000 36,500,000	MN, WI, ND	MN, WI, ND	2-06-91, IT-2	ST91-8322-000.
CP91-1939-000 (04-30-91)	North Canadian Marketing Corp. (Marketer).	[1] 150,000 150,000 54,750,250	LA, TX, MA, NY	LA, MI, WV, NJ, TN, NY, PA, OH, KY, MA, TX.	04-03-91, IT	ST91-8352-000.
CP91-1940-000 (04-30-91)	Entrada Corporation (Marketer).	[3] 200,000 200,000 73,000,000	MA, NJ	CT	03-07-91, AIT-1	ST91-7903-000.

[1] Quantities are shown in dth unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu unless otherwise indicated.

11. High Island Offshore System

[Docket No. CP91-1921-000]

May 3, 1991.

Take notice that on April 25, 1991, High Island Offshore System (HIOS), 500 Renaisance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1921-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for LaSER Marketing Company, a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

HIOS states that, pursuant to an agreement dated April 1, 1990, under its Rate Schedule IT, it proposes to transport up to 580,000 Mcf per day of natural gas. HIOS indicates that the gas would be transported from Offshore Louisiana, and Offshore Texas, and would be redelivered in Offshore Louisiana, and Offshore Texas. HIOS further indicates that it would transport 580,000 Mcf on an average day and 211,700,000 Mcf annually.

HIOS advises that service under § 284.223(a) commenced February 27, 1991, as reported in Docket No. ST91-7675-000.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. Williston Basin Interstate Pipeline Company

[Docket No. CP91-1729-000]

May 3, 1991.

Take notice that on April 5, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted in Docket No. CP91-1729-000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to add metering and appurtenant facilities under the blanket certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The filing was completed on May 3, 1991, upon Williston Basin's filing of the required fees.

Notice of the instant proposal was issued on April 9, 1991. Although the request under blanket authorization was tendered for filing April 5, 1991, the required fee (18 CFR 381.207) was not paid until May 3, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid. Therefore, it is necessary and appropriate that Williston Basin's request be further noticed to reflect the correct filing date, *i.e.*, May 3, 1991.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

13. Algonquin Gas Transmission Company et al.

[Docket No. CP91-1945-000, CP91-1946-000, CP91-1947-000, CP91-1948-000, CP91-1949-000, CP91-1950-000]

May 3, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1945-000 (5-1-91)	Providence Gas Company.	26,129 26,129 3,945,479	NJ	RI	9-21-90, AFT-1, Firm.	ST91-6105-000, 1-18-91.
CP91-1946-000 (5-1-91)	Amarillo Natural Gas, Inc. (LDC).	300 225 109,500	AZ, NM, OK, TX	TX	11-9-90, ITS-1, Interruptible.	ST91-8378-000, 4-15-91.
CP91-1947-000 (5-1-91)	K N Gas Marketing, Inc. (Marketer).	150,000 112,500 54,750,000	Various	Various	4-1-91,IT-1, Interruptible.	ST91-8223-000, 4-1-91.
CP91-1948-000 (5-1-91)	Panda Resources, Inc. (Marketer).	50,000 37,500 18,250,000	Various	Various	4-11-91, IT-1, Interruptible.	ST91-8310-000, 4-11-91.
CP91-1949-000 (5-2-91)	Conoco, Inc. (Producer)	20,000 6,500 7,300,000	OTX	TX	10-3-90, ITS, Interruptible.	
CP91-1950-000 (5-2-91)	Angerman Associates, Inc.	10,120 150 54,750	PA, WV	PA, WV	3-28-91, ITS, Interruptible.	ST91-8404-000, 4-17-91.

[1] Offshore Texas is shown as OTX.

Applicant's address	Blanket docket
Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135	CP89-948-000.
Black Marlin Pipeline Company. 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP89-2041-000.
Equitrans. Inc.. 3500 Park Lane, Pittsburgh, Pennsylvania 15275	CP86-553-000.
Northern Natural Gas Company. 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000.
Transwestern Pipeline Company. 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP88-133-000.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11229 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on May 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be Effective June 1, 1991

Third Revised Sheet No. 21
Third Revised Sheet No. 22
Third Revised Sheet No. 26
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Third Revised Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled quarterly Purchased Gas Adjustment ("PGA") and is made pursuant to Algonquin's PGA Section 17 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1 to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern") and purchased gas costs to be charged by its suppliers, Texas Eastern, National Fuel Gas Supply Corporation ("National") and CNG Transmission Corporation ("CNGT").

Algonquin states that the instant filing reflects the purchases and sales

projected to be made for the three month period beginning June 1, 1991 and the underlying costs of standby service and gas as set forth in its suppliers' filings dated March 29, 1991 in Docket No. TQ91–3–17 (Texas Eastern) and Docket No. TF91–8–16–001 (National) and March 28, 1991 in Docket No. RP91–125 (CNGT).

Algonquin states that the proposed effective date for the listed revised tariff sheets is June 1, 1991.

Algonquin further states that the effect of the change in rates is to increase the demand charges by $.0860 per MMBtu and to increase the commodity charges by 20.40¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Revision to the Surcharge Adjustment of April 18, 1991 in Docket No. TA91–1–20–001.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11235 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR91–18–000]

Aquila Gas Systems Corp.; Petition for Rate Approval

May 6, 1991.

Take notice that on April 30, 1991, Aquila Gas Systems Corporation (Aquila) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.3327 per MMBtu plus allowance for fuel for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Aquila's is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the state of Oklahoma. Aquila's petition states that it owns facilities in the state of Oklahoma, which are the subject of this petition, which consist of approximately 300 miles of pipe line in Carter, Dewey, Ellis, and Woodward Counties, Oklahoma known as the Mooreland/Dewey System. The previous maximum interruptible transportation rate of $0.288 per Mcf for section 311(a)(2) service on the Mooreland/Dewey System was approved by the Commission December 21, 1988 in Docket Nos. ST83–429–001, *et al. Aquila states that it acquired this system from BP Gas Transmission Company in November 1989.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which intrastatre pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written documents and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 20, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11248 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–9–63–000]

Carnegie Natural Gas.; Proposed Changes In FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following Primary and Alternate tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective June 1, 1991:

Primary Tariff Sheets

Fourteenth Revised Sheet No. 8
Fourteenth Revised Sheet No. 9

Alternate Tariff Sheets

Alt Fourteenth Revised Sheet No. 8
Alt Fourteenth Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its sales rates effective June 1, 1991, as part of its scheduled Quarterly PGA filing. Carnegie states that it is filing two sets of tariff sheets to correspond with the Primary and Alternate tariff sheets which are pending Commission action in Carnegie's current section 4 rate proceeding in Docket No. RP91–37–000. Carnegie states that consistent with Carnegie's request pending before the Commission in Docket No. RP91–37–000, the referenced Primary tariff sheets reflect the continuation by Carnegie of its standby charge tracker, whereas the referenced Alternate tariff sheets reflect the elimination of Carnegie's standby charge tracker and the inclusion of the associated Account No. 858 costs in Carnegie's base sales rates.

Carnegie proposes in this filing that the Commission accept the referenced Primary tariff sheets, to become effective June 1, 1991, if the Commission grants Carnegie's request for interim authorization in Docket No. RP91–37–000 to continue to track Texas Eastern standby charges through its PGA Clause. Carnegie alternatively proposes that, if Carnegie's request for interim tracking authorization is denied by the Commission, the Commission accept the referenced Alternate tariff sheets to become effective June 1, 1991.

The revised rates reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91–8–63–000: A $0.0537 per Dth increase in the demand components of its LVWS and CDS rate schedules; a $0.4061 per Dth increase in the commodity components of its LVWS and CDS rate schedules; a $0.4078 per Dth increase in the commodity component of its LVIS rate schedule; and a $0.0008 per Dth increase in the DCA component of its LVWS and CDS rate schedules. The referenced Primary tariff sheets also reflect a decrease in the Standby Charge Adjustment of $0.1093, from $0.3204 per Dth per Dth to $0.2111 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and

Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11233 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that CNG Transmission Corporation ("CNG") on May 1, 1991, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Eighth Revised Sheet No. 31
Third Revised Sheet No. 34

CNG requests that the Commission allow the proposed tariff revisions to become effective on June 1, 1991, as CNG's regular quarterly purchased gas adjustment ("PGA") filing.

CNG states that the filing would increase CNG's RQ and CD commodity rates by 0.65 cents per dekatherm, increase D-1 demand rates by $0.01 per dekatherm and increase D-2 demand rates by 1.19 cents per dekatherm from the rates currently in effect. CNG also states that other rates will change correspondingly.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11245 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-33-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that El Paso Natural Gas Company on May 1, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, with the proposed effective date of July 1, 1991:

Second Revised Volume No. 1

Ninth Revised Sheet No. 100
Ninth Revised Sheet No. 101

Third Revision Volume No. 2

Sixty-ninth Revised Sheet No. 1-D

Original Volume No. 2A

Seventy-first Revised Sheet No. 1-C

El Paso hereby submits a notice of a quarterly adjustment in rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision (PGA) of the General Terms and Conditions in El Paso's FERC Gas Tariff, Second Revised Volume No. 1.

El Paso states that the tendered tariff sheets reflect an increase of $0.0593 per dth in the gas cost component of El Paso's jurisdictional sales rates as compared with the gas cost component of the rates reflected in El Paso's last Quarterly Adjustment in rates at Docket No. TQ91-3-33-000, effective April 1, 1991. El Paso also eliminated the credit Surcharge Adjustment of $.0098 per dth established in its last annual PGA filed May 1, 1990, at Docket No. TA90-1-33-000.

El Paso also requests waiver of the Commission's regulations to permit El Paso not to file an annual PGA, which would be filed to be effective July 1, 1991. El Paso's request is based on the possibility that its settlement in Docket No. RP88-44-000, *et al.*, could become effective by July 1, 1991, in which event its PGA adjustment scheduled for July 1, 1991, which is also its annual PGA filing, would not become effective. The tariff sheets filed by El Paso are stated by El Paso to be tendered to establish sales rates in accordance with Commission regulation and its tariff in the event the settlement is not effective by July 1, 1991.

El Paso states that copies of the filing were served upon all of its jurisdictional sales customers and to interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-11237 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with the proposed effective date of June 1, 1991:

Seventeenth Revised Sheet No. 8

Fifth Revised Sheet No. 8A

FGT states that the above-referenced tariff sheets are being filed to reflect the calculation of the Annual Unit Take-or-Pay Surcharge for the third annual recovery period pursuant to section 27 of the General Terms and Conditions of FGT's FERC Gas Tariff, Second Revised Volume No. 1. Section 27 contains tariff language that establishes a mechanism to flowthrough the fixed charge allocation of buyout and buydown costs billed to FGT by Southern Natural Gas Company and was approved by Commission Order dated June 16, 1989 in Docket No. RP89-44-001. The revised Take-or-Pay Surcharge is .300¢/therm or 3.00¢/MMBtu, as compared to the Surcharge underlying existing rates of .346¢/therm or 3.46¢/MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11250 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–37–017]

High Island Offshore System; Report of Refunds

May 6, 1991.

Take notice that High Island Offshore System (HIOS), on April 15, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made in accordance with the provisions of article VI of the Stipulation and Agreement approved by the Commission on October 30, 1990, in Docket Nos. RP89–37–000, *et al.* The report summarizes amounts made by HIOS to its shippers of a refund received from ANR Pipeline Company (ANR) pursuant to its rate proceeding in Docket No. RP89–39–000 under ANR's Rate Schedule X–64.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure 18 CFR 385.211 and 385.214 (1990). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11241 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–6–26–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, Natural Gas Pipeline Company of America (Natural), tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, with the proposed effective date of June 1, 1991.

Second Revised Sheet No. 180
Second Revised Sheet No. 181

Natural states that the purpose of the filing is to reflect accrued interest for the months of December 1990 through May 1991 related to Natural's recovery of take-or-pay buyout, buydown, and other contract reformation costs (Transition Costs) under an Order No. 528 mechanism.

Natural seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect June 1, 1991.

Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP88–94–000, *et al.*, RP90–24–000 and RP91–22–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11246 Filed 6–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–28–000 and 001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 1, 1991, tendered for filing the revised tariff sheets as identified in appendices A and B to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date of these revised tariff sheets is June 1, 1991.

Panhandle states that the revised tariff sheets filed herewith reflect a Commodity Rate decrease of (3.35¢) per Dt in the projected purchased gas cost component. The primary tariff sheets listed in appendix A also provide for the following adjustments in Panhandle's D1 and D2 demand rates: (1) An increase of $1.00 for D1 and (2) no change for D2 pursuant to Section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

The primary tariff sheets filed herewith reflect revised billing determinants in the new service agreements between Panhandle and ten major customers which were filed with the Commission in Docket No. CP91–1828–000 on April 15, 1991. The instant PGA filing is based upon the Commission accepting and authorizing the new service agreements on or before June 1, 1991. In addition to the service agreements filed in Docket No. CP91–1828–000, Panhandle has also included revised billing determinants for Indiana Gas Company (Indiana Gas) to reflect a new service agreement which became effective March 1, 1991. Pursuant to an agreement dated as of March 1, 1991, Indiana Gas converted a portion of its sales service to transportation service in accordance with § 284.10 of the Commission's Regulations. In accordance with Order No. 500–J and § 284.10 such conversion is deemed to be an abandonment of the corresponding sales service.

Panhandle further states that in the event the service agreements filed in Docket No. CP91–1828–000 are not accepted and approved by June 1, 1991, Panhandle requests the Commission make effective on June 1, 1991 the alternate tariff sheets listed on appendix B hereto. The alternate revised tariff sheets filed herewith reflect the new service agreement for Indiana Gas Company. These tariff sheets reflect the Commodity Rate decrease of (3.35¢) per Dt in the projected purchased gas cost component, and the following adjustments in Panhandle's D1 and D2 demand rates: (1) An increase of $0.39 for D1 and (2) no change for D2 pursuant to section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of

Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective June 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11236 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI91–75–000]

Peoples Natural Gas Co.; Division of UtiliCorp United Inc.; Application for a Blanket Certificate With Pregranted Abandonment

May 6, 1991.

Take notice that on April 24, 1991, Peoples Natural Gas Company, Division of UtiliCorp United Inc. of 1815 Capitol Avenue, Omaha, Nebraska 68102 (Applicant) filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of all NGPA categories of NGA gas, gas imported from Canada, and LNG, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11247 Filed 5–10–91; 8:45 am

BILLING CODE 6717–01–M

[Docket No. TA91–1–40–004]

Raton Gas Transmission Co.; Compliance Filing

May 6, 1991.

Take notice that on April 23, 1991, Raton Gas Transmission Co. (Raton) filed with the Commission revised tariff sheets and supporting documents to comply with the Commission's March 19, 1991 order in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11244 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–8–000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

May 6, 1991.

Take notice that on May 1, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-Third Revised Sheet No. 4 and Ninth Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. South Georgia states that these tariff sheets and supporting information are being filed with a proposed effective date of July 1, 1991, pursuant to the Purchased Gas Cost Adjustment clause of its FERC Gas Tariff and § 154.305 of the Federal Energy Regulatory Commission's (Commission) Regulations.

South Georgia states that the Current Adjustment reflects a decrease of approximately $268,000 in jurisdictional revenues which is attributable to a decrease in the demand component of $.047 per Mcf and a decrease in the commodity component of $.61 per MMBtu from South Georgia's Purchased Gas Cost Adjustment filing in Docket No. TQ91–4–8–000. The Surcharge Adjustment is $.0555 per MMBtu, and is based on a twelve-month amortization of the balance in South Georgia's Account No. 191 as of February 28, 1991, as adjusted for the March, 1991, overcollection.

Ninth Revised Sheet No. 43, Index of Purchasers, reflects the maximum daily quantity level submitted by the Cities of Sylvester and Dawson, Georgia, after a conversion from firm sales service to firm transportation service in accordance with § 284.10 of the Commission's Regulations.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (385.211 and 385.214). All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11234 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91-1926-000]

Tejas Power Corp. v. Columbia Gulf Transmission Co.; Complaint

May 3, 1991.

Take notice that on February 4, 1991, Tejas Power Corporation (Tejas), 14811 St. Mary's Lane, suite 200, Houston, Texas 77079, filed timely Motions for Leave to Intervene and Protests in Docket Nos. CP91-665-000 and CP91-669-000. In these proceedings, Columbia Gulf Transmission Company's (Columbia Gulf) filed prior notice of its intent to provide firm transportation services, under its part 284 blanket certificate, for Mobil Natural Gas, Inc. (Mobil) and Exxon Corporation (Exxon), respectively. By order issued April 29, 1991, in Docket Nos. CP91-665-000 and CP91-669-000, the Commission, among other things; (a) accepted Columbia Gulf's withdrawal of the prior notice filing in Docket No. CP91-665-000 to provide transportation service for Mobil (Mobil) and dismissed Tejas' protest in that docket; (b) authorized Columbia Gulf to provide under its blanket certificate transportation service for Exxon of up to 50,000 Dth per day as described in Docket No. CP91-669-000; (c) established a separate complaint proceeding in Docket No. CP91-1926-000 under section 5 of the Natural Gas Act to consider Tejas' allegations, as set forth in Tejas' protests and; (d) consolidated with the complaint proceeding the proceeding in Docket No. CP91-669-000, as it relates to the transportation service to Exxon of an additional 25,000 Dth per day. This notice establishes the separate consolidated complaint proceeding in Docket No. CP91-1926-000 and contains relevant information, all as more fully set forth in Tejas' February 4, 1991, intervention and protest, which is on file with the Commission and open to public inspection.

Tejas states that it was receiving, pursuant to section 311 of the Natural Gas Policy Act, firm transportation services from Columbia Gulf on Columbia Gulf's lateral systems under Rate Schedule FTS-2 and service agreements which expired on November 1, 1989. Tejas asserts that it sought to extend these transportation agreements, which included service through Columbia Gulf's West Lateral, but was informed that no capacity was available and that in order for Columbia Gulf to provide the capacity, Tejas would be required to pay between $5 and $6 million to Columbia Gulf for the construction of unspecified facilities. Tejas also contends that its request for transportation service predated Exxon's and Mobil's requests and that by fulfilling Exxon's and Mobil's requests first, Columbia Gulf has violated the first-come, first-served policy.

Tejas contends that Columbia Gulf built and paid for facilities in order to provide service for Exxon and Mobil and that, by refusing to do the same for Tejas, Columbia Gulf is acting in an unduly discriminatory manner. Tejas believes that Columbia Gulf is hoarding capacity on its lateral lines, either for its parent, Columbia Gas Transmission Corporation, or other shippers in violation of the provisions of Order Nos. 436 and 500.

Tejas requests that the Commission reject Columbia Gulf's prior notice filings, unless the pipeline can demonstrate that it has not unduly discriminated against Tejas. Tejas also challenges Mobil's right to section 311 transportation service on the grounds that Columbia Gulf is violating the Commission's rules and regulations regarding the first-come, first-served requirements and the prohibition against unduly discriminatory behavior in providing firm transportation, whether it is pursuant to section 311 or section 7(c). Tejas is primarily concerned with obtaining capacity on Columbia Gulf's system and wants Columbia Gulf to construct facilities, if they are required, on the same basis that the pipeline built such facilities for Exxon and Mobil.

All intervenors in the proceedings in Docket Nos. CP91-665-000 and CP91-669-000 are deemed to be intervenors in the complaint proceeding established herein, and all pleadings filed in the prior notice proceedings are deemed to be part of the record in Docket No. CP91-1926-000. Any person, including those who have intervened in the prior notice proceedings, desiring to be heard or to make any protest or comment with reference to said complaint should on or before May 20, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene, if necessary, and/or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Answers to the complaint are due on or before May 20, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-11249 Filed 5-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-29-000]

Tennessee Gas Pipeline Company Compliance Filing

May 6, 1991.

Take notice that on May 2, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in response to the Commission's order on April 26, 1991 in the referenced docket:

Third Revised Volume No. 1

Substitute Third Revised Sheet No. 20
Substitute Third Revised Sheet No. 21
Substitute Second Revised Sheet No. 23
Substitute First Revised First Revised Sheet No. 24
Substitute Second Revised Sheet No. 25
Substitute Second Revised Sheet No. 26
Substitute Second Revised Sheet Nos. 38-42
Substitute Second Revised Sheet Nos. 275-279
Substitute First Revised Original Sheet Nos. 279A-B
Substitute Original Revised Sheet No. 279C
Substitute Second Revised Sheet Nos. 280-281

Original Volume No. 2

Substitute Twenty-Third Revised Sheet No. 5
Substitute Twenty-Second Revised Sheet No. 6
Substitute First Revised Seventh Revised Sheet No. 7
Substitute First Revised Eighth Revised Sheet No. 8
Substitute First Revised Seventh Revised Sheet No. 9
Substitute First Revised Twelfth Revised Sheet No. 10

Tennessee states that the purpose of this filing is to amend Tennessee's transition cost recovery mechanism to reflect: (i) A 50% reduction in the direct bill allocation to "small customers" and (ii) a volumetric surcharge of 0.8 cents per dkt resulting from a revised equitable sharing formula (25-25-50) for $25 million in "new costs."

Tennessee states that Tennessee has used an alternate equitable sharing formula for the principal payments first reflected in its November 16, 1990, filing in this docket: 25% absorbed by Tennessee, 25% allocated to direct bill recovery, and 50% allocated to volumetric recovery. This allocation was approved for these sums by the Commission in its Order of April 26, 1991.

Tennessee states that the revised direct bill amounts reflect an allocation based upon 1988 AQL (Annual Quantity Limitation) factors adjusted to reduce the allocation factors of G and GS customers by 50%. Tennessee states that this reduction complies with Order 528–A, as well as the Orders of March 1 and April 26 in this docket. Tennessee state that by computing each customer's direct bill liability as of April 30, 1991, taking into account carrying charges on transition costs and interest on all customer payments, the revised allocations have been given effect as of November 16, 1991 as required by the Commission's Order of April 26, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11238 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR91–17–000]

TEX/CON Gas Pipeline Co.; Petition for Rate Approval

May 6, 1991.

Take notice that on April 30, 1991, TEX/CON Gas Pipeline Company (TEX/CON) (formerly, BP Gas Transmission Company) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a mixium rate of $0.2512 per MMBtu plus 2% for fuel allowance for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

TEX/CON's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the states of Louisiana and Oklahoma. TEX/CON states that it owns facilities in the State of Oklahoma, which are the subject of this petition, which consist of approximately 800 miles of 4 inch through 20 inch pipe lines in the Anadarko Basin in southwestern Oklahoma. TEX/CON's previous maximum interruptible transportation rate of $0.137 per MMBtu for section 311(a)(2) service was approved by the Commission December 21, 1988 in Docket Nos. ST83–429–001, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 20, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11243 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Trunkline Gas Company (Trunkline) on May 1, 1991 tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Third Revised Sheet No. 3–A

The proposed effective date of this revised tariff sheet is June 1, 1991.

Trunkline states that the revised tariff sheet filed herewith reflects a commodity rate decrease of (0.10¢) per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with § 154.303 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchase Gas Adjustment Clause) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Trunkline's jurisdictional rates effective June 1, 1991.

Trunkline states that copies of its filing have been served on all jurisdictional sales customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11251 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–2–56–000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1991.

Take notice that Valero Interstate Transmission Company ("Vitco"), on April 12, 1991 tendered for filing the following tariff sheets as required by Orders 483 and 483–A and the Commission letter dated April 1, 1991 rejecting Docket No. TA91–1–56–000. These tariff sheets contain changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

26th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

34th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A.

The change in rates to Rate Schedule S–3 includes a decrease in purchased gas cost of $.3536 per MMBtu, a negative surcharge on Account 191 of $0.1509 per MMBtu and a surcharge of $0.3354 applicable to take-or-pay settlement costs.

The proposed effective date of the above filing is June 1, 1991. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by June 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11239 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT91–25–000]

Viking Gas Transmission Co.; Tariff Filing Pursuant to Order No. 493

May 6, 1991.

Pursuant to the Commission's Order No. 493, Viking Gas Transmission Company ("Viking") has submitted for filing ten copies and a computer tape of its FERC Gas Tariff, Original Volume No. 1. Viking has repaginated its tariff sheets in compliance with Order No. 493.

Viking has requested that the filing become effective June 1, 1991.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11240 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–33–11]

Williams Natural Gas Co.; Report of Refunds

May 6, 1991.

Take notice that Williams Natural Gas Company (WNG), on February 21, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, made to its jurisdictional sales and transportation customers for the period of January 1, 1988 through December 31, 1989.

The refunds were made pursuant to the Stipulation and Agreement (Settlement) filed February 2, 1989, and approved by Commission order issued June 21, 1990. The refunds are for (1) amounts received in excess of the maximum rate less 3.3 cents per Mcf for 1988, (2) the difference between the base rate charged and received and the Settlement base rates for January 1, 1989 through November 30, 1989, and (3) 1.2 cents per unit for December 1989. WNG transferred the refunds into an escrow account pursuant to article II of the Settlement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)). All such protests should be filed on or before May 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–11242 Filed 5–10–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–25–NG]

Cascade Natural Gas Corp. Application for Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

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

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 29, 1991, of an application filed by Cascade Natural Gas Corporation (Cascade) for blanket authorization to import from Canada up to 56 Bcf of natural gas for a two-year term beginning June 19, 1991. Cascade requests authority to import the natural gas at Sumas, Washington and Kingsgate, British Columbia, using the existing pipeline facilities of Northwest Pipeline Corporation and Pacific Gas Transmission Company. No new pipeline construction would be involved. Cascade also states it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington DC, at the address listed below no later than 4:30 p.m., Eastern time, June 12, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G–087, FE–53, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–8233.

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

SUPPLEMENTARY INFORMATION: Cascade, a Washington corporation with its principal place of business in Seattle, Washington, is a public utility engaged in the distribution and sale of natural gas in intrastate commerce in 86 communities in the States of Washington and Oregon. Cascade currently holds a two-year blanket authorization to import up to 56 Bcf of natural gas from Canada through June 18, 1991. This authorization was issued June 12, 1989, in DOE/FE Opinion and Order No. 316 (1 FE Para. 70,225), as amended by DOE/FE Opinion and

Order No. 316–A issued October 13, 1989 (1 FE Para. 70,245). Cascade's prior quarterly reports filed with DOE indicate that approximately 2.9 Bcf of natural gas was imported under Order No. 316, as amended, through December 31, 1990.

Cascade contemplates purchasing natural gas supplies from a variety of Canadian suppliers and reselling such supplies to its customers. Cascade will negotiate for gas supplies at competitive terms and conditions in order to supply gas to meet the demands of its system supply. These purchases generally will be on a month-to-month basis under 30-day spot market supply contracts.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses of this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of Cascade's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 3, 1991.

Clifford P. Tomaszewski,

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

[FR Doc. 91–11315 Filed 5–10–91; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 91–13; Certification Notice–81]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load power-plants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Cogen Technologies Baltimore Venture Ltd. Partnership's, Houston, TX	04–26–91	Topping Cycle	433	Baltimore, MD.
Nevada Cogeneration Associates #1, Salt Lake City, UT	05–01–91	Combine Cycle	85	Clark County, NV.
Nevada Cogeneration Associates #2, Salt Lake City, UT	05–09–91	Combine Cycle	85	Clark County, NV.

Amendments to the FUA on May 21, 1987 (Public Law 100–42), altered the general prohibitions to include only new electric base load power-plants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on May 6, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–11316 Filed 5–10–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140148; FRL–3890–7]

Access to Confidential Business Information by Labat-Anderson, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Incorporated (LAI), of Arlington, VA, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–0052, contractor LAI, of 2200 Clarendon Boulevard, Arlington, VA, will assist EPA's Region V, Environmental Sciences Division (ESD) in assessing its records management needs, including TSCA CBI, and in identifying and analyzing alternative records management system approaches for ESD.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–0052, LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Region V facilities only.

Clearance for access to TSCA CBI under this contract may continue until September 31, 1994.

LAI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 6, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–11291 Filed 5–10–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59297A; FRL–3925–3]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–91–13 and TME–91–14. The test marketing conditions are described below.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, rm. E–611, 401 M St. SW., Washington, DC 20460 (202) 382–2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury to human health or the environment.

EPA hereby approves TME–91–13 and TME–91–14. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in each TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the respective application. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–91–13 and TME–91–14:

1. The TME substances shall only be manufactured at the site identified in the TME applications.

2. A bill of lading accompanying each shipment must state that the use of the substances is restricted to that approved in the specific TME.

3. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of each TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the bill of lading that accompanies each shipment of each TME substance.

TME–91–13

Date of Receipt: March 25, 1991.

Notice of Receipt: April 26, 1991 (56 FR 19360).

Applicant: Confidential.

Chemical: (G) Alkyl polyamine derivative.

Use: (G) Dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

TME–91–14

Date of Receipt: March 25, 1991.

Notice of Receipt: April 26, 1991 (56 FR 19360).

Applicant: Confidential.

Chemical: (G) Alkyl polyamine derivative.

Use: (G) Dispersive use.

Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: EPA identified no significant human health concerns for these test market substances. However, the Agency did identify potential environmental concerns for the test market substances. Based on Quantitative Structural Activity Relationships ("QSARs") derived from test data on structurally similar compounds, EPA expects toxicity to aquatic organisms to occur at a concentration of 2 parts-per-billion ("ppb") TME substance in surface waters. Although EPA expects that the TME substances will be released to surface waters during manufacturing operations, the Agency predicts that receiving stream concentrations will be significantly below the Agency's aquatic concern concentration. The Agency predicts no releases to water during use operations. Therefore, the test market activities described in these TME applications will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: May 6, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-11292 Filed 5-13-91; 8:45 am]
BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

Corrections to a Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Acquisition of Land for Construction of Office Space in Northern Virginia for use by the Department of the Navy

This is a correction to a notice published May 3, 1991 at 56 FR 20429.

This notice supercedes any other previous notices appearing in this publication concerning the preparation of a Supplemental Draft Environmental Impact Statement for the consolidation of the Naval Systems Commands in northern Virginia.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the General Services Administration (GSA) announces its intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the acquisition of interests in land to construct thereon buildings to house the Naval Systems Command in at least 1,000,000 (one million) occupiable square feet of office and related space. All sites must have the capacity to house at least an additional 1,000,000 (one million) square feet of office and related space available for purchase at the option of the Government. The Navy will act as a cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6. Acquisition of land will allow the Government to construct office space for the Navy to consolidate its offices, which are scattered in 20 leased buildings in northern Virginia, into one location.

In response to a recent GSA advertisement, the Government received 20 expressions of interest from potential private and public offerors. These responses are listed in this notice in the interests of public information, and must satisfy the Government's site selection criteria in order to be considered as a potential Navy site. The possible alternatives are:

1. No Action—No change in the current pattern of office space usage by the Navy.

2. Franconia—This 72 acre Government-owned site is bounded by the Springfield Bypass (currently under construction) to the north, the Gray Concrete and Pipe company to the east, Loisdale Estates to the south, and Loisdale Road to the west.

3. Cameron Station—This 165 acre Government-owned site is bounded by Duke Street to the north, Holmes Run to the east and Backlick Run to the south. Cameron Station is currently under the control of the Department of the Army. Under provisions of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Cameron Station is scheduled to be closed by 1995 and the land may be transfered or sold to other Federal, state or local agencies, or to the general public.

4. Cameron Station—This 21 acre privately-owned site is bounded by RF&P right-of-way to the north, Bluestone Road to the east, Eisenhower Avenue to the south, and Lake Cook to the west.

5. Van Dorn Street—This 32.6 acre privately-owned site is bounded by the creek abutting the Southern Railroad yard to the north, by the proposed intersection of Clermont Drive and Eisenhower Avenue to the east and south.

6. Seminary Road—This 55 acre privately-owned site is bounded by Seminary Road to the north, I–395 to the east, and North Beauregard Street to the west.

7. Potomac Greens—This 38 acre privately-owned site is approximately 2,200 feet south of Four Mile Run and 1,500 feet north of Slaters Lane, and is bounded by the George Washington Memorial Parkway to the east and the Metrorail right-of-way to the west.

8. Port Potomac—This 24.6 acre privately-owned site is bounded by Crystal City to the north, the RF&P railroad mainline right-of-way to the east, Four Mile Run to the south, and Jefferson Davis Highway and Crystal Drive to the west.

9. Crystal City—This privately-owned site includes the 16.8 acre Hayes Street site, which is bounded by Hayes Street to the west, 15th Street to the south, South Fern Street to the east and 12th Street to the north; and several existing buildings (Crystal Gateway 1, 2, and 3, and Jefferson Plaza 2) bounded on the north by 12th Street, on the east by Crystal Drive, on the South by 15th Street, and on the west by South Clarke Street.

10. Gallows Road—This 20 acre privately-owned site is bounded by Gatehouse Road to the north, I–495 to the east, Route 50 to the south, and Gallows Road to the west.

11. Kingstowne—This 150 acre privately-owned site is bounded by King Center Parkway to the north and west, Van Dorn Street to the east, and South King Center Drive to the south.

12. Cherokee Avenue—This 50 acre privately-owned site is bounded by Indian Run Park to the north and east, Cherokee Avenue to the south, and Shawnee Road to the west.

13. Bush Hill—This 59.4 acre privately-owned site is composed of three parcels; the first parcel is generally bounded by I–95 to the north, Overly Drive and Larpin Lane to the east, and Janes Way Court and Neville Court to the south; the second parcel is generally bounded by RF&P railroad right-of-way the north, I–95 to the south, and the end of Vine Street to the West; the third parcel is generally bounded by Eisenhower Avenue to the north, the City of Alexandria Boundary Line to the south, and is about 1,000 feet west of Clermont Avenue.

14. Turkeycock Run—This 115 acre privately-owned site is bounded by I–395 to the north and west, Turkeycock Run to the east, and Edsall Road to the south.

15. Industrial Road—This 100 acre privately-owned site is bounded by Edsall Road to the north, Industrial Drive to the east, and Industrial Road to the south.

16. Spring Mall Road—This 46 acre privately-owned site is bounded by Spring Mall Road to the northwest, Elder Road to the east, the intersection of Elder Road and Melia Avenue to the southeast, and Loisdale Road to the west.

17. Tysons Corner—This 19.9 acre privately-owned site consists of four existing buildings and associated parcels located near the intersection of Tysons Blvd. and Tysons Parkway.

18. Clarendon—This site consists of a 1.72 acre privately-owned parcel generally bounded to the northeast by 13th Street, to the southeast by Wilson Blvd., to the southwest by Herndon Street, and to the northwest by Hartford Street; and other parcels totaling 6.21 acres generally bounded to the north by Clarendon Blvd., to the east by Fillmore Street, to the south by Washington Blvd., and to the west by Highland Street.

19. South Fern Street—This privately-owned 27.7 acre site is bounded to the north by Army-Navy Drive, to the east by South Eads Street, to the south by 15th Street, and to the west by South Fern Street.

20. Eisenhower Avenue—This 18.8 acre privately-owned site is bounded by Mill Road to the north and east, Eisenhower Avenue to the south, and Stoval Street to the west.

Potential environmental impacts resulting from the proposed action include short term impacts during construction, and long term changes in traffic, socio-economic and fiscal conditions. GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on May 14, 1991, starting at 7 p.m. in the auditorium of the Lee Center located at 1108 Jefferson Street, Alexandria, Virginia; on May 15, 1991, starting at 7 p.m. at the Aurora Hills Recreation Center located at 735 South 18th Street, Arlington, Virginia; and on May 16, 1991, starting at 7 p.m. at the Hayfield High School Lecture Room located at 7630 Telegraph Road, Alexandria, Virginia. A short formal presentation will precede the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the SDEIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

Written statements and/or questions regarding the scoping process should be mailed no later than May 31, 1991, to Mr. George Chandler—WPL, National Capitol Region, General Services Administration, 7th & D Streets SW., room 7062, Washington, DC 20407 (telephone 202/708–5334).

Dated: May 6, 1991.

Daniel Neal,

Deputy Director, NCR Planning Staff.

[FR Doc. 91–11225 Filed 5–10–91; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that HCFA is revising one of its systems of records, the Medicare Physician Supplier Master File, HHS/HCFA/BPO No. 09–70–0516, most recently published at 55 FR 18179, on May 1, 1990. The notice is being revised to rescind the routine use number six (6), published May 1, 1990, and to notify the public that Section 4164(b) of the Omnibus Budget Reconciliation Act (OBRA) of 1990 requires HCFA "to publish a directory of the unique physician identification numbers (UPIN) of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addresses of all listed physicians." Release of the UPINs will enable HCFA to better execute regulations found at 42 Code of Federal Regulations (CFR) 421.200, as well as the provisions of section 6204 of OBRA 1989. The latter requires laboratories and other health care entities to disclose any ownership interest by physicians.

EFFECTIVE DATE: The proposed procedural change shall take effect without further notice upon publication (May 13, 1991).

FOR FURTHER INFORMATION CONTACT: Phillip Brown, Division of Operational Initiatives, Office of Program Administration, Bureau of Program Operations, Health Care Financing Administration, room 368, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966–7158.

SUPPLEMENTARY INFORMATION:

Legislative Background

In 1988, HCFA established a new system of records, under the authority of section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272) (42 U.S.C. section 1395ww(note)), to maintain a UPIN for each physician who provides services for which payment is made under Medicare. Notice of this system, the "Medicare Physician Identification and Eligibility System (MPIES)," HHS/HCFA/BPO, no. 09–70–0525, was most recently published at 54 FR 28119, on July 5, 1989.

Section 1862(a) of the Social Security Act states that "* * * no payment may be made under part A or part B for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member * * *." Further, regulations found at 42 CFR 421.200 require HCFA to implement methods and procedures for identifying utilization patterns that deviate from professionally established norms, both in the performance of services and in the referral of patients for other services or ordering of other services or supplies. To implement these restrictions on payment, through contractors, HCFA reviews claims data for services and supplies which are provided directly by the physician, or which the physician causes to be performed or provided, to ensure that the services are medically necessary and in line with professionally accepted norms. The proposed system to collect the necessary data requires labs and durable medical equipment (DME) suppliers, as well as consulting physicians, to show on the Medicare claim form the UPIN of the ordering or referring physician.

Section 6204 of OBRA 1989 requires HCFA carriers to establish, effective in

January 1992, a system to identify the physician owners/investors in labs and other health care businesses so that HCFA can track the rate of physician referrals to businesses in which the physicians have a financial interest. The proposed tracking system would incorporate use of the UPINs to identify physician owners/investors.

Operational Background

The use of the UPIN is required in the above instances because it is the only nationally assigned number that is unique to the physician. Physicians billing multiple carriers have separate identification numbers at each carrier location. Moreover, a single carrier can assign multiple numbers to a single physician if that physician bills from multiple offices or is operating both a group and solo practice. Carriers may also assign one number to a group practice as a whole. It is impossible to establish any sort of separate billing pattern for individual physicians in group practices if the physician uses a number assigned to the group practice as a whole.

A nationally assigned number that is unique to the physician is required because many labs and DME suppliers have large geographic markets that include many carriers' jurisdictions and the physician number assigned by the local carrier to the physician would be meaningless to the processing carrier.

The data flow that was envisioned to enable Medicare to identify the referring or ordering physician requires the physician to include his or her UPIN on the referral or prescription/order for additional services or supplies; however, we have found that not all physicians comply with the request for this information in their paperwork. As such, the lab or DME supplier does not know the UPIN of the referring/ordering physician at the time it wishes to submit its claim for services/supplies.

To provide the information the lab or DME supplier needs to file its claim, as well as to permit the release of the UPIN to physicians and others who perform a service ordered or referred by another physician, in May 1990, HCFA added the UPIN and a new routine use to another Privacy Act system of records, the Medicare Physician Supplier Master File. That routine use was set forth, however, in a way which permits the disclosure of the UPIN *only* upon written request by a third party biller at the time it needs the information to complete a claim.

Proposed Change

Congress enacted OBRA 90 which requires HCFA to publish annually a directory containing the UPIN, the name, and the local carrier assigned provider number of each physician it has on its Physician Supplier Master File. The Government Printing Office will publish the directory. The directory will be divided into 22 volumes, recognizing logical marketing areas and limiting the number of pages in each volume. Initial copies of the directory would be provided at no cost to health care entities providing services to Medicare beneficiaries and submitting claims for which the requirement for the UPIN of the referring or ordering physician applies.

Requests by providers or suppliers for additional copies of directories and requests from other parties may be submitted to the Government Printing Office, which will offer the directory for sale. This charge will include the actual unit printing cost of the directory, an administrative handling charge, and postage and packaging. Because the directories are offered for sale, these requests are not processed as Freedom of Information Act requests.

We emphasize that the information in the directory will be *business* information only; no personal information about the physician will be published. Therefore, there is no unwarranted invasion of the individual physician's privacy. We point out also that the publication of directories will not establish access to either the Medicare Physician Identification and Eligibility System (09–70–0525) or the Medicare Physician Supplier Master File (09–70–0516). Access by third parties to those systems will continue to be limited to the routine uses established in the respective systems of records notices.

Therefore, we are rescinding routine use number six(6) of the Medicare Physican Supplier Master File, HHS/HCFA/BPO No. 09–70–516, (see below) published May 1, 1990. This provides notice to the public that the release of UPINs necessary to fulfill the requirements of OBRA will be accomplished through the publication of UPIN directories.

Rescind: Medicare Physician Supplier Master File, HHS/HCFA/BPO, No. 09–70–516.

(6) To certain third parties, e.g., physicians, suppliers, third party billers, laboratories, and providers, for purposes of allowing them to submit complete claims to Medicare including the UPIN of the physician who ordered the service or referred the patient, if HCFA:

a. Determines that the party has a claim involving the physician;

b. Limits the disclosure to the minimal segment of information necessary to effect the program purpose for which disclosure was authorized;

c. Requires the recipient of the information to make no further use of the record.

We are publishing the Medicare Physician Supplier Master File, HHS/HCFA/PBO No. 09–70–0516 below.

Dated: May 2, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09–70–0516

SYSTEM NAME:

Medicare Physician/Supplier Master File HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration. (See Appendix C, Section 4.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians and suppliers who provide medical services or supplies to Medicare beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

A compilation of data designed to identify physicians, suppliers, and other health care practitioners (name, UNPIN, practice location, and specialty); historical charge data on which customary and prevailing charges are based; and other data needed for computing Medicare payments amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1833, 1835, 1842 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395l, 1395n, 1395u, and 1395kk).

PURPPOSE(S):

To determine health care reasonable charges and the geographical area prevailing charges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed (1) to a provider, the claimant or a prosepctive claimant, the name of a physician who has been found ineligible to submit claims under Section 1814(h) (Payment for Posthospital Extended Care Services) for Section 1814(i) (Payment for Posthospital Home Health Services) to Title XVIII of the Social Security Act. (2) Disclosure may be made to a congressional office from the record of an individual in response to an

inquiry from the congressional office made at the request of that individual. (3) Disclosure may be made to the Title XIX State agency or the Titile XIX fiscal agents of the customary and prevailing charge screens and whatever other information is contained in the file and would be required to determine "reasonable charges" as required under section 103(i)(1) of the Social Security Act. (4) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(5) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, copy paper, disk, mocrofilm, and hard copy paper.

RETRIEVABILITY:

The records are retrieved by UPIN; by the practioner's/supplier's Employer Identification Number or other tax reporting number; and by the locally assigned billing number.

SAFEGUARDS:

Disclosure of records is limited to carrier personnel on a need-to-know basis. However, the UPIN is releasable to physicians, suppliers, third party billers, laboratories, and providers billing Medicare to ensure that the UPIN is included on Medicare claim forms and billings to identify the referring and/or ordering physicians.

The files are closed to unauthorized personnel. The determination as to which personnel are authorized will vary slightly in different carrier installations. All carriers have guards at the building entrance to prevant intrusion by individuals not employees or not having business with the carrier. One or more of the following security measures are used within the building: Color coded identification cards are used to establish the right of an employee to be in a specific area; cipher locks are used to protect files and computer areas; magnetic identification cards are used to gain access to security sensitive areas; video monitoring of sensitive areas is constant.

By law, HCFA is required to publish a directory containing the names, UPINs, and billing addresses of all physicians providing services for which part B Medicare payment may be made.

RETENTION AND DISPOSAL:

Submitted charge records are closed out the first quarter following the close of the previous fee screen year. Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operation, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for records information should be directed to the carrier servicing the physician's or supplier's geographical area. Individuals who want to determine if they have a record in this system must provide their full name and address.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the Systems Manager at the address specified above and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations, 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information contained in these records is furnished in part by the individual physicians or supplier and in part abstracted from Medicare Part B billing records and from the "Medicare Physician Identification and Eligibility System (MPIES)", HHS/HCFA/BPO, No. 09–70–0525.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–11036 Filed 5–10–91; 8:45 am]

BILLING CODE 4120–03

Public Health Service

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), Chapter HG, Indian Health Service (IHS), 52 FR 47053–67, December 11, 1987, as most recently amended at 55 FR 50886–87, December 11, 1990, is amended to reflect the establishment of an organizational substructure for the Billings Area Office to more accurately reflect current activities in the Area Office.

Under *Chapter HG, Section HG–20, Functions,* after the statement for the *IHS Area Office (HGF), Information and Resources Management Programs,* insert the following:

Billings Area Office (HGFF)

Office of the Area Director (HGFF1). (1) Plans, develops and directs the Area Program within the framework of IHS policy in pursuit of IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the Indian Health Service activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) encourages the full application of the principles of Indian preference and EEO; and (6) provides Indian tribes and other Indian community groups with optional ways of participating in the Indian Health programs including an opportunity to participate in developing the goals and objectives for the Billings Area Indian Health Service.

Office of Administrative Support (HGFF2). (1) Plans, coordinates, implements, and evaluates administrative management support activities; (2) advises the Area Director on all matters relating to Area management and administrative support activities; (3) provides guidance to the Area on program policy interpretation in budget formulation and execution, preparation of program planning and budgeting data, and financial management of grants and contracts; (4) participates in the allocation of the Area's human and manpower resources and funding resources; (5) interprets policy and provides direction in the conduct of the Area's management; (6) maintains necessary liaison with various components of the Indian Health Service and Public Health Service and other activities in the furtherance of the Area's management activities; (7) plans, coordinates, implements, and evaluates the Area Directives Control program; (8) coordinates the implementation of the Area internal control procedures for administrative functions; and (9) plans, coordinates, implements, and evaluates the Area third party billing and collection program (Medicare/Medicaid, private insurance), and medical records.

Office of Tribal Programs (HGFF3). (1) Participates in the development and advancement of tribal and Indian organizations' capability to manage health programs; (2) coordinates the Billings Area Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) activities and provides technical assistance to tribes, tribal leaders, and tribal health organizations in the planning and development of tribal management of Indian Health Service (IHS) functions; (3) serves as liaison on matters relating to tribal health programs; and (4) administers the urban health and community health representative programs, the tribal health/management programs, and auditing services.

Office of Program, Planning, Evaluation & Information Systems (HGFF6). (1) Plans, coordinates, implements, and evaluates a health planning system and facility construction design as well as determine unmet health needs; (2) advises on planning and evaluation activities, collection and use of health statistical data, and automated data processing (ADP) activities; and (3) serves as liaison for the coordination of health planning in conjunction with other agencies.

Office of Health Care Programs (HGFF7). (1) Plans, coordinates, implements directs, and evaluates the Area health care programs; (2) advises the Area Director on all matters related to health care program operations; (3) monitor and reviews health care operations including the coordination of reviews by Medicare/Medicaid and Joint Commission on Accreditation of Healthcare Organizations survey teams and other health professional review teams; and (4) identifies required program resources and/or realigns existing resources.

Office of Environmental Health and Engineering (HGFF9). (1) Plans, coordinates, implements, directs, and evaluates an environmental health and engineering program; (2) advises the Area Director on environmental health matters; (3) coordinates activities designed to effect environmental improvement in the Indian home, community, work, and institutional environments; (4) provides advisory and consulting services regarding sanitation practices, hazardous conditions, and those physical, social, and behavioral factors which affect the environment; (5) provides direction on constructing, maintaining, and improving the Indian Health Service health facilities; and (6) develops projects for institutional sanitation, community injury control and emergency preparedness.

Billings Area Service Units (HGFFA through HGFFE and HGFFH, HGFFJ, and HGFFK). Blackfeet Service Unit (HGFFA); Crow Service Unit (HGFFB); Flathead Service Unit (HGFFC); Fort Belknap Service Unit (HGFFD); Fort Peck Service Unit (HGFFE); Wind River Service Unit HGFFH); Rocky Boys Service Unit (HGFFJ); Northern Cheyenne Service Unit (HGFFK). (1) Plans, develops and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services with available resources; (4) coordinates service unit activities and resources with those of other governmental and non-governmental programs; (5) participates in the development and demonstration of alternative means and techniques of health services management and health care delivery; (6) provides Indian tribes and other Indian community groups with optimal means of participating in service unit programs; and (7) encourages and supports the development of individual tribal entities in the management of the service unit.

Under *Section HG–30, Order of Succession,* following item number (4) add: During the absence of disability of the Area Director of the Billings Area Office, or in the event of a vacancy in that Office, the first Area Office official listed below who is available shall act as the Area Director, except that during a planned period of absence, the Area Director may specify a different order of succession. The order of succession will be:

(1) Deputy Area Director, Billings Area Indian Health Service,

(2) Associate Director, Office of Administrative Support,

(3) Associate Director, Office of Health Care Programs,

(4) Associate Director, Office of Program Planning, Evaluation and Information Systems,

(5) Associate Director, Office of Tribal Programs,

(6) Associate Director, Office of Environmental Health and Engineering.

Section HG–40 Delegations of Authority. Add the following new paragraph: All delegations and redelegations of authority made to IHS Area Offices which were in effect immediately prior to this reorganization, and which are consistent with the reorganization of January 18, 1989, shall continue in effect pending further redelegation.

Dated: May 6, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91–11267 Filed 5–10–91; 8:45 am]

BILLING CODE 4160–16–M

HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: June 26–27, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: Social Security Administration Headquarters, Altmeyer Building, Multipurpose Room, 6401 Security Boulevard, Baltimore, MD 21235 (Enter and obtain a visitor parking pass at the Security Boulevard main entrance if parking on Social Security Administration property.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 23 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

This is the ninth in a series of meetings that have been held throughout the country. Each of these meetings will also be open to the public to the extent that space is available. All meetings will be announced in the **Federal Register.**

We welcome written comments that identify concerns and recommend improvements to any SSI programmatic or procedural issue. Written comments should be submitted to the Project Staff.

A summary of the meeting will be available at no charge. The transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: May 7, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–11270 Filed 5–10–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Motor Vehicle Use Restrictions; CA and NV; Notice: Route of Travel Designation Decisions for Eagle Lake Resource Area, Susanville District, Lassen County, CA, and Camping Regulations for all of Susanville District in Lassen, Modoc, Siskiyou, Plumas, Sierra, and Shasta Counties in California, and Washoe and Humboldt Counties in Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of routes of travel for Motorized Vehicles on Public Lands Administered by the Bureau of Land Management (BLM) in the Eagle Lake Resource Area, and Camping Regulations for the Alturas, Surprise and Eagle Lake Resource Areas, Susanville District, California and Nevada.

SUMMARY: The purpose of these route designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various users of those lands.

In accordance with title 43, Code of Federal Regulations, part 8340, (43 CFR 8340) notice is hereby given that the following portions of the Eagle Lake Resource Area administered by the Bureau of Land Management and used by motorized vehicles are open to all cross-country travel within the areas marked "Open" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan 01–20–91, Honey Lake-Beckwourth Management Framework Plan MFP 6–6–84, Cal-Neva MFP 6–30–75, Willow Creek MFP 6–30–72.

In accordance with 43 CFR 8340, notice is hereby given that off-highway vehicle use of motorized vehicles on the following portions of the Eagle Lake Resource Area administered by the Bureau of Land Management is limited to existing improved and unimproved roads (trails) within the areas marked "Limited" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan, 01–20–91, Honey Lake-Beckwourth Management Framework Plan (MFP) 6–6–84, Cal-Neva MFP 6–30–75, Willow Creek MFP 6–30–72.

In accordance with 43 CFR 8340, notice is hereby given that portions of the Eagle Lake Resource Area administered by the Bureau of Land Management are closed to all mortorized vehicle use, except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles and other motorized vehicles on official business specifically approved by an authorized officer of the Bureau of Land Management. The boundaries of said areas are marked "Closed" as shown on maps available at Eagle Lake Resource Area, Ref: Eagle Lake Basin Plan, 01–20–91, Honey Lake-Beckwourth Management Framework Plan (MFP) 6–6–84, Cal-Neva MFP 6–30–75, Willow Creek MFP 6–30–72.

Certain roads and other areas specifically excepted from this closure are described in the supplementary rules. This closure is subject to valid existing rights.

In accordance with 43 CFR 8365.1–6, the following supplementary rules are hereby established for the Eagle Lake Resource Area.

1. Motorized vehicle use of Eagle Lake shoreline is hereby limited to constructed and/or maintained BLM designated access roads, boat launch access roads and parking areas as shown on BLM maps at on-site bulletin boards and information kiosks or available from the BLM Eagle Lake Resource Area Office, 2545 Riverside Drive, Susanville, CA 96130.

2. All motorized vehicle operations must be on authorized routes in accordance with State law governing vehicle licensing and operation on public roads and be within posted speed limits.

3. Motorized vehicle use is prohibited within the waters of Eagle Lake with the exception of vehicle use for small boat launching at designated launch sites. No vehicle shall remain in the waters of Eagle Lake any longer than necessary to launch or retrieve a boat from the water. Operation of water craft on the waters of Eagle Lake is governed by separate State of California regulations.

4. Firearms discharge is prohibited in all developed sites as per 43 CFR 8365.2–5(a). Developed sites at Eagle Lake are the North Eagle Lake Campground; Rocky Point east shoreline access area from the entrance road cattleguard south 1.3 miles and 300 feet from the lakeshore. In addition, firearms discharge is prohibited within 300 feet of Eagle Lake along Highway 139 from Highway 139 milepost 24.09 north to

milepost 30.0; and on all public lands in T.32N, R.11E, M.D.M., section 15 and in section 22 W½ of NE¼, E½ of NW¼, SW¼ and SW¼ of SE¼.

5. In developed sites at Eagle Lake, inclusive of drive-in access areas along Rocky Point and Highway 139 as described in Supplementary Rule No. 4, all visitors must collect and dispose of all wash water (grey water) at vault toilets or at recreational vehicle dump stations.

6. In developed sites at Eagle Lake, inclusive of drive-in access areas along Rocky Point and Highway 139 as described in Supplementary Rule No. 4, all visitors must use toilets provided or use self-contained portable toilets. All wastes collected in portable toilets must be disposed of at designated waste dump stations.

In accordance with 43 CFR 8365.1–6, the following supplementary rules are hereby established for the entire Susanville District.

1. Firearms discharge is prohibited within ¼ mile of all trailheads on the Susanville District.

2. Persons camping on the public lands in the Susanville District are limited to a total of twenty-eight (28) days per year in each of the three (3) resource areas. A fourteen (14) day consecutive limit is established for any one location. Campers must move a minimum of 2 miles when changing from one location to another. Under special circumstances and upon request, the authorized officers may give written permission for extension of these limits.

3. No person may leave personal property unattended in campgrounds, developed recreation areas or elsewhere on public lands within the Susanville District for a period of more than seventy two (72) hours without written permission from the authorized officer.

4. No person shall discharge or ignite a firecracker, rocket or other firework, or explosive without authorization from the BLM.

5. No person shall cut or remove live standing trees or any portion thereof except when authorized by BLM permits or timber sale contracts.

6. Campfires are allowed in designated fire-safe areas or no existing natural bare mineral soil where ten (10) feet or more of clearance exists between the campfire area and adjacent vegetation. Persons using campfires are required to have a campfire permit issued by the Bureau of Land Management, the U.S. Forest Service, or the California Department of Forestry. All campfires are subject to seasonal fire restrictions.

DATES: These designations and regulations are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these designations and regulations will be implemented as routes are signed or as maps are printed and made available to public.

FOR FURTHER INFORMATION CONTACT: Stan Bales, Outdoor Recreation Planner, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130 (916) 257–0456; hours 7:45 a.m. to 4:30 p.m., Monday through Friday. Maps of the open, limited and closed designations are available at the Eagle Lake Resource Area Office during business hours.

SUPPLEMENTARY INFORMATION: These vehicle route designations and supplementary rules are enforceable under the authority provided in the Federal Land Policy and Mangement Act (43 U.S. 1701 *et seq.*), Executive Order (EO) 11644 (Use of Off-Road Vehicle on Public Lands), and 3 CFR 74.332 as amended by EO 11989 (vol. 42, **Federal Register**, page 26959, May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 and/or imprisonment not to exceed more than 12 months.

The camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass under the guise of camping on public lands within the Susanville District. Of equal importance is the problem of long-term camping which creates conflicts with other authorized users and uses.

Authority of this camping stay limit is contained in 43 CFR, part 8360.

PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

Dated: April 26, 1991.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 89–11158 Filed 5–10–89; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 27, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 28, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Downtown Anniston Historic District, Roughly bounded by Moore Ave., 14th St., Wilmer Ave. and 9th St., Anniston, 91000663.

West Fifteenth Street Historic District, 416—712 W. Fifteenth St., Anniston, 9100062.

Jefferson County

Automotive Historic District, Roughly bounded by First Ave. N., 24th St. S., Fifth Ave. S. and 20th St. S., Birmingham, 91000661.

CALIFORNIA

Butte County

South of Campus Neighborhood, Bounded by W. 2nd, Normal, W. 6th and Cherry Sts., Chico, 91000636.

WASHINGTON

Asotin County

US Post Office—Clarkston Main (Historic US Post Offices in Washington MPS), 949 6th St., Clarkson, 91000642.

Benton County

US Post Office—Prosser Main (Historic US Post Offices in Washington MPS), 1103 Meade Ave., Prosser, 91000653.

Clark County

US Post Office—Camas Main (Historic US Post Offices in Washington MPS), 440 NE., Fifth Ave., Camas, 91000639.

US Post Office—Vancouver Main (Historic US Post Offices in Washington MPS), 1211 Daniels, Vancouver, 91000659.

Cowlitz County

US Post Office—Kelso Main (Historic US Post Offices in Washington MPS), 304 Academy St., Kelso, 91000646.

US Post Office—Longview Main (Historic US Post Offices in Washington MPS), 1603 Larch St., Longview, 91000647.

Grays Harbor County

US Post Office—Hoquiam Main (Historic US Post Offices in Washington MPS), 620 Eighth St., Hoquiam, 91000645.

US Post Office—Montesano Main (Historic US Post Offices in Washington MPS), 211 Pioneer Ave. N., Montesano, 91000649.

Jefferson County

US Post Office—Port Townsend Main (Historic US Post Offices in Washington MPS), 1322 Washington, Port Townsend, 91000652.

Kitsap County

US Post Office—Bremerton Main (Historic US Post Offices in Washington MPS), 602 Pacific Ave., Bremerton, 91000638.

Lewis County

US Post Office—Centralia Main (Historic US Post Offices in Washington MPS), 214 W. Locust, Centralia, 91000640.
US Post Office—Chehalis Main (Historic US Post Offices in Washington MPS), 1031 NW. Cascade, Chehalis, 91000641.

Okanogan County

US Post Office—Okanogan Main (Historic US Post Offices in Washington MPS), 212 Second Ave. N., Okanogan, 91000650.
US Post Office—Omak Main (Historic US Post Offices in Washington MPS), 104 S. Main St., Omak, 91000651.

Pacific County

US Post Office—Raymond Main (Historic US Post Offices in Washington MPS), 406 Duryea St., Raymond, 91000654.

Pierce County

US Post Office—Tacoma Downtown Station (Historic US Post Offices in Washington MPS), 1102 S. A St., Tacoma, 91000657.

Skagit County

US Post Office—Sedro Woolley Main (Historic US Post Offices in Washington MPS), 111 Woodworth St., Sedro Woolley, 91000655.

Stevens County

US Post Office—Colville Main (Historic US Post Offices in Washington MPS), 204 S. Oak, Colville, 91000644.

Walla Walla County

US Post Office—Walla Walla Main (Historic US Post Offices in Washington MPS), 128 N. Second St., Walla Walla, 91000660.

Whatcom County

US Post Office—Lyden Main (Historic US Post Offices in Washington MPS), 600 Front St., Lyden, 91000648.

Whitman County

US Post Office—Colfax Main (Historic US Post Offices in Washington MPS), S. 211 Main St., Colfax, 91000643.

Yakima County

US Post Office—Sunnyside Main (Historic US Post Offices in Washington MPS), 713 E. Edison Ave., Sunnyside, 91000656.
US Post Office—Toppenish Main (Historic US Post Offices in Washington MPS), 14 Jefferson Ave., Toppenish, 91000658.

The commenting period has been waived for the following property:

WYOMING

Teton County

Lake Hotel, NW shore of Lake Yellowstone, Yellowstone National Park, 91000637.

[FR Doc. 91-11313 Filed 5-10-91; 8:45 am]
BILLING CODE 4310-70-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to twenty (20) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 56, No. 19, pages 3285, 3286, and 3287 of the **Federal Register** of January 29, 1991, a total of $1,183,531 will be awarded to the following schools:

Name of School	State	Amount
1. Suffolk University	MA	$32,480
2. Syracuse University	NY	60,711
3. City University of New York.	NY	60,840
4. Yeshiva University	NY	59,524
5. George Washington University.	DC	49,337
6. Temple University	PA	72,230
7. University of Puerto Rico.	PR	55,000
8. Memphis State University.	TN	56,870
9. Nova University	FL	65,500
10. Stetson University	FL	50,000
11. Southern Illinois University.	IL	68,799
12. Northwestern University	IL	72,220
13. Indiana University	IN	52,960
14. University of Nebraska	NB	29,082
15. University of Iowa	IA	73,625
16. University of Wisconsin	WI	57,000
17. University of Denver	CO	75,000
18. University of California/ Berkeley.	CA	75,000
19. University of Colorado	CO	75,000
20. D.C. Law Students in Court Program.	DC	42,353
Total		$1,183,531

These one-time, one-year grants are awarded under the authority of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this thirty-day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on June 12, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, Office of Field Services, (202) 863-1837.

Date Issued: May 8, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91-11320 Filed 5-10-91; 8:45 am]
BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-40)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee.

DATES: June 19, 1991, 10 a.m. to 5 p.m.; and June 20, 1991, 9 a.m. to 1 p.m.

ADDRESSES: General Aviation Manufacturers Association, Conference Room, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. William Reynard, Office of Aviation Safety Reporting System, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/969-3969.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee was established to provide overall advice and recommendations to the Office of Aeronautics, Exploration and Technology (OAET) on aviation safety needs. The Subcommittee, chaired by Captain C.R. Paty, is composed of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Subcommittee members and other participants).

Type of Meeting

Open.

AGENDA

June 19, 1991

10 a.m.—Welcome.
10:15 a.m.—Opening Remarks.
10:30 a.m.—Program Report.
11 a.m.—Operations Report.
1 p.m.—Research Report.
3 p.m.—Aviation Safety Reporting System Program Evaluation.
5 p.m.—Adjourn.

June 20, 1991

9 a.m.—Aviation Safety Reporting System Program Evaluation.
10:45 a.m.—New Business.
1 p.m.—Adjourn.

Dated: May 7, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-11287 Filed 5-10-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Staff Technical Position; Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the draft staff technical position (STP) on "Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository."

DATES: The comment period expires June 27, 1991.

ADDRESSES: Send comments to David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Anne E. Garcia, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555. Telephone 301/492-0438. A copy of the draft STP is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555. Telephone 301/492-0421.

SUPPLEMENTARY INFORMATION: On August 24, 1989, the NRC published the "Notice of Availability" for the "Draft Technical Position (TP) on Methods of Evaluating the Seismic Hazard at a Geologic Repository" and solicited public comments (see 54 FR 35266). As a result, approximately 40 comments were received from three different parties. The NRC staff reviewed the comments and, as a result of these comments and a subsequent technical exchange with the U.S. Department of Energy (DOE), the State of Nevada, Nye County, Nevada and the Edison Electric Institute, changes and clarifications were incorporated into the TP. Staff responses to these comments have been documented separately as an appendix to the draft TP now renamed "Staff Technical Position on Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository."

10 CFR part 60 does not specify the manner in which potential fault displacement and seismic hazards at a candidate site for a geologic repository are to be investigated. Therefore, the Division of High-Level Waste Management has developed this STP in order to provide DOE with guidance on appropriate geologic repository investigations that can be used to identify fault displacement and seismic hazards. The NRC staff considers that a deterministic approach to investigations of fault displacement and seismic phenomena should be applied to DOE's site characterization program. Further, the staff considers that the approach taken in this STP to investigations of fault displacement and seismic phenomena is appropriate for the collection of sufficient data for input to analyses of the fault displacement and seismic hazards, both for the preclosure and postclosure periods of performance.

Finally, the STP introduces the concept of "susceptible" faults and describes an approach through which susceptible faults can be identified and characterized.

Dated at Rockville, Maryland this 6 day of May, 1991.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-11306 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-8615 License No. SOP-10561-1 EA 91-054]

Order Suspending License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked

In the matter of David M. Manning Senior Reactor Operator:

I

David M. Manning (Licensee) is the holder of Senior Reactor Operator License No. SOP-10561-1 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 55 on September 9, 1988. The license authorizes the Licensee to manipulate, and supervise the manipulation of, the controls of the nuclear power reactor at the New York Power Authority's (Facility Licensee) Fitzpatrick Nuclear Power Plant in Scriba, New York.

II

On October 9, 1990, the Licensee, while on duty at the Fitzpatrick facility, was requested by the Facility Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Facility Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from the Licensee, the nurse checked the temperature of the sample and found that the temperature was below specifications in 10 CFR part 26, appendix A, § 2.4(g)(14), for accepting the sample. As a result, the Licensee was requested to provide another urine sample to the Facility Licensee pursuant to the same section of the appendix. The Licensee refused to provide another sample. As a result, the Facility Licensee, in accordance with 10 CFR 26.27(c), removed the Licensee from licensed operator duties for cause, placed the Licensee on 14 days leave, and referred the Licensee to an Employee Assistance Program. Although the Licensee has completed the inpatient portion of that program, the Licensee is still in an outpatient status, is subject to monthly random testing, and has not been returned to the duties authorized by his part 55 license. However, the Licensee now has unescorted access

and is involved in licensed activities subject to the part 50 license at the Fitzpatrick facility.

III

On April 24, 1991, the Licensee was interviewed by an investigator from the NRC Office of Investigations concerning the circumstances surrounding the reasons why the temperature of his initial sample was below the specifications, as well as his refusal to provide a second urine sample to the Facility Licensee on October 9, 1990. During that interview, the Licensee indicated that when he received notice from the Facility Licensee that he was selected to provide a urine sample for the random drug test on October 9, 1990, he retrieved a bogus urine sample from his locker which he had previously stored there, a practice that he had started in August 1990 for this contingency, and went to the men's room on the way to the test and heated the sample to what he thought would be body temperature. The Licensee stated that he put the sample in his pants and went to the test facility where he provided that sample to the nurse. The Licensee admitted that, although he was informed by the nurse, shortly thereafter, that another sample was required because the temperature was below the specifications required by the testing program, he refused to provide another sample. The Licensee noted that because of his refusal to provide another sample as required by the fitness for duty program regulations, he was informed by his department supervisor, as well as the Resident Manager for the Fitzpatrick facility, that he would be placed on 14 days leave, and would be referred to the Employee Assistance Program for evaluation.

During the interview with the NRC investigator, the Licensee indicated that he did not want to provide the requested sample to the nurse when selected for testing on October 9, 1990 (a Tuesday) because he knew it was "dirty" from cocaine. The Licensee stated that he had used about 1 gram of cocaine on the Sunday before the test. The Licensee also noted that he had been using cocaine since 1977 and had also used "speed" during that time. The Licensee further indicated that on weekends he used cocaine in amounts from 1 to 3 grams.

The Licensee also admitted to the NRC investigator that he had previously been referred to the Employee Assistance Program as a result of a test that indicated cocaine use on an annual physical screening in August 1988. However, the Licensee stated that he had not used cocaine or any other controlled substance since October 1990, that he was now drug free, and that he had attended a thirty-day inpatient substance abuse clinic.

IV

The responsibilities associated with a senior reactor operator license issued pursuant to 10 CFR part 55 are significant with respect to the protection of the public health and safety. The character of the individual, which includes the individual's exercise of sound judgment, is a consideration in issuing an operator license. See Section 182a of the Atomic Energy Act of 1954, as amended. In determining whether or not an individual seeking a license to be a reactor operator has the necessary character, including sound judgment, the Commission may take into account a history of illegal drug use by the applicant. Prior to May 26, 1987 each applicant for a reactor operator license was required to certify that the applicant had no drug or narcotic habit on the Certificate of Medical History, NRC form 396. Since that time, the NRC has required an evaluation of the applicant prepared by a licensed medical practitioner as part of a license application. See 10 CFR 55.23(a). This evaluation is represented on a certificate of Medical Examination, NRC Form 396. See 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as use of illegal drugs or abuse of alcohol. See form 396; also ANSI/ANS 3.4–1983, section 5.2.2.

In accordance with 10 CFR part 26, the Facility Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities.

V

The Licensee's actions described in sections II and III above raise significant concerns regarding the Licensee's integrity and trustworthiness. Specifically, these concerns are: (1) The Licensee intentionally engaged in a premeditated scheme to avoid detection of his drug use and to violate the fitness for duty program required by the NRC by storing a "clean" sample in his locker (which he admitted to have begun doing about three months prior to the test), and substituting that sample for the real sample that was required when he was selected for a random test; (2) notwithstanding his admitted use of cocaine between 1977 and October 1990, the Licensee, in a Certificate of Medical History (Form 396) signed by him on April 14, 1986, answered "No" to Question 24, "Have you ever had or do you now have any of the following? * * * Drug, narcotic habit or excessive drinking" (The Licensee did note on the form 396 that he was convicted of "Driving While Ability Impaired" in Oneida City Court, Oneida, New York in April 1982.); and (3) the Licensee refused to provide another sample to the Facility Licensee for testing when the temperature of the initial sample was below specifications because he knew that his sample would be "dirty" with cocaine even though the Facility License is required by part 26 to obtain a second sample, and the Licensee is required by part 55 to abide by all of the requirements of the Facility License. In addition, the Licensee's failure to conform to the prohibition against drug use in New York Power Authority's program and the Commission's requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator. The above actions demonstrate a lack of trustworthiness by the Licensee and an inability or unwillingness to comply with the Commission's requirements. Therefore, the NRC does not have the necessary reasonable assurance that the Licensee will carry out his duties to operate the Fitzpatrick facility safely in a trustworthy manner and observe all applicable requirements including obligations relating to the fitness for duty requirements of the Facility License.

VI

Based on the above, if at the time the License was issued, the NRC had known of the Licensee's inability or unwillingness to refrain from the use of illegal drugs, and if the NRC had known of the Licensee's willingness to attempt to circumvent compliance with the Commission's regulations, the License would not have been issued. Section 186 of the Atomic Energy Act of 1954, as amended, and 10 CFR 55.61(b) provide that a license may be revoked for any reason for which a license would not be issued upon an original application.

Consequently, in view of the above and lacking the requisite reasonable assurance that the Licensee will abide by Commission requirements, I have determined that the public health and safety requires that the License be suspended. Pursuant to 10 CFR 2.204, I find that the public health and safety

requires that this Order must be effective immediately.

VII

Accordingly, pursuant to sections 107, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR part 55, *It is hereby ordered, effective immediately, that license no. SOP–10561–1 is hereby suspended pending further order.*

The Regional Administrator, NRC region I, may relax or terminate this condition for good cause shown.

VIII

Further, pursuant to sections 107, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 55, *It is hereby ordered that* the Licensee shall show cause why License No. SOP–10561–1 should not be revoked and why it should not have been suspended.

IX

Pursuant to 10 CFR 2.202(b), the Licensee shall show cause, as required by section VIII above, by filing a written answer under oath or affirmation within 20 days after the date of issuance of this order, setting forth the matters of fact and law on which the Licensee relies. Any other person adversely affected by this Order may submit an answer to this Order within 20 days of the date of this Order. The Licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order suspending or revoking its license. Any answer to this Order shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

X

The Licensee or any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, attn: Chief, Docketing and Service Section, Washington, DC 20555, and shall include a copy of the answer to the Order. Copies of the hearing request also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

XI

In the absence of any request for hearing, the provision specified in Section VII above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order. If an answer to this Order is submitted as provided in section IX but a hearing is not requested, the Order may be relaxed or rescinded as provided in section VII. However, unless the Order is relaxed or rescinded, the Order provision of section VII is final.

In addition, in the absence of any request for a hearing and in the absence of adequate cause being shown as provided in sections VIII and IX, an Order will be issued making the provisions specified in section VIII effective and final without further proceedings.

Dated at Rockville, Maryland this 2nd day of May 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 91–11305 Filed 5–10–91, 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333, License No. DPR–59 EA 91–053]

Order Modifying License (Effective Immediately)

In the Matter of New York Power Authority, Fitzpatrick;

I

New York Power Authority (Licensee) is the holder of Facility Operating License No. DPR–59, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The License authorizes the operation of the Fitzpatrick facility in Scriba, New York, in accordance with the conditions specified therein.

II

On October 9, 1990, David M. Manning (Mr. Manning), a licensed Senior Reactor Operator licensed under 10 CFR part 55 at the Fitzpatrick facility, while on duty at the facility, was requested by the Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Manning, the nurse checked the temperature of the sample and found that the temperature was not within the range specified in 10 CFR part 26, appendix A, § 2.4(g)(14), for accepting the sample. As a result, Mr. Manning was requested to provide another urine sample pursuant to the same section of appendix A. Mr. Manning refused to provide another sample. As a result, the Licensee, in accordance with 10 CFR 26.27(c), removed Mr. Manning from licensed operator duties for cause, placed Mr. Manning on 14 days leave, and referred Mr. Manning to an Employee Assistance Program. Although Mr. Manning has completed the inpatient portion of that program, Mr. Manning is still in an outpatient status, is subject to monthly random testing, and has not been returned to the duties authorized by his part 55 license. However, Mr. Manning now has unescorted access and is involved in activities subject to the 10 CFR part 50 license at the Fitzpatrick facility.

III

On April 24, 1991, Mr. Manning was interviewed by an investigator from the NRC Office of Investigations concerning the circumstances surrounding the reasons why his initial sample was outside the acceptable temperature range, as well as his refusal to provide a second urine sample to the Licensee on October 9, 1990. During that interview, Mr. Manning indicated that when he received notice from the Licensee that he was selected to provide a urine sample for the random drug test on October 9, 1990, he retrieved a bogus urine sample from his locker which he had previously stored there and went to the men's room on the way to the test and heated the sample to what he thought would be body temperature. Mr. Manning stated that he put the sample

in his pants and went to the test facility where he provided that sample to the nurse. Mr. Manning admitted that, although he was informed by the nurse, shortly thereafter, that another sample was required because the temperature was below the specifications required by the testing program, he refused to provide another sample. Mr. Manning noted that because of his refusal to provide another sample as required by the fitness for duty program regulations, he was informed by his department supervisor, as well as the Resident Manager for the Fitzpatrick facility, that he would be placed on 14 days leave, and would be referred to the Employee Assistance Program for evaluation.

During the interview with the NRC investigator, Mr. Manning indicated that he did not want to provide the requested sample to the nurse when selected for testing on October 9, 1990 (a Tuesday) because he knew it was "dirty" from cocaine. Mr. Manning stated that he had used about 1 gram of cocaine on the Sunday before the test. Mr. Manning also noted that he had been using cocaine since 1977 and had also used "speed" during that time. Mr. Manning further indicated that on weekends he used cocaine in amounts from 1 to 3 grams.

Mr. Manning also admitted to the NRC investigator that he had previously been referred to the Employee Assistance Program as a result of a test that indicated cocaine use during an annual physical screening in August 1988. However, Mr. Manning claimed that he had not used cocaine or any other controlled substance since October 1990, that he was now drug free, and that he had attended a thirty-day inpatient substance abuse clinic.

IV

In accordance with 10 CFR part 26, the Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities.

Mr. Manning's actions described above raise significant concerns regarding his integrity and trustworthiness. Specifically, these concerns are: (1) Mr. Manning intentionally engaged in a premeditated scheme to avoid detection of his drug use and to violate the fitness for duty program required by the NRC by storing a "clean" sample in his locker (which he admitted to have begun doing about three months prior to the test), and substituting that sample for the real sample that was required when he was selected for a random test; (2) notwithstanding his admitted use of cocaine between 1977 and October 1990, Mr. Manning, in a Certificate of Medical History (Form 396) signed by him on April 14, 1986, answered "No" to Question 24, "Have you ever had or do you now have any of the following? . . . Drug, narcotic habit or excessive drinking" (Mr. Manning did note on the form 396 that he was convicted of "Driving While Ability Impaired" in Oneida City Court, New York in April 1982.); and (3) Mr. Manning refused to provide another sample to the Licensee for testing when the temperature of the initial sample was below the specifications because he knew that his sample would be "dirty" with cocaine, even though the Licensee is required by part 26 to obtain a second sample, and Mr. Manning is required by part 55 and his Senior Reactor Operator's license to abide by all of the requirements of the Facility License. In addition, Mr. Manning's failure to conform to the prohibition against drug use in the Commission requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator. The above actions demonstrate a lack of trustworthiness by Mr. Manning and an inability or unwillingness to comply with the Commission's requirements. Therefore, the NRC does not have the necessary reasonable assurance that Mr. Manning will carry out part 50 activities safely, in a trustworthy manner, and observe all applicable requirements including obligations relating to the Licensee's fitness for duty requirements.

V

Mr. Manning's actions described above are unacceptable and, accordingly, I have issued a separate Order suspending his 10 CFR part 55 license. Furthermore, as a result of his actions, I lack the requisite reasonable assurance that, with Mr. Manning involved in any activities licensed under 10 CFR part 50, the Licensee's current operations can be conducted such that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health and safety require that License No. DPR–59 be modified to prohibit Mr. David M. Manning from involvement in licensed activities under this license. Furthermore, pursuant to 10 CFR 2.204, I find that the public health and safety require that this Order must be effective immediately.

VI

Accordingly, pursuant to sections 103, 161b, 161c, 161i, and 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 50, *It is hereby ordered, effective immediately, that:*

License No. DPR–59 is modified by adding the following condition:

Mr. David M. Manning shall not participate in any licensed activity under License No. DPR–59 without prior written approval of the Regional Administrator, region I. If such approval is sought, the Licensee shall provide a statement as to its basis for concluding that Mr. Manning will properly carry out licensed activities in light of his past conduct and lack of trustworthiness as described in this Order.

The Regional Administrator, NRC region I, may relax or terminate this condition for good cause shown.

VII

The Licensee, Mr. Manning, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The answer may set forth the matters of fact and law on which the Licensee, Mr. Manning, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may also request a hearing. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Manning requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Mr. Manning, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing, the provisions specified in section VI above shall be final 20 days from the date of this Order without further order or proceedings. An answer or request for a hearing shall not stay the immediate effectiveness of this order.

If an answer to this Order is submitted as provided above but a hearing is not requested, the Order may be relaxed or rescinded as provided in section VI. However, unless the Order is relaxed or rescinded, the Order is final as provided above.

Dated at Rockville, Maryland this 2nd day of May 1991.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 91-11304 Filed 5-10-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co., Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49, issued to Northeast Nuclear Energy Company, et al (the licensee) for operation of the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would change Facility Operating License NPF-49, and authorize the transfer of Public Service Company of New Hampshire's (PSNH's) 2.875 percent ownership in Millstone Unit 3 to a newly formed and wholly owned subsidiary of Northeast Utilities (NU) as of the merger date. The new wholly owned subsidiary will also be called Public Service Company of New Hampshire.

Millstone Unit No. 3 is a nuclear-powered electric generating facility which has been constructed and is being operated by NNECO on behalf of 14 co-owners (a group of investor-owned and municipal utilities). The NRC Facility Operating License NPF-49 includes a list of co-owners. PSNH, one of the co-owners, is an electric public utility organized and operating under the laws of the State of New Hampshire.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

As a result of the proposed license amendment, there will be no physical change to the Millstone Unit No. 3 facility and all limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications will remain unchanged. Also, the Millstone Unit No. 3 Quality Assurance Program and the Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. In addition, there will be no changes to the operating organization or personnel as a result of the transaction described herein.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment will not affect the physical configuration of Millstone Unit No. 3 or the manner in which it will operate. The Millstone Unit No. 3 plant design and design bases will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications for Millstone Unit No. 3 are not affected by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. Since there will be no change in the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12th 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Learning Resources

Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent to the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30–day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of the licensee's request to transfer the stated ownership interest in Millstone Unit No. 3 from PSNH to the licensee.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this notice in the Federal Register to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of PSNH by NU. The NRC

will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the application for amendment dated March 21, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06103–3499.

Dated at Rockville, Maryland, this 6th day of May 1991.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager Project Directorate I–4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation

[FR Doc. 91–11302 Filed 5–10–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443–OLA (Ownership Interest Transfer) ASLBP No. 91–640–09–OLA]

Public Service Co. of New Hampshire, et al., Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Public Service Company of New Hampshire, Et al., Seabrook Station, Unit No. 1, Facility Operating License No. NPF–86

This Board is being established pursuant to a notice published by the Commission on February 28, 1991 in the **Federal Register** (56 FR 8373) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues." The proposed amendment would authorize a newly created entity, North Atlantic Energy Corporation (NAEC), to be included as a licensee and to acquire and possess Public Service Company of New Hampshire's (PSNH) ownership interest in Seabrook Station, Unit 1 (Seabrook).

The Board is comprised of the following administrative judges:

James P. Gleason, Chairman, 513 Gilmoure Drive, Silver Spring, Maryland 20901.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Kenneth A. McCollum, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 1st day of May 1991.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91–11308 Filed 5–10–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp. Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The Wolf Creek Generating Station is jointly owned by Kansas Gas and Electric Company (47 percent), Kansas City Power and Light Company (47 percent), and Kansas Electric Power Cooperative, Incorporated (6 percent). The Wolf Creek Nuclear Operating Corporation is responsible for operating the facility and acts as the agent for the owners.

By letter dated March 28, 1991, the legal counsel representing Kansas Gas and Electric Company (KG&E) submitted KG&E's request to transfer, pursuant to 10 CFR 50.80, its 47 percent undivided possession-only interest in NPF–42, the operating license for the Wolf Creek Generating Station. The proposed transfer is to a successor company, also to be called Kansas Gas and Electric Company, as a result of the pending merger of KG&E into a subsidiary of The Kansas Power and Light Company (KPL).

Also, by letter dated April 23, 1991, the legal counsel representing KG&E submitted a request to amend the Wolf Creek Operating License. The amendment would add a footnote to the license that recornizes the transfer of KG&E's possession-only interest in NPF–42 to a wholly owned subsidiary of KPL. The transfer will occur upon the merger of KG&E with and into that subsidiary, which is presently in existence and named KCA Corporation. It will be renamed Kansas Gas and Electric Company immediately upon consummation of the merger. No other changes to the license are associated with the merger.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. The staff has reviewed the licensee's analysis as follows:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluted. It reflects the merger of Kansas Gas and Electric Company into a wholly owned subsidiary of The Kansas Power and Light Company and as such has no effect on plant equipment or the technical qualification of plant personnel.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. It reflects the merger of Kansas Gas and Electric Company into a wholly owned subsidiary of The Kansas Power and Light Company and does not involve any change to the installed plant systems or the overall operating

philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a signficant reduction in a margin of safety. It does not involve any changes in overall organizational commitments. An ownership change alone does not reduce any margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no signficant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Services Branch, or may be delivered to the Commisison's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested

that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following mesage addressed to George F. Dick: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petiton should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Donald P. Irwin, Esq., Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, attorney for KG&E and KPL.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's regulations, the staff is publishing receipt of KG&E's request to transfer the stated ownership interest in Wolf Creek to a successor company, also to be called Kansas Gas and Electric Company, as a result of the pending merger of KG&E into a subsidiary of KPL.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of KG&E by KPL. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the request for license transfer dated March 28, 1991, and the application for amendment dated April 23, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Rooms, located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 7th day of May 1991.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate IV–2, Divisison of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–11303 Filed 5–10–91; 8:45 am]

BILLING CODE 7590–01–M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Change of meeting time.

SUMMARY: There has been a change of time for the Oversight Board meeting scheduled for Wednesday, May 15, 1991, at 12:30 p.m., as originally published in the **Federal Register,** May 2, 1991, page 20243. The new time is listed below.

DATES: Wednesday, May 15, 1991, 11:30 p.m.

ADDRESSES: Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, Amphitheater, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Brian Harrington, Press Officer, Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232 (202) 786–9672.

Dated: May 9, 1991.

Jill Nevius,

Committee Management Officer.

[FR Doc. 91–11431 Filed 5–10–91; 8:45 am]

BILLING CODE 2222–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Public Reference Branch, Washington, DC 20549–1002.

Extension

Rule 22d–1, File No. 270–275
Form ADV and Rule 203–1, File No. 270–39
Rule 204–1, File No. 270–41

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 22d–1 under the Investment Company Act of 1940 (17 CFR 270.22dp1) and Form ADV (17 CFR 279.1) and Rules 203–1 (17 CFR 275.203–1) and 204–1 (17 CFR 275.204–1) under the Investment Advisers Act of 1940.

Rule 22d–1 provides registered investment companies that issue redeemable securities, their principal underwriters and dealers in their shares with an exemption from the uniform sales load provision of section 22(d) of the Investment Company Act of 1940 to permit the sale of redeemable securities at varying sales loads. The rule imposes a burden of about 15 minutes annually, per respondent.

Rule 203–1 prescribes Form ADV as the form for registration as an investment adviser. The information in Form ADV is used by the Commission to determine whether to declare effective an application for registration and is made available to the public to disclose the applicant's basic characteristics, general background and business practices. Form ADV takes an average of 8.96 hours to complete for the first time.

Rule 204–1 sets forth the circumstances requiring the filing of an amendment to Form ADV. A typical amendment to Form ADV takes about one hour to complete.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-11278 Filed 5-10-91; 8:45 am]
BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission Office of Filings, Information and Consumer Services Public Reference Branch Washington, DC 20549-1002.

Extension

File No. 270-71, Form 12b-25
File No. 270-50, Form 8-K
File No. 270-49, Form 10-Q
File No. 270-2, Regulation S-K
File No. 270-156, Form 20-F

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of the following: Forms 8-K, 10-Q, 12b-25, and 20-F, as well as Regulation S-K. The forms and regulation provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form 12b-25 affects approximately 4,266 filers for a total of 10,665 burden hours; Form 8-K affects approximately 11,850 filers for a total of 71,100 burden hours; form 10-Q affects approximately 28,555 filers for a total of 5,425,450 burden hours; Form 20-F affects approximately 133 filers for a total of 280,630 burden hours; and Regulation S-K is assigned 1 burden hour for administrative convenience. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0058, 0060, 0070, 0071, and 0288), New Executive Office Building, Room 3228, Washington, DC 20503.

Dated: May 1, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-11279 Filed 5-10-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-29166; File No. SR-NASD-90-62]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Improvements in the NASD Code of Arbitration Procedure

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or Commission") on November 21, 1990 [1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] to amend part I, section 1 and part III, sections 25, 26, 41, and 42 of the NASD Code of Arbitration Procedure ("Code"). The proposal also amends a Resolution of the Board of Governors pertaining to Failure to Act Under Provisions of the Code of Arbitration Procedure.[3]

Notice of the proposed rule change, as amended by Amendment No. 1, together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28824, January 25, 1991) and by publication in the **Federal Register** (56 FR 3847, January 31, 1991). The Commission received one comment letter on the proposed rule change. This order approves the proposed rule change.

The proposed changes to sections 25, 26, 41, and 42, with exception of the proposed Section 41(i), were previously adopted by SICA. The NASD originally intended that the proposed rule change would, in general, correct a reference to the NASD By-Laws; clarify procedures concerning joinder and consolidation of arbitration cases; clarify the authority of the Director of Arbitration and arbitrators to determine the venue of hearings; specify that awards bear interest until paid and provide for the immediate payment of arbitration fees and assessments imposed in awards [4] incorporate by reference the NASD Code of Arbitration Procedure in all agreements to arbitrate under the rules of the NASD; and deem inconsistent with just and equitable principles of trade a failure to honor an arbitration award rendered by arbitration forums sponsored by members of SICA and under the securities arbitration rules of the American Arbitration Association.

The comment letter received expressed concerns regarding the NASD's proposed change to section 41 of the Code.[5] Section 41 of the Code, subsections (a)-(f), delineates the rules governing awards rendered by arbitrators who serve at the NASD. Specifically, the commentator was concerned about NASD proposed rule 41(g). The commentator thought that it was unfair that interest begins to run well before the award is ever received by the customer or member firm. Furthermore, a customer or firm which seeks to timely comply with the rule as drafted must speculate, when attempting to calculate the amount of interest to add, as to the length of time it will take to both process the check and for the mails to deliver it. If the time period is underestimated, the opposing party might seek an additional check for the remaining interest, potentially starting the process anew.

In response to this comment and discussions with SICA, the NASD has decided to withdraw its proposed changes to sections 41(g) and 41(h) in order to reconsider this issue.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.[7]

[1] The NASD filed three amendments to this proposed rule. Amendment No. 1 filed on December 11, 1990 clarified the discussion of joinder and consolidation. Amendment No. 2 filed on January 28, 1991 modified the language of section 42 of the Code of Arbitration Procedure to effect greater uniformity. Amendment No. 3 filed on April 22, 1991 withdrew in its entirety proposed section 41(g) and 41(h) to part III to the Code of Arbitration Procedure and requested proposed Section 41(i) be renumbered as 41(g). The amendments are available for inspection and copying in the public reference room.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] The NASD explains it has amended the Resolution of the Board of Governors in order to improve the efficiency of its arbitration process, and to provide recognition of the status of securities arbitration awards of members of the Securities Industry Conference on Arbitration ("SICA") and the American Arbitration Association.

[4] See NASD Amendment No. 3, withdrawing sections 41(g) and 41(h).

[5] See letter to Jonathan G. Katz, Secretary, SEC, from Theodore A. Krebsbach, Senior Vice President and Senior Counsel, Shearson Lehman Brothers, dated February 21, 1991.

[6] The commentator suggested the NASD could accomplish its goal, to have a losing party promptly pay an award, by simply approving proposed subsection 41(h).

[7] This proposed rule is consistent with the provisions of section 15A(b)(6) of the Act which

Continued

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR–NASD–90–62, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 7, 1991.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 91–11285 Filed 5–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29159; File No. SR–NSCC–91–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing Relating to the Revisions to the Standards for Approved Issuers of Letters of Credit for Clearing Fund Purposes

May 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1991, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's rules relating to the standards by which NSCC approves issuers of letters of credit used for Clearing Fund purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The acceptance by NSCC of letters of credit to secure a member's open account indebtedness to the Clearing Fund is subject to scrutiny, based on a number of areas of concern to NSCC, including whether the issuer of the letter of credit is a sufficiently liquid and creditworthy institution. In recent years, this concern has been heightened as the general financial status of the banking industry has become weaker.

In view of this development, NSCC plans to revise the current standards that it uses to determine whether a bank or trust company may be approved as an issuer of letters of credit for Clearing Fund purposes, which standards basically have not been changed since they were adopted in 1980, in order to update and strengthen them. These standards for approving issuers of letters of credit for Clearing Fund purposes would be revised such that any domestic or foreign bank would be required, in order to qualify as an issuing bank, to have: (1) Either (a) $300 million in total shareholders' equity and a short-term obligations rating of not less than A–2 (by Standard & Poor's Corporation) or P–2 (by Moody's Investors Service, Inc.), or (b) $150 million in total shareholders' equity and a short-term obligations rating of not less than A–1 or P–1, and (2) its letters of credit be able to be readily pledged by NSCC, pursuant to a line of credit arrangement established by NSCC as collateral to obtain credit in an amount equal to at least 80 percent of stated value.

These standards are subject to the following understandings, which have been made expressly clear in the rule filing:

(1) The relevant short term-ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company;

(2) A bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A–2 or P–2; thus, a "split" rating of A–2/P–3 or P–2/A–3 is not acceptable;

(3) For a bank to be approved as an issuing bank for NSCC letter of credit purposes, it must confirm periodically that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities;

(4) The maximum maturity for a letter of credit issued for Clearing Fund purposes is one year (this requirement currently is contained in NSCC's standard letter of credit form);

(5) The Board has the authority, in its discretion, to determine that a particular bank, because of circumstances specific to that bank, may not either begin or continue to issue letters of credit on behalf of members for Clearing Fund purposes; and

(6) A foreign bank acting through a branch or agency in the United States may not be approved as a letter of credit issuer unless a sufficient guarantee of performance of such branch or agency is received by NSCC from the bank.

The new issuer standards would ensure that an issuing bank is of sufficient creditworthiness and liquidity, without unduly limiting the choice that members have as to which bank they use, to issue letters of credit on their behalf. Specifically, the $300 million equity/top three short-term obligations rating standard would ensure that only a domestic bank that is among the roughly 100 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative criterion would allow a smaller (roughly the top 200 largest in the U.S.), yet still sizable, bank that has a top short-term credit rating to be eligible to be approved as a letter of credit issuer. Thus, size would not be the sole factor in determining whether a bank is eligible to be approved as a letter of credit issuer.

Further, the second requirement (able to be readily pledged under NSCC's line of credit arrangement, which currently is with Bankers Trust Company, for at least 80 percent credit) would ensure that the liquidity benefits provided by the line of credit arrangement would be sufficiently realized.

(b) The proposed rule changes would help ensure the continued liquidity and creditworthiness of NSCC's Clearing Fund, and, thus, are consistent with the requirements of Section 17A of the Act and the rule and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

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requires the rules of the Association to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule changes will facilitate the arbitration process in the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filings, and comments will be solicited, by an Important Notice. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 office of NSCC. All submissions should refer to File No. SR-NSCC-91-03 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11286 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28162; File No. SR-OCC-91-06]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change Relating to the Assessment of Applications for Clearing Membership and Business Expansion

May 3, 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 on March 29, 1991, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-91-06) described in items I, II, and III below, which items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

Two separate purposes underlie this proposed rule change. The first is to establish an objective criterion to determine the experience of an applicant for clearing membership in clearing securities transactions. The second purpose is to provide for more timely action on business expansion applications.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Two separate purposes underlie this proposed rule change. The first is to augment OCC's standards for assessing the experience of back office personnel of applicants for clearing membership and to ensure the continued competency of back office personnel of existing clearing members. The second is to provide for more timely action on applications for business expansion submitted by clearing members.

Augmented Standards

Section .03c of the Interpretations and Policies ("Interpretations") to Section 1 of Article V of the By-laws provides that the Membership/Margin Committee ("MMC") will not recommend the approval of an application for clearing membership if the applicant lacks substantial experience in clearing securities transactions and does not, in the MMC's opinion, employ back office personnel with sufficient experience to compensate for the applicant's lack of background in clearing. The nature and depth of the experience of an applicant and its back office personnel currently are assessed on a subjective basis by OCC's staff in its routine operational orientation.

OCC has determined to use an additional standard to make such assessment. Accordingly, OCC proposes to add an interpretative paragraph to clause (c) of the Section 3 which would require a broker-dealer's applicant to be, or to employ an associated person who is, registered as a "Limited Principal—Financial and Operations" ("FINOP") with the National Association of Securities Dealers ("NASD").

An individual who is registered as a FINOP may supervise the preparation and filing of a broker-dealer's financial reports and provide overall supervision for person administering back office operations. By requiring a broker-dealer applicant to employ a FINOP, OCC will have an objective criterion to use in evaluating the experience of the applicant's back office personnel. OCC believes that this proposal is not unduly burdensome and is non-discriminatory because the FINOP examination is standard within the U.S. securities industry.

In addition to registered broker-dealers, OCC's By-laws permit non U.S. securities firms to apply for clearing membership in OCC. Certain non U.S. securities firms may apply to become exempt non U.S. members. Exempt non U.S. members may file financial reports with OCC under the financial and reporting standards of the country where its principal place of business is located and use the reporting forms established by its designated non U.S. regulatory agency. At this time, only non U.S. securities firms which are formed and operate under the laws of Canada (or any of its provinces) may apply to become exempt non U.S. members.[1] For

[1] Securities Exchange Release No. 24725 (July 21, 1987), 52 FR 28400.

these applicants, OCC proposes that they be required to employ at least one associated person who is registered as both a Principal/Director/Officer ("PDO") and as a Designated Registered Options Principal ("DROP") with the Investment Dealers Association of Canada ("IDAC").[2]

The IDAC has informed OCC that the PDO registration examination includes Canadian capital information. This examination should be an appropriate standard of evaluation because exempt Canadian clearing members file financial statements in accordance with Canadian capital requirements. In addition, the requirement that this same individual also be registered as a DROP is appropriate to ensure that he or she is knowledgeable about options transactions. OCC understands from the IDAC that DROP is appropriate to ensure that he or she is knowledgeable about options transactions. OCC understands from the IDAC that DROP study information primarily is based on materials that relate to the U.S. options markets.

Non U.S. securities firms, which are not eligible to apply for exempt status, are required to prepare their financial statements in accordance with U.S. accounting practices and the accounting and financial requirements of the Commission. Therefore, for such non U.S. securities firm applicants, OCC proposes that the applicant itself, or a person associated with the applicant be required to take and successfully complete any applicable OCC financial and operations examination.

Consistent with current procedures, the MMC may consider an applicant's execution of a facilities management agreement in determining compliance with this new requirement. In addition, the MMC would have the discretion to waive the requirement in exceptional cases and where good cause is shown, and to accept other evidence of the experience of an applicant's back office personnel.[3]

OCC also proposes to apply parallel requirements to existing clearing members in new Rule 214. OCC does not believe that the new rule will significantly burden existing clearing members because they are given substantial periods of time to comply and to maintain compliance with this new rule. The MMC further would be authorized to exempt or waive these requirements as described above. In the event a clearing member fails to comply with the requirements, the MMC is authorized to take certain actions until compliance is achieved. OCC believes that the proposed rule will promote the continued prompt and accurate clearance of securities transactions by clearing members.

Applications for Business Expansion

Section .03e to the "Interpretations" under Section 1 of Article V of the By-laws permits existing clearing members to apply for authorization to clear other types of transactions (*e.g.*, firm, customer or market-maker) or for other kinds of options transactions (*e.g.*, equity, index, Treasuries, foreign currency, market baskets), if the clearing member did not apply to clear for all types and kinds of transactions in its application for clearing membership.

Such applications for business expansion currently are submitted to the MMC for action. The MMC, however, does not meet on a monthly basis. Accordingly, up to eight weeks may pass before action appropriately could be taken on an application for business expansion.

To improve the timeliness of its response to such applications, OCC proposes to add an interpretative paragraph to Section .03e. That paragraph would authorize the Chairman or the Presdient to approve, on a temporary basis, any application for business expansion for which a clearing member has requested expedited treatment.

Consistent with current procedure, the interpretative paragraph would require the MMC to independently review the application at tis next scheduled meeting and to determine *de novo* whether to approve or disapprove such application. The proposed interpretative paragraph would further provide that, should the MMC's determination modify or reverse the decision of the Chairman or President, such determination would not invalidate any acts taken by OCC or the rights of persons arising therefrom. This provision is to ensure that OCC would not be required to "back-out" cleared and settled transactions from its books and records.

The proposed rule change is consistent with the purposes of section 17A of the Act, as amended, because it will provide for an objective means by which OCC may assess the experience in clearing securities transactions of an applicant for clearing membership and will facilitate the accurate clearance of securities transactions by promoting the continued competency of clearing members in preparing financial reports and in administering their back office operations. The proposed rule change is also consistent with section 17A because it facilitates a clearing member's increased participation in the options market by improving the timeliness by which OCC responds to an application for business expansion.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

OCC did not solicit nor did it receive any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 office of OCC. All submissions should refer to file number

[2] The IDAC is the self-regulatory organization which overseas the registration of persons actively engaged in the Canadian securities business.

[3] The latter provision is based upon Section VII of Schedule C to the NASD By-Laws.

SR–OCC–91–06 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–11284 Filed 5–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29163; File Nos. SR–PTC–90–05 and SR–PTC–90–06]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Changes Relating to Cash Settlement Accounts

May 3, 1991.

On October 15, 1990, and October 19, 1990, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934, as amended, ("Act") [1] two proposed rule changes (SR–PTC–90–05 and SR–PTC–90–06, respectively).[2] The proposals will amend certain parts of PTC's Rules concerning computation of the cash balance for a Limited Purpose Account ("LPA") and clarify PTC's Rules concerning the procedures for cash settlement. Notice of the proposed rule changes was published on February 12, 1991 to solicit comments from interested persons.[3] No comments were received. This Order approves the proposals.

I. Description

A. Calculation of the Cash Balance for LPAs (SR–PTC–90–05)

The proposed rule change will clarify what permitted charges may be made against the cash balance in an LPA. Specifically, the proposal will clarify that: (1) PTC has the right to charge an LPA for PTC fees or other charges associated with the LPA unless the Limited Purpose Participant ("LPP") makes alternative payment arrangements; (2) PTC may reverse the payment of principle and interest ("P & I") advances; and (3) PTC may give its lenders an interest in any P & I payments which is used to collateralize the borrowing. The proposal also clarifies any ambiguity concerning the netting of a participant's LPA balance with other account balances a participant may have in other accounts at PTC.

These changes were made to clarify to Collateralized Mortgage Obligation ("CMO") trustees and rating agencies the changes PTC could make to the cash balances of an LPA and the existence of any liens on the assets that underlie the CMO.[4]

The proposal will allow PTC to make alternate payment arrangements with an LPP to satisfy the LPA debit balance. PTC will permit two alternate payment arrangements. First, PTC will allow its participants to pre-fund an LPA debit balance.[5] Second, the LPP may direct PTC to charge another of the participant's accounts rather than charging the LPA.

PTC will charge the LPA only for the amounts expressly authorized in PTC's rules. PTC's rules currently provide that in computing the cash balance for an account maintained by a participant or an LPP the cash balance may be charged with "any amounts billed by the Corporation," and "other amounts payable by the LPP to the Corporation with respect to the LPA." [6] The proposal specifically deletes the broad language in Article II and replaces the deleted language with a list of the specific charges that are allowed. In this regard, the proposed rule changes effectively limit the permitted charges that may be made against the LPP.

Among the permitted charges that PTC may assess to the LPA is the reversal of principle and interest ("P & I") advances.[7] One of the services PTC provides as a clearing agency for mortgage-backed securities is the collection and distribution of P & I due to members listed as registered owners of securities on PTC's books. PTC will collect P & I from issuers and paying agents on the payment date and then credit the appropriate PTC participant account on the distribution date. When P & I payments are not received from the issuer or paying agent by the distribution date, PTC will advance P & I to participants or LPPs on distribution date.[8] Although it is unlikely that PTC will use it, PTC must have the authority ultimately to charge an LPP for those advances and for any costs associated with those advances. In that case, the LPP would be subrogated to PTC's claim against the issuer or guarantor for timely payment of P & I.

B. Procedures for Cash Settlement (SR–PTC–90–06)

The proposed rule change will clarify PTC's cash settlement procedures for participants and LPPs. The proposal amends PTC's cash settlement procedures to clarify that a participant or an LPP cannot set-off any debit balance of the participant or LPP against any external obligations owed by PTC to the participant of LPP.

The proposed rule change provides that a participant or an LPP shall satisfy its debit balance in full when it is due, without netting, defense, set-off or counterclaim. Specifically, the proposed rule change will clarify that an LPP may not offset any settlement obligation with obligations arising outside the depository. The provisions will expressly prohibit a participant or LPP from setting-off the settlement balance with amounts owed to the participant or LPP as a result of loans made to PTC by a participant or an LPP.

These provisions will govern a participant's or LPP's cash settlement obligations unless the participant or LPP has made arrangements with PTC to pre-fund the debit balance.[9] The debit

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[1] 15 U.S.C. 78s(b) (1989).

[2] On October 15, 1990, PTC submitted SR–PTC–90–05. PTC submitted SR–PTC–90–06 on October 19, 1990. Both proposed rule changes were submitted pursuant to section 19(b)(3)(A) of the Act. PTC subsequently amended both proposals requesting review pursuant to section 19(b)(2). See letter from Lee Rasnick, General Counsel, PTC, to Sonia Burnett, Attorney, Commission (dated December 6, 1990).

[3] Securities Exchange Act Release No. 28858 (February 5, 1991), 56 FR 5721.

[4] Before issuing a CMO, trustees for the CMO and rating agencies require a clear statement as to the charges that will be made to the cash balance for a LPA and existence of any liens on the assets that underlie the CMO. Since PTC's rules were silent on this issue (PTC's rules provide that PTC does not have a lien on securities in an LPA, however, prior to the rule change under consideration today, PTC's interest in the cash balance of an LPA was not mentioned in PTC's rules) and in light of PTC's interest in other assets on deposit at PTC, PTC's interest in an LPA was not apparent. *E.g.*, PTC has a first and prior lien on all securities in a participant's account (except securities that are fully paid for customer securities) and all securities and cash deposited by a participant or LPP in the participant's fund and all other cash and property held by PTC for the account of the participant or LPP. In addition, PTC may charge the participant's or LPP's account for depository services rendered. PTC's Rules, Article II, Rule 4.

[5] See section *B* of this Order.

[6] The permitted charges that PTC may assess against the LPA are listed in various sections of PTC's rules. Under the proposed rule change, the list of permitted charges will be essentially the same as the charges currently allowed under PTC's rules. See *e.g.*, PTC Rules, Article III, Rule 2, section 2(b) (Financing Payments) and section 4, (Adjustments).

[7] Other amounts that PTC may charge to the LPA are amounts billed by PTC, the correcting of errors in crediting the cash balance of the LPA and amounts transferred from the participant's LPA cash balance to another PTC participant's account.

[8] PTC may use its own funds, the cash portion of a participant's or LPP's mandatory deposit into the Participants Fund, or borrowed funds to finance the P & I advances. If PTC borrows funds in order to advance the P & I payment, PTC ordinarily will grant the lender a security interest in the right to the P & I payment and the lender would be entitled to the P & I payment when PTC receives it from the issuer or paying agent.

[9] This provision was proposed as a part of PTC's proposed amendments to its cash settlement provisions in an earlier rule filing, SR–PTC–90–05. See supra, n. 9 and accompanying text.

balance may be pre-funded by making available funds to cover the debit balance before the payment is due. Pre-funding is an alternate payment arrangement and in essence, operates as a waiver of the Fed-wire payment to PTC. The option of whether to allow pre-funding and waive the Fed-wire payment is in the sole discretion of PTC.

II. Discussion

The Commission believes that PTC's proposal is consistent with the section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions while ensuring the safeguarding of funds and securities in PTC's possession or under PTC's control. The Commission believes that the proposal will further encourage the goal of immobilization of securities.

Section 17A(a)(1) of the Act states that inefficient procedures for the clearance and settlement of securities transactions impose unnecessary costs on investors and on persons facilitating transactions on behalf of investors. Additionally, that provision of the Act expressly encourages the use of automation to improve efficiency in the clearing, settling, and processing of information with respect to securities transactions.

When PTC implemented limited purpose participation in 1990, only issuers, warehouse lenders, and special clearing participants were eligible to become an LPP.[10] PTC expanded the scope of "limited purpose participation" in order to accommodate activities of existing members who used all of PTC's services and who needed LPP accounts to safekeep certain types of securities, such as Government National Mortgage Association securities ("GNMA") underlying CMOs.[11] PTC's proposal will provide clarity with respect to allowable offsets, charges and liens to the LPA to accommodate certain requirements of CMO trustees and rating agencies.[12] The clarifications in PTC's proposal also will provide consistency with PTC rules and procedures. PTC's proposed rule change, in essence, will allow PTC to continue to retain CMOs on deposit and further the goal of immobilization of securities consistent with the Act.

[10] Securities Exchange Act Release No. 28078 (June 1, 1990), 55 FR 23625.

[11] PTC expanded the scope of entities eligible to become an LPP to allow full-purpose participants or entities that would qualify as a full purpose participant to maintain an LPA. Securities Exchange Act Release No. 28078, n. 13 *supra*.

[12] The proposed rule change in this regard will consist largely of PTC bringing together the allowable charges and offsets in Article II, rather than referencing various sections of PTC's rules.

Section 17A(b)(3)(F) states that clearing agency rules should provide for the safeguarding of securities and funds which are in the clearing agency's custody or control. The use of an LPA is confined to deposits of certain types of securities by qualifying participants. Because an LPA is not intended for general use, specific procedures for calculating the cash balance and for making cash settlement will allow PTC to closely monitor the status of the LPA. By monitoring the status of the LPA, PTC will be able to ensure, consistent with industry practice, that the cash balance for the LPA is charged only for those amounts specified in PTC's rules and that PTC does not claim an interest in the LPA. The Commission believes this provision will facilitate the safeguarding of funds and securities that are in PTC's custody or control or for which PTC is responsible consistent with section 17A(b)(3)(F) of the Act.

Section 17A(b)(3)(F) of the Act states also that clearing agency rules should provide for the prompt and accurate processing of securities transactions. The Commission notes that by more clearly articulating its procedures for cash settlement, PTC will enable an LPP to more readily understand and comply with the requirements. Some PTC participants or LPPs are lending institutions from which PTC may borrow funds, or otherwise have business dealings with PTC in a capacity other than as a PTC participant or LPP. The proposed rule change provides that obligations of PTC that arise as a result of an association with PTC other than the participant's settlement activities, may not be set-off against the participant's settlement obligations. By clearly providing that an LPA debit balance shall not be netted, that an LPP shall not seek to set-off its LPA debit balance with obligations other than those items expressly provided for in PTC's rules and that the LPA debit balance shall be paid when it is due, the proposed rule change will help to protect the integrity of PTC's settlement process and thus the proposal will help promote efficient settlement of transactions at PTC. For these reasons, the Commission believes the proposal will promote efficiency in PTC's settlement process and the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR–PTC–90–05 and 90–06) be, and are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–11282 Filed 5–10–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29160; File No. SR–PTC–91–06]

Self-Regulatory Organizations; Participants Trust Company; Filing of Proposed Rule Change Relating to Amendments to its By-Laws

May 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies PTC's By-Laws to increase the number of directors on the Board of Directors of PTC ("Board") from 10 to 12. The rule change also makes a technical modification to the By-Laws to clarify that the number of directors may be changed by either the directors or the shareholders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The next of these statements may be examined at the places specified in item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose—The purpose of this proposed rule change is to increase the number of directors on the Board from 10 to 12, in order to enhance the representation, on the Board, of the various market participants using PTC's services.

The rule change also makes a technical change to the By-Laws to clarify that the number of directors can be changed by Board action, in addition to shareholder action. Section 8.7 of PTC's By-Laws provides for amendment to the By-Laws by the vote of the directors or the shareholders, which would include amending the By-Laws to change the number of directors. However, the current version of section 3.2 of the By-Laws requires that changes to the number of directors be made in accordance with section 3.2. The proposed rule change will amend section 3.2 to clarify that the number of directors may be changed by either the directors or the shareholders, pursuant to the authority granted in section 8.7.

(b) Basis—Since the proposed rule change will enhance the representation, on the Board, of various market participants using PTC's services, it is consistent with section 17A(b)(3)(C) of the Act and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received from Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

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 its finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 office of PTC. All submissions should refer to File No. SR–PTC–91–6 and should be submitted by June 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–11283 Filed 5–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18134; International Series Rel. No. 265; 812–7717]

Advisors International Fund; Application

May 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Advisors International Fund.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3–1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser in accordance with the conditions of the proposed amendments to rule 12d3–1.

FILING DATE: The application was filed on April 23, 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 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 May 31, 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. Applicant, 6 St. James Avenue, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504–2274, or Max Berueffy, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

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 an open-end management investment company organized as a Massachusetts business trust. On January 14, 1991, Applicant filed a Notification of Registration on form N–8A and a Registration Statement on form N–1A under the Securities Act of 1933 and the Act. Applicant's investment manager is Bearbull (UK) Limited, which is wholly owned by Bearbull Limited, the holding company of the Bearbull Group, a financial services organization.

2. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies").

3. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed

amendments to Rule 12d3–1. See Investment Company Act Release No. 17096 (August 3, 1989), 54 FR 33027 (August 11, 1989). Proposed amendment rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisition of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisition satisfies certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test.[1] Accordingly, applicant seeks an exemption from the "margin security" requirements of rule 12d3–1.

2. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (August 3, 1989), 54 FR 33027 (August 11, 1989).

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because of the restrictive requirements for inclusion on the Board's "List of Foreign Margin Stocks," securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T.

Applicant's Condition

Applicant agrees to the following condition is connection with the relief requested:

Applicant will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–11280 Filed 5–10–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18136; 812–7656]

Convertible Holdings, Inc.; Application

May 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Convertible Holdings, Inc. ("Convertible Holdings").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for an exemption from section 18(a)(2)(B) of the 1940 Act.

SUMMARY OF APPLICATION: Convertible Holdings seeks an order permitting it to purchase its shares on a securities exchange subject to certain conditions.

FILING DATE: The application was filed on December 19, 1990. An amendment was filed on April 2, 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 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 June 3, 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, Convertible Holdings, Inc., Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504–2259, or Max Berueffy, 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.

Applicant's Representations

1. Convertible Holdings, a Maryland corporation, is a diversified, closed-end management investment company registered under the 1940 Act. It is a "dual-purpose" investment company with dual investment objectives of (a) long-term capital appreciation and (b) current and long-term growth of income. Convertible Holdings attempts to achieve its objectives by investing primarily in convertible debt securities and convertible preferred stocks. In accordance with its dual objectives, Convertible Holdings has a stated objective (a "Minimum Income Rate Objective") of obtaining a minimum rate of income return equal to 85% of the yield of the Value Line Convertible Index calculated on the same basis. If, at the end of any quarter, the Minimum Income Rate Objective has not been met, the fee payable in that quarter to Convertible Holdings' investment adviser, Merrill Lynch Asset Management, Inc. ("MLAM"), will be reduced by 25% of the fee.

2. Convertible Holdings has outstanding two classes of securities, "Capital Shares" and "Income Shares." Each class is separately listed for trading on the New York Stock Exchange (the "NYSE"). Convertible Holdings will maintain this structure until July 31, 1997, when the Income Shares will be redeemed at $9.30 per share plus accumulated and unpaid dividends. The Capital Shares will then be the sole remaining class of shares outstanding and the Board of Directors will decide whether to liquidate Convertible Holdings or to submit to the holders of the Capital Shares a proposal to convert to an open-end investment company.

3. The principal characteristics of Convertible Holdings' Capital Shares and Income Shares are described fully in the application. Capital Shares are common shares which will be entitled to any capital appreciation from all the assets of Convertible Holdings. Holders of Capital Shares will receive no

distributions from Convertible Holdings' Net Income[1] so long as Income Shares are outstanding. Income Shares are preferred shares which will be entitled to receive as dividends any Net Income earned on all assets of Convertible Holdings. The minimum cumulative dividend on the Income Shares is $1.00 per share annually. To the extent that any such cumulative dividend cannot be satisfied from Net Income, it will be paid from any net realized short-term or long-term capital gains. Convertible Holdings intends to redeem all Income Shares in 1997 for $9.30 per share plus accumulated and unpaid dividends. If total net assets are insufficient to redeem the Income Shares at such amount, the total net assets of Convertible Holdings will be distributed to the holders of the Income Shares on a pro rata basis. If there are accumulated and unpaid dividends on the Income Shares aggregating $2.00 or more per share, then the holders of the Income Shares will be entitled, voting separately as a class, to elect a majority of the full Board of Directors, and the holders of the Capital Shares will elect the remaining Directors. Such voting rights will continue until all dividend arrearages on the Income Shares have been paid or declared and set apart for payment. Except with respect to the election of Directors and as otherwise set forth in the application, all shareholders of Convertible Holdings vote as a single class and are entitled to one vote per share.

4. As indicated above, the Capital Shares and the Income Shares are separately listed and traded on the NYSE. The Capital Shares have historically traded at a discount to net asset value. The Income Shares, on the other hand, have historically traded at a premium to net asset value.[2] On a combined basis, the two classes together have traded at a discount from their combined net asset value. For example, on December 7, 1990, the per share net asset values for the Capital Shares and Income Shares were $7.55 and $9.57, respectively, for a combined net asset value of $17.12. At that date, the closing sale prices on the NYSE for the Capital Shares and Income Shares were $4.00 and $10.875, respectively, for a combined closing sale price of $14.875. The trading history of the Income Shares and the Capital Shares is set forth more fully in the application.

5. The existence of the discount in the trading for the Capital Shares, and for the two classes on a combined basis, has resulted in substantial dicontent on the part of a number of shareholders, particularly holders of Capital Shares. Consequently, management of Convertible Holdings and its Board of Directors have for some time considered potential alternative actions that might be taken to reduce the discount.

6. To address the problem of the discount, the Board of Directors of Convertible Holdings has approved a proposal of MLAM to repurchase equal numbers of Income Shares and Capital Shares in the open market, subject to receipt of the requested exemptive order and shareholder approval of an amendment to Convertible Holdings' Articles of Incorporation (the "Charter"), described in the application, that is ncessary in order to effect the purchase of Capital Shares and Income Shares. The frequency and amount of such purchases will be approved by the Board of Directors, subject to the conditions set forth below. Convertible Holdings does not intend to resell any of the Income Shares or Capital Shares that it proposes to repurchase.

7. In approving this proposal, Convertible Holdings' Board of Directors determined that the proposal provided several potential benefits in seeking to reduce the discount. In particular, it leaves the structure of Convertible Holdings unaffected so that it can continue in operation with its current objectives and capital structure. In addition, it involves less expense to Convertible Holdings than utilization of tender offers. Finally, as described below, open market purchases of Income Shares and Capital Shares will be effected at a price not in excess of the current combined per share net asset value of the Income Shares and Capital Shares. To the extent the aggregate purchase price of shares of both classes (including brokerage expenses) is less than the combined net asset values, the combined per share net asset value of the Income Shares and Capital Shares will increase. Convertible Holdings does not believe that any increase in its expense ratio resulting from a lower asset base after such purchases will be material to investors.

Applicant's Legal Analysis

1. Convertible Holdings hereby requests an exemptive order pursuant to section 6(c) of the 1940 Act to the extent that the proposed purchases of Convertible Holdings' Income Shares and Capital Shares may violate section 18(a)(2)(B) of the 1940 Act. Section 18(a) prohibits a closed-end investment company that has a class of senior security [3] outstanding from purchasing its common stock unless the senior security meets certain requirements with respect to asset coverage. In the case of a class of senior security that is a stock, the required asset coverage is a minimum of 200% after deducting the amount of the purchase price of the common stock. 15 U.S.C. 80a–18(a)(2)(B). "Asset coverage" of a class of senior security that is a stock is defined in section 18(h) of the 1940 Act as "the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate of the involuntary liquidation preference of such class of senior security which is a stock." The "involuntary liquidation preference" of a class of senior security which is a stock is defined as "the amount to which such class of senior security would be entitled on involuntary liquidation of the issuer in preference to a security junior to it." In the case of the Income Shares, the involuntary liquidation preference is $9.30 per share plus accumulated and unpaid dividends. Convertible Holdings would violate section 18(a)(2)(B) if it were to purchase its Capital Shares at a time when, giving effect to the purchase, the Income Shares did not have the prescribed asset coverage. As of January 31, 1991, the asset coverage of the Income Shares was 188.44%. Convertible Holdings believes, however, that its requested exemption from section 18(a)(2)(B) meets the standards of section 6(c).

2. Convertible Holdings believes that the proposed purchases would be appropriate in the public interest. In this regard, it submits that the exemptive order that it requests, if granted, would not in any way detract from the benefits that it provides as a dual-purpose fund. Moreover, there has been increasing

[1] "Net Income" includes all dividends, interest and other income (but not realized or unrealized gains, stock dividends and other capital items) earned by Convertible Holdings on its portfolio holdings, net of its expenses.

[2] The net asset values per share for the Income Shares and Capital Shares are determined as of the close of the NYSE on the last business day of each week and month. Net asset value of an Income Share is equal to the lower of (a) $9.30 plus accumulated and unpaid net income per share or (b) the total net assets of Convertible Holdings divided by the number of Income Shares outstanding. Net asset value of a Capital Share is equal to the net assets of Convertible Holdings minus net assets attributable to Income Shareholders, divided by the number of Capital Shares outstanding.

[3] A "senior security" is defined in section 18(g) of the 1940 Act as "any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends." The Income Shares are senior securities as defined in section 18(g).

concern among Convertible Holdings' shareholders for it to take steps to address its discount problem.[4] The proposed repurchases would, as described above, potentially benefit holders of both Income Shares and Capital Shares.

3. Convertible Holdings believes that the proposed purchases will be consistent with the policies and purposes of the 1940 Act generally and of section 18. Section 18 is designed to prevent unduly complex capital structures, inequitable control of investment companies, leveraging, and potential conflicts of interest between various classes of securityholders. One of the most important aspects of that section is to protect the interests of holders of a closed-end investment company's senior securities by prohibiting such a company from purchasing its common shares if, giving effect to the purchase, the company does not have an asset coverage of 200%. Convertible Holdings anticipates that the proposed purchases will not comply with section 18(a)(2)(B) since it does not currently have the asset coverage required by that section. However, the proposed purchases are not being made to enhance the value of the holdings of a small, or controlling, group of common stockholders. Moreover, the purchases will have the effect of modestly increasing the asset coverage of the Income Shares for so long as they are made at a time when the combined market price of the Income Shares and Capital Shares is less than the net asset value represented by such Shares.

4. Convertible Holdings submits that the requested order would also be consistent with the protection of investors. Convertible Holdings will repurchase only equal numbers of Income Shares and Capital Shares, except that for the minimal differences described in the conditions to the requested order. Thus, Convertible Holdings will not discriminate against either class in conducting its repurchases. In addition, the repurchases will comply fully with section 23(c)(1) of the 1940 Act since they will be conducted on the NYSE or another securities exchange and will not commence unless the notice to Convertible Holdings' shareholders has been provided in accordance with section 23(c)(1).[5]

Applicant's Conditions

Convertible Holdings agrees that any order granted on the application will be conditioned on the following:

1. Convertible Holdings will not permit the number of outstanding shares of either class at any time to exceed by more than 1,000 the number outstanding of the other class.

2. Convertible Holdings will not permit the number of shares outstanding of either class to be out of balance with the number of shares outstanding of the other class to any extent for more than five consecutive trading days (except that if, at the expiration of such period, a purchase to redress an imbalance would be inconsistent with requirement No. 3 hereunder, Convertible Holdings will not make such a purchase until it can do so consistent with such requirement).

3. Convertible Holdings will not purchase shares of either class unless the unit (one Income Share and one Capital Share) net asset value determined at the close of business of the prior day exceeds the sum of (a) the per share purchase price of the shares being purchased (plus the assumed brokerage commission), plus (b) the higher of (i) the most recent market price or (ii) the lowest current asked price for shares of the other class (plus in either case an assumed brokerage commission).[6] For this purpose, unit net asset value will be determined by dividing Convertible Holdings' total net assets (not including any assets representing undistributed net investment income) by the number of Income or Capital Shares outstanding, whichever is the greater.

4. Purchases of either class will be effected on a national securities exchange and not exceed on any day 20% of the average daily trading volume for such shares as reported on the NYSE composite tape in the four weeks preceding the current week.

5. Convertible Holdings will notify all stockholders of its proposed repurchase program by letter or report which will discuss any discount in market value from net asset value. It will also inform the stockholders of Convertible Holdings' intention to redeem all outstanding Income Shares on July 31, 1997 at $9.30 per share plus accumulated and unpaid dividends to the redemption date and the fact that after such redemption, all of the remaining assets of Convertible Holdings will be owned by the holders of the Capital Shares.

6. In its quarterly reports to stockholders, Convertible Holdings will provide information as to the aggregate number of shares of each class purchased and the average price thereof.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-11281 Filed 5-10-91; 8:45 am]

BILLING CODE 8010-01-M

[4] Convertible Holdings notes, however, that presumably, as the 1997 "maturity" date of the Company approaches, both Income Shares and Capital Shares will trade at prices more closely approximating their respective net asset value.

[5] Moreover, shareholders will have the opportunity to vote on that very point at the 1991 annual meeting by voting on whether Convertible Holdings' Charter should be amended to permit the repurchases.

[6] The assumed commission rate to be utilized will be based on the commission rate paid by Convertible Holdings for prior purchases, as adjusted to take into account any changes in rates charged to institutions such as Convertible Holdings.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 3, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47524.

Date filed: May 2, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 484 (Europe-Western Africa fares).

Proposed Effective Date: May 15, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-11230 Filed 5-10-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 3, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47518.

Date filed: April 29, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of V. Kelner Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for issuance of a Foreign Air Carrier Permit to authorize it to engage in foreign nonscheduled air transportation of persons, property and mail between points in Canada and points in the U.S.

Docket Number: 47520.

Date filed: April 29, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of Continental Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for renewal of the Denver, Colorado-London, United Kingdom authority in its certificate for Route 514 for period of five years.

Docket Number: 47522.

Date filed: April 30, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1991.

Description: Application of Japan Airlines, Company Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies to amend its foreign air carrier permit to authorize JAL to engage, in addition to its existing permit authority, in scheduled foreign air transportation of persons, property and mail, as follows: (1) Combination service between Tokyo, Japan and the coterminal points Seattle, Washington and Atlanta, Georgia; (2) combination and all-cargo service between Tokyo and Chicago, Illinois; (3) combination service between Tokyo and Sao Paulo/Rio de Janeiro, Brazil (with full traffic rights) via Los Angeles, California; (4) combination service between Tokyo and Washington, DC.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–11231 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–62–M

Office of Hearings

[Docket 47224]

Miami/Tampa-Toronto Service Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on May 21, 1991, at 10 a.m. (local time), in room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, May 7, 1991.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 91–11252 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 21–QCCI; Quality Control for the Manufacture of Non-Metallic Compartment Interior Components

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on the proposed Advisory Circular (AC) 21–QCCI Quality Control for the Manufacture of Non-Metallic Compartment Interior Components. This notice is necessary to give all interested persons an opportunity to present their viewpoints on the proposed AC.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Production Certification Branch, AIR–220, 800 Independence Ave., SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert A. Robino Jr., AIR–220, at the address above, telephone (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named in the above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views or arguments as they may desire. Commenters should identify AC 21–QCCI and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Production Certification Branch before issuing the final AC.

Background

The proposed AC provides information and guidance regarding quality control systems for the manufacture of non-metallic compartment interiors, and for demonstrating compliance with Federal Aviation Regulations (FAR) part 21.

Issued in Washington, DC, on April 17, 1991.

Andrew B. Lown,

Acting Manager, Production Certification Branch.

[FR Doc. 91–11276 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 171; Airborne MLS Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the second meeting of Special Committee 171 to be held June 5–7, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the first meeting's minutes, RTCA paper no. 151–91/SC171–19; (3) Technical presentations; (a) Status briefing on related MLS activities; (b) Data Link; (c) Advanced procedures updates; (d) Other; (4) Working Group reports; (a) Operations Working Group (WG–1); (b) Technical Working Group (WG–2); (5) Further development of initial work program and plan for accomplishment; (6) Working Group sessions; (7) In plenary; (a) Working Group progress; (b) Task assignment; (8) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 2, 1991.

Herb Goldstein,

Designated Officer.

[FR Doc. 91–11277 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 16–91]

Treasury Bonds of May 2021

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,750,000,000 of United States securities, designated Treasury Bonds of May 2021 (CUSIP No. 912810 EJ 3), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated May 15, 1991, and will accrue interest from that date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2021, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, May 9, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 8, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g.,

99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement of the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount with be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the Principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstruction.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstruction transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of May 15, 2021, CUSIP No. 912810 EJ 3

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2021 due May 15, 2021, CUSIP No. 912803 AW 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0
Nov. 15, 1998	FH 8
May 15, 1999	FJ 4
Nov. 15, 1999	FK 1
May 15, 2000	FL 9
Nov. 15, 2000	FM 7
May 15, 2001	FN 5
Nov. 15, 2001	FP 0
May 15, 2002	FQ 8
Nov. 15, 2002	FR 6
May 15, 2003	FS 4
Nov. 15, 2003	FT 2
May 15, 2004	FU 9
Nov. 15, 2004	FV 7
May 15, 2005	FW 5
Nov. 15, 2005	FX 3
May 15, 2006	FY 1
Nov. 15, 2006	FZ 8
May 15, 2007	GA 2
Nov. 15, 2007	GB 0
May 15, 2008	GC 8
Nov. 15, 2008	GD 6

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
May 15, 2009	GE 4
Nov. 15, 2009	GF 1
May 15, 2010	JU 5
Nov. 15, 2010	JV 3
May 15, 2011	JW 1
Nov. 15, 2011	JX 9
May 15, 2012	JY 7
Nov. 15, 2012	JZ 4
May 15, 2013	KA 7
Nov. 15, 2013	KB 5
May 15, 2014	KC 3
Nov. 15, 2014	KD 1
May 15, 2015	KE 9
Nov. 15, 2015	KF 6
May 15, 2016	KH 2
Nov. 15, 2016	KK 5
May 15, 2017	KM 1
Nov. 15, 2017	KP 4
May 15, 2018	KR 0
Nov. 15, 2018	KT 6
May 15, 2019	KV 1
Nov. 15, 2019	KX 7
May 15, 2020	KZ 2
Nov. 15, 2020	LB 4
May 15, 2021	LD 0

BILLING CODE 4810-40-M

ATTACHMENT

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

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BILLING CODE 4810–40–C

[Department Circular—Public Debt Series—No. 15–91]

Treasury Notes of May 15, 2001, Series B–2001

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,750,000,000 of United States securities, designated Treasury Notes of May 15, 2001, Series B–2001 (CUSIP No. 912827 A8 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1991, and will accrue interest from the date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2001, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, May 8, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 7, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be

accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. the minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of May 15, 2001, Series B–2001, CUSIP No. 912827 A8 5

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B–2001 due May 15, 2001, CUSIP No. 912827 BA 4.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due	
November 15, 1991	ET 3
May 15, 1992	EU 0
November 15, 1992	EV 8
May 15, 1993	EW 6
November 15, 1993	EX 4
May 15, 1994	EY 2
November 15, 1994	EZ 9
May 15, 1995	FA 3
November 15, 1995	FB 1
May 15, 1996	FC 9
November 15, 1996	FD 7
May 15, 1997	FE 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
November 15, 1997	FF 2
May 15, 1998	FG 0
November 15, 1998	FH 8
May 15, 1999	FJ 4
November 15, 1999	FK 1
May 15, 2000	FL 9
November 15, 2000	FM 7
May 15, 2001	FN 5

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 91–11310 Filed 5–8–91; 4:02 pm]

BILLING CODE 4810–40–C

[Department Circular—Public Debt Series—No. 14–91]

Treasury Notes of May 15, 1994, Series S–1994

Washington, May 2, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $13,500,000,000 of United States securities, designated Treasury Notes of May 15, 1994, Series S–1994 (CUSIP No. 912827 A7 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1991, and will accrue interest from that date, payable on a semiannual basis on November 15, 1991, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Tuesday, May 7, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 6, 1991, and received no later than Wednesday, May 15, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or

reject any or all tenders in whole or in part, to allot more or less then the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applications when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guaranteee as provided in section 3.5. must be made or completed on or before Wednesday, May 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, May 13, 1991. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes alloted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes alloted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-11312 Filed 5-8-91; 4:02 p.m.]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Program of Exchange With the Czech and Slovak Federal Republic

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from U.S. educational and other not-for-profit institutions to conduct a summer language exchange with the Czech and Slovak Federal Republic.

DATES: Deadlines for submissions: Proposals must be received at USIA by 5 p.m., Eastern Daylight Time, May 29, 1991; post marked or faxed documents will not be accepted. Duration: The duration of the grant should be from four to eight weeks. Programs are expected to take place between July and September 1991. No funds may be expended until the grant agreement is signed with the USIA's Office of Contracts.

ADDRESSES: Fifteen copies of the completed application, including required forms, should be submitted to the office below. U.S. Information Agency, Reference: Exchange with the Czech and Slovak Federal Republic, Office of the Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Mr. Ted Kniker or Ms. Debbie Trent at USIA, Academic Exchanges European Branch, E/AEE Room 208, Washington, DC 20547, Fax (202) 401-1728, Telephone (202) 619-4420, to request detailed application packets, which consist of all necessary forms, formats, and guidelines for preparing proposals. Copies of the bilateral agreement will also be included.

SUPPLEMENTARY INFORMATION: This exchange is to be conducted in pursuit of the goals established in the Program of Cooperation and Exchange between the governments of the United States and Czechoslovakia (now the Czech and Slovak Federal Republic). The purpose of this program is to conduct intensive summer language training programs for up to 20 participants from each country. Proposals should include participants from both the Czech and Slovak republics. Programs in the U.S. are expected to be conducted in English. Programs in the Czech and Slovak Federal Republic are expected to be conducted in the language of the host republic.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer. Applications for a substantive language and cultural training exchange will be accepted from accredited, degree-granting U.S. universities or colleges, consortia of such universities and colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs. Support is offered for exchanges of language specialist for language programs of at least four weeks duration, and not to exceed eight weeks duration. Participants must be citizens of the United States or of the Czech and Slovak Federal Republic.

Applying institutions are expected to make their own arrangements directly with appropriate Czech and Slovak institutions.

Language Qualifications

Participants are expected to have sufficient fluency in the language of the host country (or republic) to be able to pursue university level study and be able to converse with citizens of the country without the aid of interpreters.

Allowable Costs

Project awards will be made in a range of amounts but will not exceed $75,000. Awards to organizations with less than four years experience in international exchanges will be limited to $60,000. Therefore, budget submissions from such organizations should not exceed this amount. Grant-funed items of expenditure will be limited to the following categories:

—International Travel
—Domestic travel
—Maintenance or Per Diem
—Academic program costs, e.g., tuition, university fees
—Books
—Insurance
—Orientation
—Administration (salaries, benefits, other direct and indirect costs).*

*Please Note.—It is required that requested administrative funds not exceed 20 percent of the total amount requested; additional administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing; tuition waivers are highly desired.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application guidelines. Ineligible proposals will not be considered for funding. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and with the guidelines for preparing proposals prior to funding decisions by delegated officials. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Completed applications will be reviewed according to the following criteria

a. Adherence of proposed activities to the conditions described in the bilateral agreement between the United States and the Czech and Slovak Federal Republic.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange.

c. Agency evaluation and assessment of the organization's previous international exchange experience; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties.

e. Cost effectivenes—greatest return on each grant dollar; degree of cost sharing exhibited.

f. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to provide for the participation of individuals from different regions and of diverse backgrounds, to the extent feasible for the applicant institutions.

g. Preference will be given to proposals that include language educators as participants.

h. Preference will be given to proposals that include an area studies component.

Notification

All applicants will be notified of the result of the review process on or about June 21, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1991.

Warren J. Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–11257 Filed 5–10–91; 8:45 am]

BILLING CODE 8230–01–M

Public Diplomacy, U.S. Advisory Commission; Meeting

SUBJECT: U.S. Advisory Commission on Public Diplomacy Meeting.

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 15 in room 600, 301 4th Street, SW., Washington, DC from 11 a.m. to 12 noon.

The Commission will meet with Ms. Paula Dobriansky, Associate Director, Bureau of Programs, to discuss the Bureau's policy guidance role and overseas operations.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: May 7, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91–11256 Filed 5–10–91; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 92
Monday, May 13, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, May 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 9, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–11446 Filed 5–9–91; 3:24 p.m.]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 13, 20, 27, and June 3, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 13

Wednesday, May 15

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Federal Register Notice and Commission Order on Louisiana Energy Services' Application for License (Tentative)

Week of May 20—Tentative

Monday, May 20

9:00 a.m.
Briefing on Final Rule on Performance Based QA—Part 35 (Public Meeting)

Tuesday, May 21

10:00 a.m.
Briefing on BRC Consensus Process (Public Meeting)
2:00 p.m.
Briefing on Final Rule on License Renewal—Part 54 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 27—Tentative

Friday, May 31

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 3—Tentative

Friday, June 7

1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: May 8, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–11430 Filed 5–9–91 1:30 p.m.]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 9:30 a.m., May 14, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R90–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91–11461 Filed 5–9–91; 3:42 p.m.]

BILLING CODE 7710–FW–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:19 p.m. on Tuesday, May 7, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) potential litigation resulting from non-disclosure of asset information, (2) the resolution of failed thrift institutions, (3) sale of assets, and (4) contracting activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 8, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–11415 Filed 5–9–91; 11:42 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 20496 May 3, 1991].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 1, 1991.

CHANGE IN THE MEETING: Rescheduling.

The following items were not considered at a closed meeting on Tuesday, May 7, 1991, at 2:30 p.m. and have been rescheduled for Thursday, May 9, 1991, at 2:30 p.m.

Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

Commissioner Lochner, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272–2400.

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–11417 Filed 5–9–91; 11:42 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 13, 1991.

A closed meeting will be held on Tuesday, May 14, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 14, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.
Settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272–2300.

Dated: May 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–11418 Filed 5–9–91; 11:42 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 92
Monday, May 13, 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.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

Correction

In notice document 91-9905 appearing on page 19351 in the issue of Friday, April 26, 1991, in the third column, the **EFFECTIVE DATE** should read "May 28, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-464-FNC]

RIN 0938-AD48

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

Correction

In notice document 91-7225, beginning on page 13317, in the issue of Monday, April 1, 1991, make the following corrections:

1. On page 13317, in the 3rd column, under **ADDRESSES:**, in the 13th line, "Building, 3625" should read "Building, 6325".

2. On page 13318, in the first column, in the second complete paragraph, in the fifth line, "or" should read "and".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 13th line, after "designation" insert "for".

4. On page 13319, in the 2nd column, in the last paragraph, in the 17th line from the bottom of the page, "able" should read "unable".

5. On page 13320, in the third column, under *H. Exception to Cost Limits*, in the third line, "§ 413.39(f)." should read "§ 413.30(f)."

6. On page 13321, in the first column, the second paragraph should read as set forth below.

"If the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust retroactively each SNF cost limit."

7. On page 13322, in the first column, in the third table, in the second column, under the rule, the total was omitted and should read "$102.32".

8. On the same page, in the second column, under **V. Per Diem *****", in the seventh line, "section 18 (v)(1)(E)" should read "section 1861(v)(1)(E)".

9. On the same page, in the 3rd column, in the 1st complete paragraph, in the 16th line, "increase" should read "increases".

10. On page 13324, in the first column, under **Table I.**, in the third column of the table, in the first line, "$15.15" should read "15.25".

11. On page 13325, in the 3rd column, under **Table II.**, in the 10th line, "Report" should read "Rock".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-461 (Final)]

Gray Portland Cement and Cement Clinker From Japan

Correction

In notice document 91-10913 appearing on page 21391 in the issue of Wednesday, May 8, 1991, the investigation number should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Monday
May 13, 1991

Part II

Department of Education

34 CFR Parts 668 and 682

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1840-AB42

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations. These regulations contain provisions that are common to the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by section 3004 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), section 2003 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), and section 301 of the Student Right-to-Know and Campus Security Act (Pub. L. 101-542). Under section 3004 of Pub. L. 101-508, effective July 1, 1991, an institution will lose its eligibility to participate in the Guaranteed Student Loan (GSL) programs if the institution's cohort default rates for each of three consecutive fiscal years exceed thresholds established by the new law. Public Law 101-239 makes an undergraduate student ineligible to borrow under the Supplemental Loans for Students (SLS) loan program for attendance at an institution with a cohort default rate that equals or exceeds 30 percent. Public Law 101-239 also requires the Secretary to promulgate regulations to prevent institutions that have undergone institutional status changes such as branching, consolidation, change of ownership or control, or another such change from evading the consequence of their cohort default rate, such as their students loss of eligibility to borrow under the SLS program. Public Law 101-542 defines the term "cohort default rate." These regulations change the term and definition of fiscal year default rate as defined in § 668.15(f) to cohort default rate to reflect the statutory definition, and amend section 668.25 to clarify the procedure an institution must follow regarding the handling of title IV, HEA program funds and proceeds when the institution closes, ceases to provide instruction, or loses its eligibility to participate in the Title IV, HEA programs.

DATES: Comments must be received on or before June 12, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Doug Laine or Pat Newcombe, Telephone Number (202) 708-8242. Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR 668.15 to implement recent legislative changes. The proposed rule changes the term and definition of fiscal year default rate as contained in § 668.15(f) to cohort default rate to match the statutory language and provides for the application of the cohort default rate to institutions that have changed their institutional status. This proposed rule also codifies the legislative change that prohibits an undergraduate student from obtaining an SLS loan for attendance at an institution with a cohort default rate that equals or exceeds 30 percent. Further, the proposed rule describes the legislative change under which an institution loses its eligibility to participate in the GSL programs based on the default rates of its former students. The proposed rule also delineates the exceptional mitigating circumstances the Secretary will consider if an institution appeals its loss of eligibility and describes the procedures under which the institution may appeal its loss of eligibility. Finally, the proposed rule prohibits institutions that close or cease to provide instruction from awarding title IV program funds. The GSL programs include the Stafford Loan, Supplemental Loans for Students (SLS), PLUS loan, and Consolidation Loan programs. Since institutions do not participate in the Consolidation Loan Program, an institution's loss of eligibility under the statute does not apply to that program.

Regulatory Changes

The Secretary is proposing to amend § 668.15. These proposed regulatory changes are required by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), which added a new section 435(m) to the HEA and amended section 428A(a) of the HEA, the Student Right-to-Know and Campus Security Act (Pub. L. 101-542), which further amended section 435(m) of the HEA (Pub. L. 101-542), and by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

The first group of proposed changes is technical in nature. New subsection 435(m) defines the term "cohort default rate." This new statutory definition is nearly identical to the definition of "fiscal year default rate" in § 668.15(f)(1) of the current regulations. However, the statutory definition provides that loans that are rehabilitated under section 428F of the HEA before the end of a fiscal year will not be considered as in default for the purposes of determining an institution's cohort default rate. The Student Right-to-Know and Campus Security Act further amended the definition of cohort default rate in section 435(m) of the HEA to provide that only loans for which the Secretary or guarantee agency has paid a claim for insurance will be included in the calculation of an institution's cohort default rate. The Secretary is proposing these amendments to the definition found in § 668.15(f) to ensure that the regulatory term and definition are consistent with the term "cohort default rate" and definition found in the statute. For purposes of consistency, the Secretary is also proposing to amend current regulatory references to "fiscal year default rate" to "cohort default rate."

The Secretary is also proposing in § 668.15 to establish regulatory standards regarding the applicability of cohort default rates if an institution's status has changed. Section 435(m) of the HEA requires the Secretary to publish regulations designed to prevent an institution participating in the SLS program from evading the application of a cohort default rate through institutional status changes such as branching, consolidation, and changes of ownership and control. Although section 435(m) only requires the Secretary to prescribe implementing regulations with respect to student eligibility for SLS loans at an institution with a cohort default rate that equals or exceeds 30 percent, the Secretary has decided, for purposes of consistency, to apply the definition of cohort default

rate to all the Title IV, HEA programs and develop regulations applicable to all Title IV programs to prevent an institution from evading the application of the cohort default rate. However, the statutory requirement does not affect the Secretary's current regulations, policies and procedures that utilize an institution's cohort default rate as an indicator of the institution's ability to properly administer the Title IV student assistance programs and as a basis for the Secretary to require that an institution submit certain information under § 668.15 (b), (c), and (e) and as a basis to commence a proceeding to limit, suspend, or terminate the institution's eligibility to participate in the Title IV student assistance programs.

The Secretary is proposing to apply cohort default rates for institutions that change status in the following manner:

(1) For institutions that change status from a separate location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the new institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(2) For institutions that change status from a free-standing institution to a separate location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate will apply to the new, consolidated institution and all of its current locations.

(3) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both of the institutions that are merging. This cohort default rate will apply to the new, consolidated institution.

(4) For institutions that change status from a separate location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

Under the current institutional identification system, the Department and guarantee agencies are not able to determine the number of borrowers who enter repayment and the number of borrowers who default at a specific location of an institution.

The Department is now in the process of revising its institutional identification system and will issue institutional identifiers to each specific location of an institution. This revised system will allow the Secretary and guarantee agencies to determine the number of borrowers who enter repayment and the number of borrowers who default at a specific location of an institution. The Secretary currently anticipates that this revised system will be in place for fiscal year 1993. However, until this institutional identification system is revised, the Secretary will consider the cohort default rate of a location of an institution to be the same as the cohort default rate of the entire institution for the fiscal year for which the cohort default rate is being calculated. Thus, a location of an institution will be considered to have the cohort default rate of the entire institution if it changes status to a free-standing institution. Furthermore, the location will use the cohort default rate of the entire institution (in conjunction with the cohort default rate of the institution of which it is becoming a location) if it becomes a location of another institution.

The Secretary is also proposing to amend 34 CFR 668.15 to implement the statutory changes made to section 435(a) of the Higher Education Act of 1965 by Public Law 101–508. This statutory change provides that an institution loses its eligibility to participate in the GSL programs if that institution's cohort default rates for the three most recent fiscal years for which data are available were equal to or greater than 35 percent. In fiscal year 1993 and beyond, an institution with a cohort default rate that equals or exceeds 30 percent for each of the three most recent fiscal years for which data are available will be ineligible. For example, in fiscal year 1991 an institution's fiscal years 1987, 1988, and 1989 cohort default rates will be used to determine whether the institution will lose its eligibility to participate in the GSL programs. If the Secretary determines that the institution's cohort default rates were equal to or greater than the threshold percentage, the statute requires that the institution lose its eligibility to participate in the GSL programs for the remainder of the fiscal year in which the determination is made and for the two succeeding fiscal years. After this time period has elapsed, the institution must satisfy the Secretary that it meets all requirements for participation in the GSL programs and execute a new program participation agreement with the Secretary to again participate in the GSL programs.

Under the proposed rules, an institution's loss of eligibility to participate in the GSL programs is effective on the date the institution receives notice from the Secretary that its cohort default rates have exceeded the threshold percentages for the three most recent fiscal years. An institution may appeal its loss of eligibility to participate in the GSL programs under the procedures set forth in 34 CFR 668.15(g). An institution wishing to appeal its loss of eligibility must submit its appeal in writing to the Secretary within 30 days after receiving notification of its loss of eligibility. An institution wishing to appeal its loss of eligibility on the basis of exceptional mitigating circumstances must submit an appeal that addresses the criteria identified in 34 CFR 668.15(g). The Secretary will not consider other arguments for restoring an institution's eligibility as exceptional mitigating circumstances in such an appeal. While the appeal is pending, the Secretary, pursuant to authority granted him under section 435(a) of the HEA, will not permit an institution to participate in the GSL programs except to deliver subsequent disbursements to borrowers who had received the proceeds of a first disbursement prior to the institution's loss of eligibility.

The law provides that the Secretary may permit the institution to continue to participate in the GSL programs if the institution demonstrates to the satisfaction of the Secretary that the data used to calculate the school's cohort default rate or the calculation of that rate for any of the three fiscal years is not accurate and a recalculation would reduce the institution's cohort default rate for any of the three applicable fiscal years below the threshold percentage. In addition, an institution's eligibility to participate in the GSL programs would resume if the institution demonstrates to the satisfaction of the Secretary that exceptional mitigating circumstances, as defined in proposed § 668.15(g), make the institution's loss of eligibility inequitable. If the institution satisfactorily demonstrates that either of the above criteria apply to that institution, the eligibility of that institution is reinstated retroactively to the date the institution was first notified

that its default rates exceeded the threshold rates.

The statute specifies that, if an institution appeals the loss of eligibility, the Secretary will issue a decision within 45 days after the institution submits its appeal. An institution wishing to appeal based on the use of inaccurate data should have the corrected data verified by the guarantee agency. An institution's appeal will not be considered to be filed with the Secretary until the corrected data is verified by the guarantee agency, and the time limit for the Secretary's consideration of the appeal does not start until the appeal is filed. The proposed regulations would require a guarantee agency to respond to an institution's request to verify its default rate data within 15 working days of the date the agency receives the institution's written request. The Department urges guarantee agencies to respond expeditiously to institutions' requests for verification of the accuracy of the data. The proposed regulations would also provide that, as part of its appeal, an institution may submit, in writing, information identifying the errors in the data or the exceptional mitigating circumstances that satisfy these proposed regulations. This information must be submitted to the designated Departmental official, acting on behalf of the Secretary, identified in the notification of the default rates sent to the institution. The designated Departmental official will consider the relevant information submitted by the institution, but no oral hearing will be provided. There will be no appeal from the decision of the designated Departmental official.

As required by statue, a historically black college or university within the meaning of section 322(2) of the Higher Education Act of 1965, a tribally controlled community college within the meaning of the Tribally Controlled Community College Assistance Act of 1978, and a Navajo community college under the Navajo Community College Act are not subject to loss of eligibility until July 1, 1994.

The Secretary is proposing to add a new subparagraph (g)(1)(ii) to section 668.15 to establish exceptional mitigating circumstances that would permit consideration of appeals by institutions. The Secretary anticipates that an institution will regain its eligibility to participate in the GSL programs on the basis of exceptional mitigating circumstances only in rare instances. As proposed, an institution appealing its loss of eligibility on the basis of exceptional mitigating circumstances must have reduced its default rate by 50 percent of the amount by which its cohort default rate exceeds the threshold percentage each year for the two most recent fiscal years for which the Secretary has calculated a default rate.

The Secretary is interested in receiving public comment on the following criteria that the Secretary might also consider adopting as exceptional mitigating circumstances that make the institution's loss of eligibility inequitable: (1) The socioeconomic status of the students served by the institution, (2) the progress of the institution in reducing the dollar value of defaulted loans, (3) the economic health and general state of employment in the region, (4) the historic mission of the school, and (5) the successful completion and job placement of students. The Secretary will consider adopting one or more of these criteria, or other criteria received in public comment, either as additional requirements or as alternative circumstances for justifying continuation of an institution's eligibility. The Secretary is particularly interested in receiving public comment as to whether objective data is available for an institution to substantiate that one or more of these criteria apply to the institution if it chooses to appeal its loss of eligibility.

Further, the Secretary is particularly interested in receiving public comment on other criteria that should be used to determine if there are exceptional mitigating circumstances that make the institution's loss of eligibility inequitable. The Secretary wants to solicit objective criteria from the public that can be statistically measured by the Secretary to determine if an exceptional mitigating circumstance exists.

The Secretary is proposing the reduction of default rate as an exceptional mitigating circumstance because he believes that an institution that has made exceptional progress in reducing its cohort default rate by half the excess over the statutority permissible threshold rate each year for two consecutive years has taken appropriate action to significantly reduce the incidence of default. The Secretary believes it would be inequitable for a school that has demonstrated exceptional success in reducing its default rate to lose its eligibility because its default rate is slightly above the threshold rate.

As indicated above, the Secretary is proposing that, to prove that an exceptional mitigating circumstance exists, an institution must show that its default rate was reduced by at least 50 percent of the amount by which the institution's cohort default rate exceeds the threshold limit each year for the two preceding fiscal years. For example, if an institution had a fiscal year 1987 cohort default rate of 55 percent, it must have reduced its fiscal year 1988 rate to 45 percent or less (at least 50 percent of the difference between 55 percent and 35 percent). If the institution reduced its fiscal year 1988 cohort rate to 45 percent, it must reduce its fiscal year 1989 rate to 40 percent or less (at least 50 percent of the difference between 45 percent and 35 percent).

These proposed regulations complement the current regulations implementing the Secretary's default reduction initiative that were published on June 5, 1989 in the **Federal Register** (55 FR 24114). The default related regulatory requirements and sanctions contained in those regulations remain in effect. Therefore, an institution with a fiscal year 1989 cohort default rate that exceeds 60 percent remains subject to a limitation, supension, or termination action by the Secretary even if the institution's default rate was less than 35 percent in fiscal year 1987 or fiscal year 1988.

The proposed regulations would add a new section 668.15(i) to reflect section 428A(a)(2) of the HEA. Under the statutory provision, an institution loses its eligibility to participate in the SLS program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which such rate is available is equal to or greater than 30 percent.

The proposed regulations would also amend section 668.25 to make a distinction between the treatment of institutions that close or stop providing educational instruction and the treatment of those that lose eligibility to participate in the Title IV, HEA programs for other reasons. Under the current regulations, if an institution loses its eligibility to participate in the Title IV, HEA programs during a payment period, that ineligible institution is allowed to credit or disburse Title IV, HEA program funds to those students to whom it made a commitment when the institution was eligible. This exception is made to enable a student to continue his or her education or training for the continuation of that payment period. However, the current regulations also allow an ineligible institution to credit or disburse Title IV, HEA funds even if the institution closes or stops providing educational instruction. In almost all cases, the student's obligation to pay the

institution for training received is negated by the failure of the institution to deliver the educational services under the terms of the contract. Thus, closed institutions and institutions that discontinue providing educational instruction to students receive a "windfall" at the expense of the Federal Government, because most of the Title IV, HEA program assistance will be credited to the institution which, under the institutional refund policy, will likely pay for institutional costs for instruction not actually provided to the student. For example, most institutional refund policies allow an institution to retain a percentage of institutional charges higher than the percentage of the program completed by the student. It is not uncommon for an institution to retain 75% of the institutional charges for students who complete only 25% of the portion of the program for which they were charged, or, for an institution to retain 100% of the institutional charges for students who have completed slightly more than 25% of the portion of the program for which they were charged. Therefore, proposed § 663.25 would allow those institutions that have lost eligibility, but continue to provide educational instruction for the duration of the payment period, to award Title IV, HEA program funds to those students to whom they have made a commitment.

The proposed amendment to § 668.25 would also codify the procedure an institution must follow in delivering Stafford and SLS loan proceeds if an institution loses its eligibility to participate in the GSL programs. An institution may deliver to a student, or credit the student's account with, the proceeds of a second or subsequent disbursement of a Stafford loan or SLS loan only if the proceeds of the first disbursement were delivered to the student or credited to the student's account prior to the loss of eligibility.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will only affect a small percentage of institutions that participate in the GSL programs.

Paperwork Reduction Act of 1980

Sections 668.15 and 668.25 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. [44 U.S.C. 3504(h)]

There is no annual public reporting burden associated with these regulatory revisions to §§ 668.15 and 668.25.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, Regional Office Building 3, Seventh and D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Dated: May 6, 1991.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan and PLUS program)

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094 and 1141, unless otherwise noted.

2. Section 668.15 is amended by removing the term "fiscal year default rate" and adding in its place the term "cohort default rate", in paragraphs (a)(1), (b) introductory text, (b)(1)(i), (b)(1)(ii) introductory text, and (e), by removing the reference "(f)" in paragraph (a)(1) and adding in its place "(h)", by redesignating paragraph (f) as paragraph (h), by revising newly designated paragraph (h)(1), and by adding new paragraphs (f), (g), and (i) to read as follows:

§ 668.15 Additional factors for evaluating administrative capability.

* * * * *

(f)(1) Except as provided in paragraph (f)(6) of this section, an institution loses its eligibility to participate in the GSL programs if the Secretary determines that the institution's cohort default rate, for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than the applicable threshold rates.

(2) For purposes of the determinations made under paragraph (f)(1) of this section, the threshold rates are—

(i) 35 percent for each of fiscal years 1991 and 1992; and

(ii) 30 percent for fiscal year 1993 and all subsequent fiscal years.

(3) An institution that loses its eligibility under paragraph (f)(1) of this section may not participate in the GSL programs beginning on the date the Secretary notifies it that its cohort default rate exceeds the thresholds specified in paragraph (f)(2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution has lost its eligibility under paragraph (f)(1) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution that loses its eligibility to participate in the GSL

programs under paragraph (f)(1) of this section may not regain its eligibility to participate in the GSL programs, following the period described in paragraph (f)(3) of this section, until the institution—

(i) Satisfies the Secretary that it meets all requirements for participation in the GSL programs and executes a new agreement with the Secretary for participation in the GSL programs; or

(ii) Is notified by the Secretary that the notice of ineligibility is withdrawn.

(5) If the Secretary withdraws an institution's loss of eligibility pursuant to paragraph (g)(4) of this section, the eligibility of the institution is made retroactive to the date of the notice of ineligibility.

(6) Until July 1, 1994, the provisions of paragraph (f)(1) of this section are not applicable to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(g)(1) An institution wishing to appeal the loss of eligibility to participate in the GSL programs under paragraph (f)(1) of this section may submit an appeal in writing to the Secretary's designated Departmental official within 30 days after it receives notification of its loss of eligibility, demonstrating that—

(i) The calculation of the institution's cohort default rate for any of the three fiscal years relevant to the loss of eligibility is not accurate and a recalculation with corrected data verified by the cognizant guarantee agency or agencies, would produce a cohort default rate for any of those fiscal years below the threshold percentage specified in paragraph (f)(2) of this section; or

(ii) The institution has reduced its cohort default rate for each of the two most recent fiscal years for which the Secretary has calculated a cohort default rate for that institution by 50 percent of the amount by which its cohort default rate for the previous year exceeds the applicable threshold percentage specified in paragraph (f)(2) of this section.

(2) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits an appeal that addresses the criteria in paragraph (g)(1) of this section to the Secretary's designated Departmental official.

(3) The decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(4) The Secretary withdraws the notification of ineligibility to participate in the GSL programs sent to an institution under paragraph (f)(1) of this section, if the Secretary determines that the institution's appeal demonstrates that one of the factor's specified in paragraph (g)(1) of this section exists.

(5) A guarantee agency shall respond to an institution's request for verification of its default rate data for purposes of paragraph (g)(1)(i) of this section within 15 working days of the date the agency receives the institution's written request.

* * * * *

(h) * * *

(1)(i) *Cohort default rate* means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on Stafford or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on Stafford or SLS program loans received for attendance at that institution who default before the end of the following fiscal year. In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance, and, in calculating the cohort default rate, excludes any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate. For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment, the term "cohort default rate" means the average of the rates calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition. Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(ii)(A) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the fiscal year for which the rate is calculated.

(B) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iii)(A) For institutions that change status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of October 1 of the fiscal year for which a cohort default rate is being calculated.

(B) For institutions that change status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(D) For institutions that change status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

* * * * *

(i) An institution loses its eligibility to participate in the SLS program if the Secretary determines that the institution's cohort default rate for the most recent fiscal year for which such rate is available is equal to or greater than 30 percent.

* * * * *

3. Section 668.25 is revised to read as follows:

§ 668.25 Loss of institutional eligibility to participate in the Title IV, HEA programs.

(a) If an institution closes, stops providing educational instruction, or

loses its eligibility to participate in the Title IV, HEA programs it shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the effective date of closing, cessation of instruction, or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(3) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(4) Inform the Secretary of how it will provide for the collection of any outstanding loans made under the National Defense/Direct Loan, Perkins Loan, or ICL programs;

(5) Continue to distribute refunds of unearned payments for institutional charges according to § 668.22.

(b) If an institution closes or stops providing educational instruction, it shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, and unexpended Title IV, HEA program funds it has received except for its administrative allowance, if applicable; and

(2) Return to the appropriate lenders any GSL proceeds it has received but not delivered to the students or credited to the students' accounts.

(c) If an institution loses it eligibility to participate in the Title IV, HEA programs during a payment period, but continues to provide educational instruction to eligible students enrolled in its formerly eligible programs from the date that the institution lost its eligibility until the scheduled completion date of that payment period or period of enrollment, it may—

(1) For the Pell Grant and campus-based programs, use Title IV, HEA program funds in its possession or request additional funds from the Secretary, under conditions specified by the Secretary, if it does not possess sufficient funds, to satisfy any unpaid commitment made for that payment period to a student prior to the institution's loss of eligibility; and

(2) For the Stafford and SLS programs, if the proceeds of the first disbursement of a Stafford or SLS loan were delivered to the student or credited to the student's account prior to the institution's loss of eligibility, credit the student's account or deliver to the student any subsequent disbursement of that Stafford or SLS loan to satisfy any unpaid commitment made to a student for that period of enrollment for which the Stafford or SLS loan was made.

(d) For purposes of this section—

(1) A commitment under the Pell Grant Program occurs when a student is enrolled and attending the institution and has submitted a valid student aid report to the institution.

(2) A commitment under the campus-based and ICL programs occurs when a student is enrolled and attending the institution and has received a valid award letter from the institution; and

(3) A commitment under the GSL programs occurs when the Secretary or guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094)

4. Section 668.90(a)(3)(iii) is amended by removing the term "fiscal year default rate" and adding in its place the term "cohort default rate".

PART 682—GUARANTEED STUDENT LOAN PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Sections 682.410(c)(1)(iii), 682.603(c), and 682.606(b)(2) are amended by removing the term "fiscal year default rate" and adding in their place the term "cohort default rate".

[FR. Doc. 91–11122 Filed 5–10–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
May 13, 1991

Part III

Department of Education

Rehabilitation Services Administration

Rehabilitation Short-Term Training; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Short-Term Training

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities for Fiscal Year 1991.

SUMMARY: The Secretary of Education proposes priorities for fiscal year 1991 for training activities to be supported under the Short-Term Training program of the Rehabilitation Services Administration (RSA).

DATES: Comments must be received on or before June 12, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Michael Morgan, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (room 3038 Switzer Building), Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer, Washington, DC 20202–2649. Telephone: (202) 732–1400. TDD users may contact the Program Specialist via the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Short-Term Training program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided for special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to the proposed priorities described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing a project or projects that meet the priorities. RSA invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities.

The final priorities will be announced in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans With Disabilities Act (ADA)

The purpose of the Rehabilitation Act of 1973, as amended, is to develop and implement, through research, training, and services, comprehensive and coordinated programs of vocational rehabilitation and independent living for individuals with disabilities in order to maximize their employability, independence, and integration into the workplace and the community. The Americans with Disabilities Act (Public Law 101–336), signed into law on July 26, 1990, guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

In order to assist in the implementation of the national policy of equal opportunity for individuals with disabilities mandated by the ADA in a manner consistent with the Rehabilitation Act of 1973, as amended, priority will be given to projects that provide a short-term training course for pre-service educators and post-employment trainers of personnel working in State vocational rehabilitation agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities.

The short-term training must be national in scope and conducted after the publication of final regulations to implement the employment and public accommodation provisions under Titles I and III of the ADA. These regulations will be promulgated by the Equal Employment Opportunity Commission and the Department of Justice and are expected to be published by July 26, 1991.

The short-term training must provide educators and trainers with the following: (1) An understanding of the ADA and any regulations implementing the ADA. (2) Specific vocational rehabilitation and independent living skills and knowledge of services needed for assisting employers in complying with the requirements of the ADA, including, but not limited to, accessibility surveys, job accommodation, worksite modifications, reasonable accommodations, and assessment of function limitations. (3) An understanding of the legal and professional liabilities of vocational rehabilitation and independent living professionals in the provision of services and information regarding compliance with the requirements of the ADA. (4) A course outline and sample course materials that can be incorporated in courses in their undergraduate and graduate rehabilitation education programs and in-service training programs for their respective agencies or programs, including regional rehabilitation continuing education programs (RRCEP), State vocational rehabilitation agency in-service training programs, and long-term training programs under section 304 of the Rehabilitation Act.

To avoid duplication, the project must coordinate training efforts with those activities to be funded by the National Institute on Disability and Rehabilitation Research that relate to training and technical assistance for the Americans with Disabilities Act.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Survey research findings published by the University of Wisconsin-Stout Research and Training Center (*Inservice and Continuing Education Needs of Rehabilitation Facility Personnel,* 1990), as well as the 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates (September, 1989), indicate a significant shortage of qualified personnel with rehabilitation job development and job placement skills. In addition, the Secretary wishes to emphasize marketing strategies as a mechanism to encourage employers to hire and retain employees with disabilities. The impact of the Americans with Disabilities Act on business and industry will also create the need for job development and placement staff to provide technical assistance to employers on hiring and retaining employees with disabilities.

The Rehabilitation Services Administration believes that these

specialized needs for staff development in the areas of job development and job placement may be met through a concentrated training program of short duration that focuses on placement, marketing, and transferability of job skills.

The training must be designed to provide personnel in State vocational rehabilitation agencies and other rehabilitation professionals with—(1) The ability to better match client skills with employer demands in order to increase placements; (2) The knowledge to assess an individual's job skills that may be transferred to other occupational opportunities; (3) The skills to apply national and State occupational information, e.g., the information from the National Occupational Information Coordinating Council (NOICC) and State Occupational Information Coordinating Councils (SOICC), to facilitate competitive employment opportunities for individuals with disabilities; (4) The skills to develop marketing programs for the services of vocational rehabilitation agencies that will lead to improved placement outcomes of individuals with disabilities in private industry; and (5) The ability to assist private industries in the initiation of disability management programs.

The project must demonstrate potential for replication in other locations through the dissemination of training materials and protocols. After a project is funded, a manual must be produced that contains a course outline and training materials focused on the five areas listed above.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in room 3219, Mary E. Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 29 U.S.C. 774)

Catalog of Federal Domestic Assistance No. 84.246, Rehabilitation Short-Term Training

Dated: May 7, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–11227 Filed 5–10–91; 8:45 a.m.]

BILLING CODE 4000–01–M

federal register

Monday
May 13, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Interstate Highway Interchange Serving the Tulalip Indian Reservation, Snohomish County, WA; Notice of Intent to Prepare an Environmental Impact Statement (EIS)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for an Interstate Highway Interchange Serving the Tulalip Indian Reservation, Snohomish County, WA

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of intent to prepare an EIS and notice of public scoping meeting.

SUMMARY: This summary advises the public that the BIA intends to prepare an EIS for the Tulalip Tribe's proposal to construct an added point of access to Interstate 5 (I–5) at 88th Street NE. to provide crucial reservation access, improve traffic circulation on the reservation, and facilitate the tribe's economic development. Public scoping meetings will be held to receive input and preparation of this EIS. 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 EIS. Comments and participation in the scoping process are solicited.

DATES: Written comments should be received by June 12, 1991. Public scoping meetings will be held on May 29, 1991, at 7 p.m. in the Tulalip Tribe's Boardroom (Tribal Headquarters Building), 6700 Totem Beach Road, Marysville, Washington 98270, and on May 30, 1991, at 7 p.m. in the Marysville City Council Chambers (2nd floor Public Safety Building), 1635 Grove Street, Marysville, Washington 98270.

ADDRESSES: Comments should be addressed to Mr. Stanley Speaks, Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169; telephone (503) 231–2208 or FTS 429–2208.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Eggers, Area Environmental Officer, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169; telephone (503) 231–2208 or FTS 429–2208.

SUPPLEMENTAL INFORMATION: The proposed I–5/88th Street NE. interchange would be located approximately 26 miles north of Seattle, Washington on that section of I–5 that separates the Tulalip Indian Reservation on the west from the City of Marysville on the east. The location is 1.7 miles north of the 4th Street interchange and 1.6 miles south of the 116th Street NE. interchange. A diamond configured interchange would be constructed with north and south on/off ramps, and a four lane I–5 overpass. The eastern approach of the 88th Street NE. connector includes construction of a bridge replacement over Quil Ceda Creek.

The purpose and need for this action is to provide crucial access to the Tulalip Reservation for a major tribal economic development project. Planned improvements for the Tulalip Tribe's Industrial/Business Park can thereby proceed; promoting a long-term, stable source of revenue and furthering economic development within the Tulalip Indian Reservation. The alternative access provided will significantly improve reservation traffic circulation, emergency vehicle response time and business accessibility. At present, the reservation's main entry/egress is the 4th Street interchange which is operating at or above its design capacity and has been improved to its practical limits.

In addition to improving the level of service at both the 4th Street and 116th Street NE. interchanges, construction of the I–5/88th Street NE. interchange will remedy traffic access and circulation impediments in the neighboring City of Marysville. The interchange's easterly connector will also provide vitally needed access to eastern Snohomish County and State Route 9.

The two principal alternatives are to construct the project as planned or not to construct the project. Other alternatives will be developed from comments received on this notice and after scoping meetings are held. The major impact to be expected if the proposed action is implemented will be on the operation of Interstate 5.

The significant issues to be covered during the scoping and planning process will include project need and purpose, project impact on I–5 traffic flow, regional and community growth, and preservation of wetlands.

The Tulalip Tribe has requested that the EIS prepared for the purpose of NEPA compliance also be made sufficient for utilization by participating State and local agencies complying with Washington's State Environmental Policy Act (SEPA). It is BIA's intention to assume lead agency status and to comply with this request. Therefore, comments should be directed at both NEPA and SEPA compliance.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969, as amended (43 U.S.C. 4373 et seq.); Council of Environmental Quality Regulations (40 CFR, parts 1500 DM 1–7, and 1508); Department of the Interior Procedures (516 DM 1–7), and the BIA's Handbook (30 BIAM Supplement 1). The BIA will be the lead Federal Agency because it will fund a major portion of the project. However, the Federal Highways Administration and Washington Department of Transportation will act as cooperating agencies since each has a major role in project review and approval.

We estimate the Draft Environmental Impact Statement will be made available to the public by mid-summer, 1991.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs, by 209 DM 8.

Dated: May 6, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–11222 Filed 5–10–91; 8:45 am]

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federal register

Monday
May 13, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23746; Notice No. 91-12]

RIN 2120-AD48

Airworthiness Standards; Small Airplanes With Stall Speed Greater Than 61 Knots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the 61-knot stall speed limitation requirement applicable to normal, utility, and acrobatic category single-engine and certain multiengine small airplanes of less than 6,000 lbs. maximum weight. The proposal would require additional occupant protection requirements for those airplanes with a stall speed exceeding 61 knots. This proposal retains the current level of airplane occupant protection and permits the design and type certification of higher performance, single-engine airplanes capable of attaining an increase in cruise speeds with better specific fuel consumption. This improvement in performance and operating economics cannot be achieved without substantial increased cost and complexity if these designs are constrained by the present 61-knot stall speed limitation.

DATES: Comments must be submitted on or before September 10, 1991.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23746, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23746. Comments may be inspected in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Victor F. Sokoloski, Standards Office (ACE-112), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23746." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The current airworthiness standards for small airplanes, part 23 of the Federal Aviation Regulations (FAR), contain a requirement (§ 23.49(b)) that limits the stall speed (at maximum weight in the landing configuration) of single-engine and certain small multiengine airplanes to values not exceeding 61 knots (70 mph). This requirement dates back more than 50 years to the original Civil Air Regulations (CAR). At that time, it was considered necessary to protect "air passengers" by ensuring that passenger-carrying airplanes did not land at higher speeds. This is evident from early Civil Aviation Authority (CAA) publications, such as the November 1951, appendix B of the Civil Aeronautics Manual 8 (CAM 8). A copy of this report is available in the docket. The CAA report provided the following guidance on stall speed:

Stalling Speed Limit. The stalling speed at maximum weight in the configuration used during normal operations should not exceed 70 m.p.h.

Recommendation. Studies of forced landings show that, all other things being equal, the fatality rate is proportional to the stall speed, i.e., as the stall speed increases, the number of fatalities per accident increases. The record indicates that fatality rate increases rapidly above approximately 55 m.p.h. Therefore, it is strongly recommended that the stall speed not exceed 55 m.p.h. in the landing configuration at maximum weight.

As the airworthiness regulations evolved, the stall speed limit in the landing configuration was removed for certain airplanes. First it was eliminated for large, multiengine transport airplanes that had the capability to operate safely after the loss of power from one engine, and later it was eliminated for small multiengine airplanes that meet a one-engine-inoperative climb performance requirement at 5,000 feet altitude in the cruise configuration. The 61-knot stall speed limitation was retained for all single-engine airplanes and for multiengine airplanes with a maximum weight not exceeding 6,000 pounds that do not meet the one-engine-inoperative climb requirement of § 23.67(b)(1). The requirement was retained because an engine failure in these airplanes could result in a forced landing where occupant injury is more likely to occur. The retention of the limit on stall speed provides a correspondingly lower landing speed and minimize the kinetic energy that must be absorbed in emergency landings. Thus a degree of crash protection is provided for the passengers and crew. Airplanes with the ability to climb and cruise after the failure of one engine are generally not

forced into this emergency landing situation and, therefore, are permitted to have higher stall speeds.

The FAA has received petitions for exemption from § 23.49(b), the 61-knot stall speed requirement, applicable to type certification of single-engine airplanes. The FAA has also received many inquiries from aircraft manufacturers concerning possible relief from this requirement. The petitioners claim that this relief is needed to obtain the full performance and economic advantages of incorporating the latest turbine-powered design technology in single-engine airplanes and to provide a higher cruise speed with lower specific fuel consumption.

Based on the information contained in these petitions and inquiries, the FAA requested an independent study of the 61-knot stall speed issue by the "Small Aircraft Stall Speed Study Group." The study group was formed in December 1982 and consisted of Professor Robert W. Simpson, Massachusetts Institute of Technology (MIT), as Chairperson, and other professionals with expertise in aircraft design and airworthiness from various areas of the aviation community. The group also had representation from the FAA, National Transportation Safety Board (NTSB), and the National Aeronautics and Space Administration (NASA). The study group's report to the FAA was published in March 1983 and a copy of this report is available in the docket. The study group's report provided several recommendations, one of which was to remove the existing 61-knot stall speed requirement.

Also, the American Institute of Aeronautics and Astronautics' (AIAA) workshop on Revitalization of General Aviation in the United States (December 1989) cites only two rule changes that should be considered for this revitalization. One of these is relief from the 61-knot stall speed limitation. A copy of the AIAA report is available in the docket.

The Small Aircraft Stall Speed Study Group's recommendations were based on a review of the FAA accident/incident data base, consisting of 37,530 reports, for the 6-year period 1976–1981. The study group's analysis still is considered valid. The data studied were for emergency/forced landings, generally off the airport. The most significant results of that study showed that:

a. The percentage of fatal emergency landing accidents, where the pilot retained control until the crash, is small: 2.7 percent for single-engine and 3.5 percent for twin-engine airplanes.

b. Only 1 percent of fatal emergency landing accidents, where the pilot retained control until the crash, were caused by engine failures.

c. Fuel mismanagement was more significant than engine failure as a cause of all emergency landings, accounting for 50 percent.

d. The incidence of fatal accidents was higher for twin-engine airplanes than for single-engine airplanes in all categories of emergency/forced landings.

e. Occupant survivability in emergency landing accidents does not show a clear correlation to the stall speed. The outcome of an emergency landing is affected by many other factors, such as: structural crashworthiness of the airplane type, pilot skills, type of restraint system, actual speed at impact, weather, type of terrain at impact site, altitude of emergency, glide ratio of the airplane, etc.

In 1982, the General Aviation Safety Panel (GASP), which represented a broad constituency from the general aviation community, was formed for the purpose of recommending regulatory and nonregulatory means by which the FAA could improve general aviation safety. Also in 1982, the General Aviation Manufacturers Association (GAMA) submitted a petition for rulemaking to FAA to require shoulder harnesses in small airplanes. After several years of study and development of the interrelated recommendations of GAMA, GASP, and the Small Aircraft Stall Speed Study Group, the FAA amended part 23 with amendment 23–32 (50 FR 46872, November 13, 1985) and amendment 23–36 (53 FR 30802, August 15, 1988) to increase greatly airplane crashworthiness with new or increased requirements for: shoulder harnesses, dynamic testing of seats and restraint systems, sidefacing seats, retention of items of mass, restraint of baggage and cargo, turnover protection, external doors and emergency exits, and fuel tank installation. In addition, the FAA has recently published Notice No. 85–7A (55 FR 7280, February 28, 1990), Crash Resistant Fuel Systems for part 23 airplanes.

During the development of the airworthiness standards proposed by this rulemaking action, the FAA examined whether pilot training and qualification requirements might be necessary as a result of providing an alternative to the 61-knot stall speed limitation for single-engine airplanes. The Small Aircraft Stall Speed Study Group proposed in its March 1983 report that § 61.31(e) (General limitations, high performance airplanes) be amended to require additional flight instruction for pilots in command of a single-engine airplane that has a power-off stall speed in the landing configuration of more than 61 knots. The FAA studied this recommendation and concluded that the proposed additional flight instruction was already included in a normal flight training curriculum and that it did not relate to an increased stall speed. Regardless of the stall speed, all part 23 airplanes are certificated to the same airworthiness standards applicable to flight characteristics and performance, with the exception of the spin requirements of § 23.221 that depend on airplane category and number of engines. Therefore, an increase in stall speed above 61 knots should not, by itself, require increased pilot qualifications.

It is possible to design an airplane with higher wing loadings and still comply with the 61-knot stall speed requirement by incorporating larger and more complex high-lift systems. The use of such complex, high-lift systems may result in a reduction of the low speed flying qualities and lessen the level of safety of both normal and emergency operations in approach and landing conditions; however, the applicable part 23 airworthiness requirements apply. The use of complex high-lift systems may well increase the design, production, and maintenance cost of an airplane.

If the proposed rule change is adopted, the FAA expects that very few new single reciprocating engine airplanes will be introduced with a stall speed in the landing configuration (V_{s0}) greater than 61 knots. In recent years, most high performance small airplane designs have been turbine powered. Almost all of the reciprocating engine airplanes in production are based on designs that have been in existence for many years. Only a few have a V_{s0} exceeding 61 knots. The size of reciprocating aircraft engines has generally leveled off at 435 horsepower, thus limiting their application in high performance airplanes.

The 61-knot stall speed limit may have outlived its original reason for existence, i.e., to provide some protection for "air passengers" at a time (over 50 years ago) when airplane crashworthiness was minimal, engine reliability was comparatively low, airplane performance was often minimal, airfields were rudimentary, runways were shorter, and landing approach aids were minimal or nonexistent, etc. In the intervening years, all of these factors have improved to the extent that the 61-knot stall speed limit could be exceeded

in part 23 airplanes without a degradation of safety when additional compensating occupant protection requirements are incorporated. This would permit the design and certification of faster, more efficient high performance single-engine airplanes utilizing the turbine engines available today.

This NPRM proposes an alternative to the current 61-knot stall speed requirement of § 23.49(b). The proposed alternative would permit both multiengine airplanes with a maximum weight not exceeding 6,000 pounds that do not meet the requirement for positive one-engine-inoperative climb performance and single-engine airplanes to be type certificated with a stall speed of more than 61 knots. This proposed amendment to the 61-knot stall speed requirement would require these single-engine, and multiengine, airplanes to incorporate crashworthiness enhancements that would provide airplane occupant protection equivalent to that provided occupants of similar airplanes having a stall speed not exceeding 61 knots. If this proposal were adopted, applicants would have the option of selecting the stall speed (and the corresponding occupant protection requirements) that is best for their particular airplane design.

General Discussion of Proposals

Section 23.49

The FAA proposes to amend part 23 of the Federal Aviation Regulations to permit type certification of both single and multiengine small airplanes with stall speeds greater than 61 knots, provided they incorporate additional occupant protection provisions to compensate for the increased kinetic energy dissipated during a forced landing. This would be accomplished by amending § 23.49 to require compliance with certain additional occupant protection requirements included in this proposal.

There are a number of airplane development programs under way that will expand the use of turbine engines in single-engine airplanes. More advanced types of engines with corresponding increases in power or thrust and improved fuel efficiency are also under development. Because these engines provide a significant increase in power-to-weight ratio and operate more efficiently at high altitudes, increased wing loadings are required for fuel efficient cruise. The current 61-knot stall limit is a constraint to the development of these airplanes incorporating such propulsion and aerodynamic improvements.

Section 23.67

This proposal would clarify the change made to § 23.67 by amendment 23–42 (56 FR 344, January 3, 1991). The provisions of § 23.67(b)(1) require that all airplanes with a stall speed of more than 61 knots meet the one-engine-inoperative climb gradient requirements. Therefore, a change to §§ 23.67 (b)(1) and (b)(2) is required to clarify that multiengine airplanes of less than 6,000 pounds maximum weight that include the improved occupant protection of § 23.562(d) and have a stall speed greater than 61 knots would only comply with the climb gradient determination requirements of § 23.67(b)(2)(i). This proposal does not change the one-engine-inoperative climb requirements.

Section 23.562

During the development of § 23.562, Emergency landing dynamic conditions, which was incorporated in amendment 23–36 (53 FR 30802, August 15, 1988), the supporting technical data presented by the NTSB was obtained from data for small airplanes whose stall speeds were not greater than 61 knots. Forced landings of airplanes whose stall speeds are greater than 61 knots will expose the airplanes' occupants to an increase in kinetic impact energy. The increase in kinetic impact energy is proportional to the square of the stall speed of the airplane in the landing configuration. To compensate for this increased energy level, additional occupant protection requirements beyond those stated in § 23.562 are included in this proposal. The emergency landing dynamic conditions express the impact energy level in terms of an impact velocity. The increased occupant protection requirement in this proposal is obtained by multiplying the ultimate load factors of § 23.561(b) and the peak deceleration of the seat/restraint system test of § 23.562(b)(1) by the square of the ratio of the increased stall speed to the stall speed of 61 knots. The use of the velocity ratio squared to obtain the increased occupant protection requirement is consistent with an analytical methodology found in the U.S. Army's Aircraft Crash Survival Design Guide, USARTL–TR–79–22C, Volume III—Aircraft Structural Crashworthiness, which addresses the conservation of momentum associated with an aircraft impact that has earth plowing. A copy of volume III of the design guide is available in the docket.

The FAA proposes to limit the maximum deceleration for the seat/restraint system dynamic test to 32g, which is the value that the FAA is considering proposing in a separate NPRM being developed for commuter category airplanes. The 32g limitation will be reached at a stall speed (V_{so}) of 79 knots. At higher stall speeds, this maximum deceleration will remain constant at 32g.

In addition, the static upward ultimate load factor for acrobatic category airplanes will be limited to a value of 5.0g. Because of the maneuvers they perform, acrobatic category airplanes are designed to higher maneuvering limit load factors (both positive and negative) than normal and utility category airplanes. The maximum upward value required in this proposed rule for normal and utility category airplanes is 5.0g and is consistent with loads resulting from the negative limit load factor required by § 23.337 for acrobatic category airplanes. Under emergency landing conditions, all categories of small airplanes would experience similar forces; therefore, requiring acrobatic airplane seats to be designed to higher load factors would not be warranted.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that

analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact Assessment. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Economic Evaluation

This evaluation examines the impact of an NPRM that would amend part 23 of the Federal Aviation Regulations (FAR). For normal, utility, and acrobatic category airplanes, § 23.49(b) currently requires that the stall speed (V_{s0}) may not exceed 61 knots for both single-engine airplanes and those multiengine airplanes that have a maximum weight of 6,000 pounds or less and cannot meet the one-engine-inoperative minimum climb gradient specified in § 23.67(b). The proposed rule would establish increased occupant restraint and crashworthiness requirements for airplanes to be type certificated with a stall speed of more than 61 knots under specific circumstances.

For airplanes designed with a V_{s0} greater than 61 knots, the proposal would require applicants to enhance the airplane's crashworthiness to a level that would provide equal levels of protection to occupants of aircraft with higher stalling speeds and to occupants of aircraft that do not exceed a 61-knot stall speed. In particular, the structural load factor requirements of § 23.561(b) and the peak deceleration requirements of the seat/restraint system test under § 23.562(b)(1) would have to be increased for higher stall speed airplanes by the square of the ratio of the proposed stall speed to a stall speed of 61 knots.

In addition to these substantive changes, the proposed rule also would make conforming changes to the one-engine-inoperative climb requirements of § 23.67(b). No significant costs or benefits are attributed to these provisions, and they are not considered further in the evaluation.

Significantly more efficient airplanes could be developed by employing the advantages of higher wing loadings if the affected airplanes were not limited to a stall speed of 61 knots. The potential benefits of removing the stall speed limit would vary with individual airplane designs, but case specific analysis has shown that a 20 percent gain in specific fuel consumption could be achieved. Evidence suggests that this efficiency gain, due to higher wing loading, could also be accomplished by incorporating a very high-lift flap system (wide-span trailing edge flaps and leading edge Kruger flaps) and still remain within the 61-knot limit. However, if higher wing loadings were combined with larger and more complex high-lift flap systems in order to meet the 61-knot requirement, there may be accompanying penalties in low speed handling qualities. These penalties may have a detrimental effect on both normal and emergency operations in approach and landing conditions.

In order to retain the current level of airplane occupant protection, the proposal would require additional occupant protection for airplanes that this rule would allow to be certificated with stall speeds above 61 knots. Specific estimates of the potential structural and weight penalty costs that could be incurred would be design specific and are not available for this evaluation. However, the proposal would establish requirements that would apply only to the airplane design elected by the applicant. By definition, the proposed amendment, including any associated costs, would be applicable only to applicants who have determined that it would be in their own best interests to design an airplane with a V_{s0} greater than 61 knots. The proposal would provide the applicant the option of selecting the combination of stall speed and occupant protection requirements that would be most cost-beneficial and best suited for its particular airplane design. The FAA believes, therefore, that the benefits of the proposed rule would exceed the costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that the proposed change to part 23 would not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a small aircraft manufacturer is one with 75 or fewer employees. A substantial number is a number that is not fewer than 11 and is more than one-third of the small entities that would be subject to the proposed rule. A review of domestic general aviation manufacturing companies indicates that only 2 companies meet the size threshold of 75 employees or fewer. The proposed amendments to part 23 will therefore not affect a substantial number of small entities.

International Trade Impact Analysis

The provisions of this proposed rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by part 23 requirements and could, therefore, implement the provisions of the proposed rule solely on the basis of competitive considerations.

Federalism Implications

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

Conclusion

The FAA proposes to revise the airworthiness standards to permit single-engine and certain multiengine small airplanes of less than 6,000 pounds maximum weight to exceed the present 61-knot stall speed limitation. Airplane designs exceeding this limitation would be required to incorporate additional occupant protection to compensate for the higher kinetic energy that must be dissipated during emergency landings. This proposal would retain the current level of airplane occupant protection and permit the design and type certification of higher performance, single-engine airplanes capable of attaining an increase in cruise speeds with better specific fuel consumption. This improvement in performance and operating economics cannot be achieved without substantial increased cost and complexity if these designs are constrained by the present 61-knot speed limitation.

For the reasons discussed above, and based on the findings in the Regulatory Flexibility Determination and the

International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS; NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.49 is amended by revising the introductory text of paragraph (b); by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f); and by adding a new paragraph (c) to read as follows:

§ 23.49 Stalling speed.

* * * * *

(b) Except as provided in § 23.49(c), v_{s0} at maximum weight may not exceed 61 knots for—

* * * * *

(c) All single-engine airplanes, and those multiengine airplanes of 6,000 pounds or less maximum weight with a v_{s0} of more than 61 knots that do not meet the requirements of § 23.67(b)(2)(i), must comply with § 23.562(d).

3. Section 23.67 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 23.67 Climb: One engine inoperative.

* * * * *

(b) * * *

(1) Each airplane of more than 6,000 pounds maximum weight must be able to maintain a steady climb gradient of at least 1.5 percent at a pressure altitude of 5,000 feet at a speed not less than 1.2 v_{s1} and at standard temperature (41° F) with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) For each airplane of 6,000 pounds or less maximum weight, the following apply:

(i) Each airplane that meets the requirements of § 23.562(d), or that has a v_{s0} of 61 knots or less, must have its steady climb gradient determined at a pressure altitude of 5,000 feet at a speed of not less than 1.2 v_{s1}, and at standard temperature (41° F), with the airplane in the configuration prescribed in paragraph (a) of this section.

(ii) Except for those airplanes that meet the requirements prescribed in § 23.562(d), each airplane with a v_{s0} of more than 61 knots must be able to maintain the steady climb gradient prescribed in paragraph (b)(1) of this section.

* * * * *

4. Section 23.562 is amended by revising the introductory text of paragraph (b), by redesignating paragraph (d) as (e), and by adding a new paragraph (d) to read as follows:

§ 23.562 Emergency landing dynamic conditions.

* * * * *

(b) Except for those seat/restraint systems that are required to meet paragraph (d) of this section, each seat restraint system, for crew or passenger occupancy in a normal, utility, or acrobatic category airplane, must successfully complete dynamic tests or be demonstrated by rational analysis supported by dynamic tests, in accordance with each of the following conditions. These tests must be conducted with an occupant simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR part 572, subpart B, or an FAA-approved equivalent, with a nominal weight of 170 pounds and seated in the normal upright position.

* * * * *

(d) For all single-engine airplanes with a v_{s0} of more than 61 knots at maximum weight, and those multiengine airplanes of 6,000 pounds or less maximum weight with a v_{s0} of more than 61 knots at maximum weight that do not comply with § 23.67(b)(2)(i):

(1) The ultimate load factors of § 23.561(b) must be increased by multiplying the load factors by the square of the ratio of the increased stall speed to 61 knots. The increased ultimate load factors need not exceed the values reached at a v_{s0} of 79 knots. The upward ultimate load factor for acrobatic category airplanes need not exceed 5.0g.

(2) The seat/restraint system test required by paragraph (b)(1) of this section must be conducted in accordance with the following criteria:

(i) The change in velocity may not be less than 31 feet per second.

(ii) The peak deceleration (g_p) of 19g and 15g must be increased and multiplied by the square of the ratio of the increased stall speed to 61 knots:

$g_p = 19.0\,(V_{s0}/61)^2$ or $g_p = 15.0\,(v_{s0}/61)^2$

The peak deceleration need not exceed the value reached at a v_{s0} of 79 knots.

(iii) The peak deceleration must occur in not more than time (t_r), which must be computed as follows:

$$t_r = \frac{31}{32.2(g_p)} = \frac{.96}{g_p}$$

where—

g_p = The peak deceleration calculated in accordance with paragraph (d)(2)(ii) of this section

t_r = The rise time (in seconds) to the peak deceleration.

* * * * *

Issued in Washington, DC on May 1, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91–10877 Filed 5–10–91; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
May 13, 1991

Part VI

Environmental Protection Agency

40 CFR Part 152

Criteria for Classifying Pesticides for Restricted Use Due To Ground Water Concerns; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36172; FRL 3599-2]

RIN 2070-AB60

Criteria for Classifying Pesticides for Restricted Use Due to Ground Water Concerns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes two options for adding new criteria for selection of pesticide products as candidates for restricted use classification. Pesticide products classified for restricted use under authority of section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) may be purchased and used only by certified pesticide applicators or individuals under their supervision. The proposed criteria would require consideration of restricted use for pesticide products that may contaminate ground water. One option would add criteria consisting of either the measured persistence and mobility of an ingredient of a pesticide product, or the detection of the ingredient in ground water in at least three different counties. This is EPA's preferred option. Another option would consider an ingredient's persistence and mobility, and/or (depending on the product's data base) whether the ingredient had been detected in ground water in at least three different counties at levels greater than 10 percent of the Maximum Contaminant Level (MCL) or lifetime Health Advisory established under the Safe Drinking Water Act, or in 25 or more wells in 4 or more States.

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: Submit written comments, bearing the document identification number "OPP-36172", by mail to: Public Information Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, deliver comments to: Rm. 246, CM 1B 2, 1921 Jefferson Davis Highway, Arlington VA.

Information submitted in any comment concerning this proposed rule may be claimed to be confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment with the CBI deleted must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Attorney-Advisor, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 1H3, WF 1B 1, 3d Floor, 2805 Jefferson Davis Highway, Arlington, VA (703) 308-8003.

SUPPLEMENTARY INFORMATION:

I. Background of the Restricted Use Program

As part of the FIFRA amendments of 1972, Congress gave EPA authority to classify certain pesticides for restricted use if unrestricted use may cause unreasonable adverse effects. EPA may require that a pesticide whose use is restricted be applied only by or under the direct supervision of a certified applicator or under other restrictions set by EPA. FIFRA section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C), provides EPA with the following authority to classify pesticides for restricted use:

> (C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:
>
> . . . . .
>
> (ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restrictions may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation . . . .

Congress added this authority to give EPA additional flexibility to regulate pesticides. Restricted use provides a means to maintain the benefits of use by imposing a variety of restrictions that will protect health and the environment and avoid the need for cancellation. See S. Rep. No. 838, 92d Cong., 2d Sess. 21 (1972); H.R. Rep. No. 511, 92d Cong., 1st Sess. 21 (1971). One restriction EPA may impose is classification of a pesticide product as restricted to use by or under the direct supervision of a certified pesticide applicator.

FIFRA section 11(e), 7 U.S.C. 136i(e), creates two classes of certified applicators, commercial and private. Congress anticipated that certification of applicators would be an important means for reducing both misuse and overuse of pesticides. Applicators who misuse pesticides could have their certification withdrawn. Withdrawing certification would seriously affect the business of commercial applicators and would prevent both commercial and private applicators from obtaining and using restricted pesticides. Moreover, the education and training required for certification provides an opportunity for reducing the hazards to humans and the environment from both misuse and overuse. See H.R. Rep. No. 511 at 21-22 (1971).

II. Current Regulations

The current regulation for restriction of end-use pesticide products to use by certified applicators is contained at 40 CFR 152.170. Sections 152.170(b) and (c) specify that a pesticide product will be considered for restricted use classification if any of several criteria are met. These criteria are based largely on the acute toxicity a pesticide product presents to man or non-target wildlife, or the chronic or delayed toxicity a pesticide product may pose to man.

Current §§ 152.170(a) and (e) set out requirements for restriction which are applicable to all classification actions. Section 152.170(a) specifies that an end-use pesticide product considered for restricted use will, in fact, be classified if further evaluation shows that restriction of the product would decrease the risk of adverse effects, the decrease in risks as a result of the restriction would exceed the decrease in benefits, and the labelling of the product will not be adequate to mitigate the risks.

Section 150.170(e) requires that labelling of an end-use product may be judged adequate only if several criteria are met, including: The directions for use must not require operations so complex that special training or experience is needed to perform them; the directions must not require equipment unavailable to the general public; failure to follow the directions in a minor way would result in few or no significant adverse effects; failure to follow directions for use would result in few or no significant

adverse effects of a delayed or indirect nature via persistence or pesticide movement.

Pursuant to §§ 152.170(a)(3) and (4), EPA determines whether restriction would decrease the risk of adverse effects and, if so, whether the resulting decrease in risk of using the pesticide exceeds the decrease in benefits. To determine whether restriction of a pesticide product can reduce the risk of an adverse effect, EPA considers the training, experience, and equipment available to certified applicators which enable them to follow label directions designed to decrease the risk. EPA also considers the possibility that, because they have been trained to be aware of environmental effects, or because their livelihood may depend on it, certified applicators are more motivated to follow label directions, in addition to being more able to follow them.

In evaluating the degree of risk reduction achieved by restricting a use, EPA focuses on the types of risks that could be reduced by restriction. As a general matter, this has included reduction of risks to the applicator, as well as reduction of risk to non-applicators, fish and wildlife, and nontarget species. Conversely, in evaluating the impacts which restricting a use has on benefits, EPA focuses on benefits which would be lost if the use were restricted and also considers costs which would be increased as a result of restriction. An important concern is the extent to which the imposition of a restriction will limit access to, or the availability of, a product, or increase the cost of using it.

The decision whether to classify a pesticide for restricted use may also occur in the context of an evaluation of the overall risks and benefits associated with a use under FIFRA sections 3 and 6(b), rather than in the context of an incremental risk benefit analysis under 40 CFR 152.170(a). Evaluations of a pesticide's overall risks and benefits occur, for example, in the context of the Special Review process. Classification will be appropriate in a situation where, but for classification and imposition of restrictions, the risks of a use would exceed the benefits of the use. Thus, the option of restricting the use of a pesticide may allow the Agency to register, or continue the registration, of a product whose use may otherwise have to be denied or cancelled.

III. The Proposals

This proposal would add criteria to those in 40 CFR 152.170(b) stating that EPA may consider classifying a pesticide for restricted use if any of its ingredients has the reasonable potential for reaching ground water on a widespread basis. This Unit discusses two proposals (Options 1 and 2) and the rationale for each. The public docket for this proposal contains those documents cited here which are not widely available.

Pesticide ingredients discussed in these proposals include chemical components of a pesticide product, and metabolites and degradates of those components. In recent years pesticide ingredients have been detected in ground water. Such contamination has resulted from leaching of pesticides (both before and after applications), spills, misuse, improper disposal and other factors.

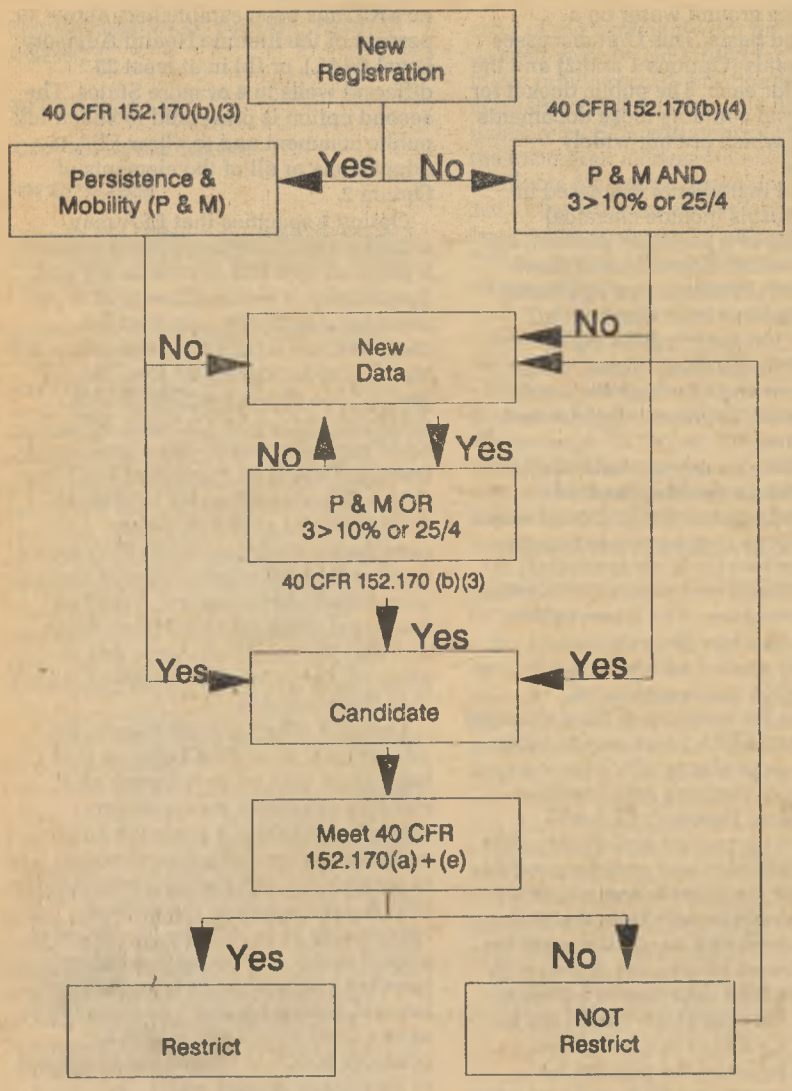
EPA believes early consideration of ways to reduce the likelihood of widespread, unacceptable ground water contamination is appropriate because, once ground water is contaminated, it may be difficult and expensive to reduce the contamination. The intent of the criteria is to allow the public and industry to predict which pesticide products EPA may consider as candidates for restriction. They will also guide internal EPA processes to focus attention on products which have a real possibility of meriting restricted use classification. However EPA will propose restricted use action only after further evaluation and only for products which meet the criteria and which it believes would benefit from restriction because restriction would decrease the risk of adverse effects, the decrease in risks exceed the decrease in benefits and label changes alone would not be adequate. Unit V of this preamble discusses in detail the process for determining whether EPA will propose the restriction of a candidate. However, this proposal does not discuss any specific products.

EPA is proposing two alternative approaches for adding new criteria for selecting pesticide products as candidates for restricted use classification due to ground water concerns. The first approach (Option 1) would add the measured persistence and mobility of an ingredient of a pesticide product, or the detection of an ingredient in ground water in three different counties as criteria. This is EPA's preferred approach. The risk basis of the second approach is more empirical (Option 2), and would add as criteria the measured persistence and mobility of an ingredient and/or (depending on the product's data base) whether the ingredient was found either: (a) In three or more counties at levels greater than 10 percent of the Maximum Contaminant Level (MCL) established under the Safe Drinking Water Act, or if no MCL has been established, above 10 percent of the lifetime Health Advisory Level (HAL), or (b) in at least 25 different wells in 4 or more States. The second option is presented to solicit full public comment and to allow EPA to adopt some or all of the elements of Option 2.

Option 1 specifies that EPA may consider restricting a pesticide product if either of two sets of criteria are met. Specifically, it would allow EPA to consider classifying a product for restricted use if both the persistence and mobility of an ingredient from that product are above specified levels. Alternatively, under Option 1, EPA could consider classifying a product for restricted use if an ingredient has been detected in ground water in at least three different counties. Before considering such detections EPA would confirm that the monitoring and analysis was performed by trained, qualified personnel using accepted procedures and that the detections were due to pesticidal activities as discussed in Unit V of this preamble.

Option 1 offers at least three main advantages. First, EPA believes that laboratory data on persistence and mobility are useful measures for predicting whether a pesticide has the potential for reaching ground water. Use of persistence and mobility would allow EPA to take action at the earliest opportunity to reduce the likelihood of ground water contamination before possible contamination increases. Second, basing Option 1 on detections at any level would allow EPA to consider action to reduce the likelihood of significant ground water contamination at the earliest possible time once contamination has been detected. Third, Option 1 is simpler to understand and administer and depends on less monitoring data than Option 2. Such simplicity may be appropriate in this rule because the criteria proposed are a screen for selecting candidates which will be considered for restricted-use. The main disadvantage of Option 1 is that it may result in EPA considering restricting some pesticide products whose ingredients may never result in unreasonable adverse effects on human health or the environment. In addition, since this approach is based on potential for contamination, it does not utilize as a trigger information on the severity of ground water contamination or the hazard associated with the pesticide.

Under Option 2, EPA would consider restricting a product's use based on three sets of criteria; these criteria are combined in varying ways under



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different circumstances. The first criteria, as in Option 1, would be measured persistence and mobility data exceeding specified levels. The second criterion would be whether an ingredient has been detected in ground water in at least three counties above 10 percent of the Maximum Contaminant Level (MCL) if one has been established by EPA under the Safe Drinking Water Act, or if not, above 10 percent of a proposed or final lifetime Health Advisory Level (HAL). EPA would confirm these detections as in Option 1. The third criterion would be whether an ingredient has been detected, at any level, in 25 or more wells in 4 or more States.

For registered pesticides for which EPA does not receive new persistence, mobility or monitoring data, EPA would consider restricting the use of a pesticide that meets the following criteria: It is (1) Persistent and mobile, and (2) monitored levels of contamination either (a) exceed 10 percent of the MCL or HAL in at least 3 counties, or (b) occur in 25 or more wells in 4 or more States (see Unit IV of this preamble).

In the case of new registrations and for currently registered pesticides where new data (i.e. any new persistence, mobility or monitoring data) is submitted after promulgation of this rule, EPA would consider restricting the use of a pesticide if the following criteria are met: It is (1) Persistent and mobile, or (2) monitored levels of contamination either (a) exceed 10 % of the MCL or HAL in at least three counties, or (b) occur in 25 or more wells in 4 or more States. Option 2 is depicted in the following chart:

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Both Option 1 and 2 apply the same criteria to pesticide products undergoing registration for the first time. Since EPA will not possess ground water monitoring data for pesticides before they are registered, these products would be considered for restricted use based solely upon data indicating both persistence and mobility.

Option 2 offers several advantages. The first advantage is allowing EPA to take action to prevent further ground water contamination when a developing pattern of contamination shows that an ingredient has the potential to rise to levels which may pose unacceptable health risks. This potential is indicated by detection of the ingredient in three diverse locations at 10 percent of the EPA health standard (i.e., the MCL or HAL). The second advantage is that this option would allow EPA to prevent further ground water contamination by an ingredient when a developing pattern shows that it has the potential for exposing large numbers of people at low levels of contamination. The third advantage offered by Option 2 when EPA receives new data on the persistence or mobility of the ingredient is that it would allow EPA to take early action to reduce any ground water contamination before possible contamination occurs in ground water.

In contrast to Option 1, unless EPA has new persistence, mobility or monitoring data, Option 2 would avoid consideration of restricted use by EPA for chemicals which do not have both the potential for ground water contamination as measured by persistence and mobility data and either (a) the potential for exposure resulting in lifetime health effects on humans (as measured by detection of a fraction of the MCL or HAL), or (b) the demonstrated potential for exposing large numbers of people. Consequently, an advantage under Option 2 could be that the products considered for restricted use may more closely match those that are actually restricted by EPA after evaluation of the risks and benefits of restricting the specific product (see Unit IV of this preamble). The main disadvantage of Option 2 is that it depends more heavily than Option 1 on the availability of ground water monitoring data which is representative of the level and/or prevalence of an ingredient in ground water. Under Option 2, there is a greater possibility that lack of representative ground water data may allow low level contamination to occur before EPA considers restricted use.

To varying degrees, both of these options can result in taking action to reduce the likelihood of unacceptable ground water contamination. By identifying appropriate candidates for restricted use, EPA may avoid more stringent actions necessary to mitigate the possibility that ground water contamination may pose unreasonable adverse effects on human health and the environment.

EPA is interested in receiving comments on all scientific and policy aspects of the two approaches. For example, are these the right criteria for identifying pesticide products posing the greatest ground water risks? Can the reduction in risks outweigh the costs associated with using certified applicators (or someone under their supervision)? EPA is also interested in comments on the relationship between the two options and the overall approach proposed in EPA's Pesticides and Ground Water Strategy (the Strategy). Are there other risk-based criteria that EPA could adopt that would be defensible, easy to apply, and accomplish a purpose similar to the options presented? What potential does restricting the use of a pesticide product to use by certified applicators have for reducing misuse or inappropriate applicator and mixer/loader practices?

EPA is also interested in comments on the specifics. Should EPA base its criteria only on potential for exposure, as in Option 1, or should EPA consider demonstrated potential for significant exposure to small numbers of people and potential for exposure which may not be significant but may affect large numbers of people, as in Option 2? Should EPA base the criteria on laboratory persistence and mobility data for new pesticides and detections of pesticide ingredients in ground water for existing chemicals? Are the standards for persistence and mobility discussed in Unit IV of this preamble appropriate? Is detection in 3 different counties an appropriate standard for use in Option 1 and Option 2? Is a standard other than detection in 3 counties appropriate for use in discerning if ground water contamination has occurred in hydrogeologically distinct locations? What factors support a larger or smaller number of detections? Is the extra 10 fold safety factor (applied via use of 10 percent of the MCL/HAL as a trigger) appropriate, or is a risk-based trigger not desireable at all? Is detection in at least 25 wells in 4 or more States an appropriate indicator of potential for exposure to large numbers of persons at low levels? When an ingredient is not persistent, or not mobile, should EPA consider restricted use when the ingredient is found in ground water in three counties (Option 1), or in three counties above the MCL/HAL (Option 2), as discussed later in this Unit? In Option 2, should EPA use different criteria (i.e. persistence and mobility or detections, versus persistence and mobility and detections) depending on the date of receipt of data (i.e. new data as opposed to presubmitted data).

As discussed above, restricted use classification can result in risk reduction because restricted use pesticides may only be sold to, and used by, certified pesticide applicators or persons supervised by them. Such certified applicators are more likely to follow pesticide label instructions than non-certified applicators because they are better trained in pesticide mixing, loading, application, and disposal techniques and are more aware of the adverse environmental consequences of not following the label instructions than non-certified applicators. (See, e.g., *Evaluation of the EPA Private Applicator Pesticide Training and Certification Program: A Five State Study,* ABT Associates, 1981, pp. 77–99). In addition, failure to follow label instructions can jeopardize the license upon which a certified applicator's livelihood may depend. Lastly, certified applicators are trained in general techniques for protecting ground water which may not appear on pesticide labels.

To increase the risk reduction available from restricted use classification, EPA has proposed a recertification requirement for certified applicators, and a requirement that some or all candidates for certification or recertification be trained in, or demonstrate competence in, techniques used to minimize the potential for ground water contamination. EPA has already developed a training course containing basic information applicators must know if they are to minimize the risk of ground water contamination. States will use this course in developing training or retraining courses for certified applicators.

Restricted use classification will help EPA implement the Strategy. Classification will be useful because it will trigger recordkeeping requirements regarding sale and use of the affected products. This information is likely to be valuable for designing local pesticide management plans that States may use to address potential problems in light of local patterns of ground water vulnerability, value, and use. Restricting a pesticide may also make it easier to identify users who, in many States, are required to sign a registry at the point of purchase. This registry will improve

States' ability to work directly with users in implementing local management plans for pesticides that require them.

Restriction can also reduce the potential for ground water contamination when EPA requires label changes to a pesticide. Such changes are likely to require complex operations, equipment, or detailed knowledge or experience, and failure to follow changed label directions may result in significant risk of ground water contamination. Even when label changes are not required by EPA, restricted use classification can reduce the potential for ground water contamination because certified applicators are likely to exercise better judgement, in the absence of label directives, when contamination is a concern. For example, labels on certain pesticide products, which are applied from a tank into irrigation water drawn from ground water, direct the user to avoid allowing "back siphoning" of the tank of pesticide into the ground water. Due to their training, certified pesticide applicators will be more likely to be aware of the "back siphoning" problem, as well as and how to avoid it, reducing the likelihood of ground water contamination.

IV. Criteria for Considering Restricted Use Classification

EPA proposes to define "ground water" in a new § 152.161(b) as "water which is below the land surface in a zone of saturation at or above atmospheric pressure". (See *Basic Ground Water Hydrogeology*, Ralph C. Heath, U.S. Geological Survay Water Supply Paper 2220, 1983, "definition of terms", as well as p. 4).

EPA proposes to define "ingredient" in a new § 152.161(c) as "any component of a pesticide product, or a metabolite or degradate of any component." Under this definition EPA will consider classifying a pesticide end-use product for restricted use if any component meets the criteria, whether the component is an active ingredient, inert ingredient, impurity, or metabolite or degradate of these. Current § 152.161(b) is proposed to be renumbered § 152.161(d) to accommodate these changes.

EPA believes an ingredient has the potential to reach ground water if it is shown, via laboratory studies, that it is mobile and persistent. These criteria were discussed in connection with Options 1 and 2 and are contained in proposed § 152.170(b)(3)(i).

Mobility is an indication of the ability of an ingredient to move through soil toward ground water. Based on EPA's experience in recent years, as summarized below and in the docket to this rule, proposed § 152.170(b)(3)(i)(A) sets the criteria for mobility of an ingredient as any soil-water partition coefficient (K_d) less than or equal to 5, carbon-referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/gm, or detection of an ingredient below 75 cm in the soil profile, when any of these results is indicated by studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N, or other reliable scientific data.

Persistence is a measure of the resistance of an ingredient to the factors which tend to break it down as it moves through the soil. Based on EPA experience to date, as summarized in this unit and in the public docket to this rule, proposed § 152.170(b)(3)(i)(B) sets the criteria for persistence of an ingredient as a half-life greater than 3 weeks as shown from any reliable laboratory aerobic soil metabolism studies or field dissipation studies, or resistance to hydrolytic degradation or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period, based on any reliable studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N, or other reliable scientific data.

Leaching of a pesticide is dependant on both half-life ($t_{1/2}$) and mobility (K_{oc} or K_d). While measures of either persistence or mobility considered individually may not be sufficient to indicate that an ingredient has the potential for reaching ground water, EPA believes that, if taken together, these measures indicate that an ingredient has that combination of longevity and speed of movement which could potentially result in ground water contamination, at least under some conditions which may exist in the environment. EPA bases this view on an assessment of 25 of 45 pesticide ingredients whose detection in ground water has been attributed to normal agricultural use. The 25 ingredients were those chemicals for which complete persistence and mobility data were readily available. No review was performed for the remaining 20 chemicals due to data gaps in the environmental fate data base.

This assessment showed that the chosen persistence and mobility measures predicted ground water contamination in 11 of 12 cases for ingredients detected in ground water in 3 or more counties, as in Option 1, and in 8 of 8 cases for ingredients detected in ground water above 10 percent of the MCL/HAL in 3 or more counties as in Option 2. It also showed that 8 of 12 ingredients found in ground water 1 or 2 times meet the persistence and the mobility measures. EPA believes that the chosen measures provide a good indication of increased likelihood of widespread ground water contamination. The assessment has been placed in the administrative record for this proposed rule. EPA is interested in receiving comment regarding whether the standards for persistence and mobility are appropriate when used in the contexts of Options 1 or 2.

EPA acknowledges that the criteria it has proposed for persistence and mobility are conservative. EPA believes utilization of conservative criteria for persistence and mobility may be appropriate to allow EPA to set standards for considering restriction of all pesticide products containing an ingredient which may reach ground water.

As a second criterion in Option 1 and 2, EPA would consider that an ingredient detected in ground water in three counties has the potential to reach ground water. Before using such detections EPA would confirm that the monitoring and analysis was performed by trained, qualified personnel using accepted procedures and that the detections were due to pesticidal activities as discussed in Unit V of this preamble. EPA believes that three counties are sites distant enough from each other that ground water contamination of each could not have resulted from a single pesticide application or other event. Under this approach EPA would consider that three detections are enough to indicate a developing pattern of ground water contamination. Where such a pattern of contamination is evident, under Option 1 restricted use classification would be considered even when laboratory data or controlled field studies on leaching potential are not available. Accordingly, § 152.170(b)(3)(ii) proposes detection in three different counties as a separate criterion for considering restricted use classification. EPA solicits comment on whether this criterion is appropriate for preventing widespread, unacceptable ground water contamination.

EPA is especially interested in receiving comments on whether detection in three different counties is an appropriate way of indicating potential for ground water contamination in different hydrogeological sites? For example will use of the "3 counties" standard be protective enough when detections occur in very large counties? Will the standard be overly broad in the context

of detections in small, contiguous counties?

EPA is also especially interested in receiving comment on whether restricted use action should be considered when an ingredient is either not persistent, or not mobile, but is found in ground water at three locations. In other words, in cases where laboratory data do not predict an ingredient's potential for reaching ground water but the ingredient reaches ground water nonetheless, will the criteria plus EPA's further evaluation (e.g. presence of risk, ability to reduce it via restricted use, and other factors discussed in Unit V. of this preamble) be sufficient to determine whether the product merits restricted use?

Finally, under Option 2, EPA is proposing an approach which incorporates both level of exposure and degree of hazard. Using 10 percent of the MCL/HAL as the trigger for consideration of restricted use provides a ten fold safety margin between the levels which would trigger consideration of restricted use action and drinking water standards under the Safe Drinking Water Act. This margin of safety is designed to permit detection before drinking water standards are reached when contamination may be increasing as well as for any sampling bias in the existing ground water data base.

When levels of contamination do not exceed 10 percent of the MCL/HAL but are geographically widespread (i.e., detections in 25 different wells in 4 or more States) EPA would consider restricted use to prevent further contamination. EPA expects that adequate ground water monitoring data is and will be available to support this approach. EPA has completed a large survey to detect pesticides in ground water and will continue to receive information on incidents of ground water contamination from States, pesticide registrants and other sources. In addition, public water systems are, or soon will be, required to sample for selected pesticides when their ground water supplies are determined to be vulnerable to contamination.

To the extent that it differs from Option 1, Option 2 would read as follows:

Section 152.170 Criteria for restriction to use by certified applicators.

(b) * * *

(3) A pesticide product intended for outdoor use will be considered for restricted use classification if, based on studies, any of which are submitted to the Agency after [insert date of publication in the **Federal Register**] and conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data the pesticide meets the requirements of pararaphs (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section.

(i)(A) It has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile.

(B) It has any experimentally determined half life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30–day period.

(ii) It has been detected in ground water in at least 3 counties above 10 percent of the Maximum Contaminant Level if one has been established under the Safe Drinking Water Act, or above a level equal to a proposed or final lifetime Health Advisory, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(iii) It has been detected in ground water in at least 25 wells in at least 4 States, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(4) A pesticide product intended for outdoor use will be considered for restricted use classification if, based on studies submitted to EPA before [insert date of publication in the **Federal Register**] and conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, the pesticide meets the requirements of paragraphs (b)(4)(i) and (b)(4)(ii) or (b)(4)(iii) of this section.

(i)(A) It has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile.

(B) It has any experimentally determined half life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30–day period.

(ii) It has been detected in ground water in at least 3 counties above 10 percent of the Maximum Contaminant Level if one has been established under the Safe Drinking Water Act, or above a level equal to a proposed or final lifetime Health Advisory unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

(iii) It has been detected in ground water in at least 25 wells in at least 4 States, unless those detections have been shown not to be a result of pesticidal activities including but not limited to mixing, loading, application or disposal.

V. Restricted Use Determinations

In determining whether a detection meets the criterion in § 152.170(b)(3)(ii), EPA proposes to exclude data about ingredients detected as a result of activities other than use of the product as a pesticide. For example, consideration of classification of a pesticide as restricted use would not be undertaken based on detections of ingredients known to result from industrial spills (as opposed to spills at or near mixing, loading, or application sites), leakage from secure waste disposal sites, or similar occurrences not connected with pesticidal activities. Pesticidal activities include such activities as mixing, loading, and disposing of pesticides, as well as application of pesticides. EPA will not take action to restrict use based solely on contamination resulting from nonpesticidal activities because classification is not likely to reduce the potential of such contamination. In contrast EPA may take restricted use action based on spills associated with pesticidal activities which result in instances of contamination in three diverse locations because these are the types of occurrences that restricted use classification can prevent or reduce.

Similarly, EPA will use detections shown to result from activities that constitute use of a pesticide other than in accordance with the labelling (i.e., misuse) to determine whether the criteria in § 152.170(b)(3)(ii) are met. FIFRA section 3(d), 5 U.S.C. 136a(d), directs EPA to restrict pesticides when used in accordance with "widespread and commonly recognized practices which may generally cause unreasonable adverse effects on the environment." Under Option 1, if either spills or misuse result in three instances of contamination by an ingredient, EPA will consider restricting the pesticide product which is the source of the ingredient. In such a case, in addition to other considerations discussed in Units IV and V of this preamble, EPA will consider whether the known instances of contamination indicate a widespread and commonly recognized practice and will only restrict the use of the pesticide if it does.

EPA solicits comment on the proposal to consider contamination resulting from misuse. EPA is especially interested in receiving comment on whether anecdotal evidence, more than three similar instances of misuse which results in contamination, or three or more instances of misuse spaced over a specific time period is necessary, under Option 1, for a conclusion that misuse

may represent widespread or commonly recognized practice.

If a pesticide first meets the criteria under Option 1 or 2 proposed in this rule, EPA would apply the existing criteria in § 152.170(a)(2) through (4), and (e) to determine whether restriction is warranted. Section 152.170(a)(2) specifies that EPA will only restrict a pesticide whose labelling is not, or cannot be made, adequate to mitigate the risk. Section 152.170(a)(3) specifies restriction only if that would reduce overall risk. Finally, § 152.170(a)(4) says restriction will be undertaken if the "decrease in risks of the pesticide as a result of restriction would exceed the decrease in benefits." This Unit discusses how those existing criteria may be applied when the Agency considers restriction of a pesticide because of its potential to contaminate ground water.

With regard to the determination in § 152.170(a)(3), EPA anticipates that in most cases restricting the use of a pesticide that meets one of the proposed criteria will reduce the risk of adverse effects. Both misuse and failure to exercise good judgement in using pesticides can contribute to the potential for ground water contamination, and restriction to use by, or under the supervision of, a certified applicator is an effective way to assure that pesticides are properly used.

Factors that are not specified in the new criteria may also indicate that restricted use classification will not reduce the risks of ground water contamination. In some cases, the risk of contamination may be insignificant because of the way the product is used. For example, a product intended for outdoor domestic use may have an insignificant contribution to the potential for ground water contamination because it is used in low volumes or concentrations. Risk may also be insignificant if ground water monitoring data indicate that an ingredient is unlikely to actually reach ground water at sites where it is handled or applied. This could occur if an ingredient of concern binds tightly to soil in the locations where the product is handled or applied. The presence of such factors will therefore tend to eliminate use of restricted use classification as a risk reduction measure. Laboratory data showing that an ingredient is either not persistent, or not mobile will prompt EPA to consider such factors carefully.

Ancillary data from the environmental fate studies which are used in proposed § 152.170(b)(3)(i) (Option 1 and 2) may also indicate a smaller leaching potential, and therefore, smaller risk. For example, leaching potential may be considered less significant if an ingredient tends to partition into an organic over an aqueous phase during extraction procedures, or if an ingredient moves very little through soil columns during a column leaching study. If an ingredient just hits the persistence and mobility triggers, ancillary environmental fate data, graphical or multiplicative indices developed to assess leaching potential will be considered. These methodologies are discussed in "Soil Pesticide Interaction Potentials for loss", D.W. Goss, National Water Quality Technology Development Staff, USDA, Soil Conservation Service, Forth Worth, Texas; and "Groundwater Ubiquity Score: A Simple Method for Assessing Pesticide Leachability", Gustafson, D.I., *Environmental Toxicology and Chemistry*, Vol. 8, pp. 339–357, 1989. In short, when there is evidence that an ingredient will not reach ground water, EPA will not restrict the source product based on the fact that an ingredient meets the criteria for considering restriction.

EPA may also determine that the properties of a product are sufficiently understood that it is unlikely to reach ground water at levels which may cause unreasonable adverse effects. In making this determination, EPA will consider the risk which could be posed by the detected ingredient. EPA will consider the character of the toxicological concern, the weight of the evidence of any detections in view of the history of use, the availability of monitoring data, special circumstances associated with the detection and the risk presented by the highest levels of the ingredient which could reach ground water. If, considering these factors, EPA determines that the ingredient presents an insignificant risk, EPA will not restrict the product. Consideration of such factors, for example, would ensure that formation or leaching of carbon dioxide, a pesticide degradate which is innocuous, will not normally lead to restricted use classification.

A product that meets the criteria proposed in this proposed rule has the potential to contaminate ground water. It is possible that not every product that meets the proposed criteria will cause unacceptable contamination. However, EPA believes that the benefits of reducing the probability of such ground water contamination generally may exceed the relatively small costs of training and certifying applicators, paying for the services of commercial applicators and relabelling products.

EPA will consider any additional information that shows that the costs of restricted use classification are so great that they outweigh the decrease in risks which are achieved. This could arguably be the case for a domestic use product which may effectively be cancelled by a restricted use classification decision. In practice, however, EPA does not think that many domestic use products would avoid restriction solely on this ground. EPA believes that, because this rule addresses only outdoor uses of pesticides, hiring a certified applicator would generally be a viable option for homeowners who might have applied the unrestricted product.

As required by 40 CFR 152.170(a)(2) and (e), EPA will determine whether the labelling of an end-use product is adequate to mitigate the risk of ground water contamination. However, for the labelling to be adequate to mitigate the risk, § 152.170(e)(2)(B) requires that following directions designed to protect ground water must not involve complex operations, and § 152.170(e)(2)(C) requires that there be minimal possibility that contamination could result from a minor failure to follow label directions. EPA does not anticipate that labelling will often be adequate to mitigate the risk of contamination by products containing an ingredient which meets the proposed criteria because measures used to protect ground water will often involve complex operations or detailed knowledge of local conditions, and even minor failures to follow label directions can result in an unacceptable potential for contamination of ground water.

EPA will use § 152.170(b)(3)(i) to scrutinize new chemicals. This approach will allow EPA to decide whether to classify a new chemical for restricted use, without waiting for it to reach ground water. EPA also plans to continue efforts already underway to gather data regarding persistence and mobility of existing pesticide ingredients, as well as data regarding newly discovered metabolites and degradates of pesticides and data regarding pesticide ingredients found in ground water.

In order to initiate prompt action to reduce the likelihood of ground water contamination by the pesticides of greatest concern, at a minimum EPA intends to apply the criteria in this rule to a group of pesticides containing ingredients which currently meet both Option 1 and Option 2. In other words, at a minimum, EPA will give priority attention to products whose ingredients are known to be persistent and mobile and have been detected in ground water in three counties above the MCL or HAL, or are known to be persistent and mobile and have been detected in

ground water in at least 25 different wells in at least 4 States. EPA will then evaluate which of these products meet the standards detailed in this Unit V, and EPA will propose restricted use classification for some or all of those pesticides in the **Federal Register** within the next 6 months but will not issue a final regulation to restrict those pesticides until after issuance of a Notice of Rulemaking which promulgates the criteria in Option 1, Option 2, or a combination of the two.

Action to restrict pesticides due to ground water concerns is currently authorized on a case-by-case basis under 40 CFR 152.170(d). EPA has undertaken several actions to restrict the use of pesticides under that section. EPA has considered continuing use of a pure case-by-case approach but has, instead, opted to propose an overall rule setting out the criteria EPA would use to determine a pesticide ingredient's potential for contamination. This rule will provide the public notice of the criteria EPA will use to determine which pesticides have potential to contaminate ground water and may upon further evaluation merit restricted use classification. At the same time, the objective standards proposed in this document will expedite EPA's decision making process because it sets out EPA's criteria, makes the outcome more predictable for the public and regulated industry, and ensures that classification decisions are consistent with one another.

As discussed above, EPA solicits comments and data relating to this decision, the criteria proposed in this document, and all aspects of this proposal. EPA is interested in comments and data that would either support the proposed criteria or suggest a different approach to classifying pesticides due to ground water concerns. EPA recently issued a final rule amending the restricted use classification procedures. See 53 FR 15986 (May 4, 1988) (codified at 40 CFR part 152, Subpart I). EPA is not reopening the May 4, 1988 rule for comment and is accepting comments only on the issue of adding criteria for ground water concerns to the existing rule.

VI. Statutory Review

Pursuant to FIFRA section 25, a copy of this proposed rule has been provided to the Secretary of Agriculture and the Scientific Advisory Panel for review. The Scientific Advisory Panel waived review.

The Secretary of Agriculture reviewed and offered comments on Option 1. The major comments, and EPA's response, are summarized below.

The Secretary of Agriculture suggested that a toxicity based contamination trigger level be incorporated into Option 1. EPA has not incorporated the suggestion but by including Option 2 in Unit III of this preamble, EPA is soliciting comment on an approach whose risk basis is more empirical because it includes toxicity standards in the criteria.

The Secretary also suggested that, the number of detections (i.e. detections in three different counties) specified in Option 1, be increased. EPA does not want to wait for a large number of instances of contamination to occur before considering restriction. However, EPA is soliciting further comment on the number of locations which would trigger consideration of restricted use.

The Secretary suggested that detections from misuse not be considered. However, EPA thinks that instances of misuse are among the kinds of activities classification as restricted use is most likely to decrease. The Secretary also said that K_d (soilwater partition coefficient) of less than or equal to 5, and migration 2.5 feet below the soil surface are overly conservative as measures of mobility. EPA knows that these values are conservative but may select them because they can be of concern when a pesticide has a high persistence.

The Secretary of Agriculture also suggested that K_{oc} be used as a measure of mobility in lieu of K_d because K_{oc} is cheaper and applicable in more soil types. K_d presently costs about $10,000 per soil type and EPA generally has test data for the four soil types for which EPA requires tests. EPA expects to have K_d data adequate for assessing the mobility of most pesticide active ingredients. EPA continues to believe that K_d is an appropriate test of an ingredient's mobility. EPA agrees that K_{oc} is also an adequate measure of mobility of an ingredient. K_{oc} is related to K_d as follows: $K_{oc} = K_d \times 100/$ percent of organic carbon in the soil. EPA has added it to both Option 1 and 2.

The Secretary of Agriculture also suggested that EPA not consider detections of an ingredient in non-potable water when determining potential for ground water contamination. EPA does not agree with this suggestion. Option 1 and 2 use three occurrences in water to predict potential for widespread contamination of ground water. EPA believes that the fact that an ingredient has leached to non-potable ground water is as valid an indication of potential for widespread contamination of ground water as any other instance of ground water contamination.

Lastly, the Secretary suggested that EPA add an upper limit for K_d since K_d is correlated with the potential of an ingredient to run off. EPA recognizes K_d is associated with the potential of an ingredient to run off. However, this proposal is concerned with mitigation of potential for ground water contamination. When EPA addresses potential for pesticide run off, K_d and/or K_{oc} will be considered.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a proposed regulation is "major". Major regulations require a regulatory impact analysis. EPA has determined that this proposed rule is not a major regulation as defined in E.O. 12291 because the total impact on the economy is expected to be substantially less than $100 million, it is not expected to impose major costs on consumers, individual industries or Federal, State or local governments, or adversely affect employment, competitiveness or productivity of U.S. based enterprises. The rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

EPA has estimated that the impact of the rule will be $33 million (total present value over a 10–year period discounted at 10 percent). This is based on an estimate that up to 24 active ingredients may qualify for restriction under the rule. The details of this determination are in an Economic Impact Analysis which has been placed in the public docket for this rule.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This rule does not contain information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq.

List of Subjects in 40 CFR Part 152

Administrative practice and procedure, Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 1991.

F. Henry Habicht II,

Acting Administrator.

Accordingly, 40 CFR chapter I, subchapter E, part 152 is proposed to be amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U also issued under 31 U.S.C. 9701 and Pub. L. 100–202.

2. In § 152.161 by removing the existing paragraph designations and inserting the following definitions in alphabetical order to read as follows:

§ 152.161 Definitions.

* * * * *

Ground water means water which is below the land surface in a zone of saturation, at or above atmospheric pressure.

Ingredient means any component of a pesticide product or a metabolite or a degradate of any component.

* * * * *

3. In § 152.170, by revising paragraph (a)(1) and adding paragraph (b)(3) to read as follows:

§ 152.170 Criteria for restriction to use by certified applicators.

(a) * * *

(1) It exceeds one or more of the specific criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use;

* * * * *

(b) * * *

(3) A pesticide product intended for outdoor use will be considered for restricted use classification if an ingredient of the product meets or exceeds the criteria in paragraph (b)(3)(i) or (b)(3)(ii) of this section:

(i)(A) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has any soil-water partition coefficient (K_d) less than or equal to 5 mL/kg, any carbon referenced sorption coefficient (K_{oc}) less than or equal to 500 mL/g, or it has been detected below 75 centimeters in the soil profile, and

(B) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has any experimentally determined half-life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or it has any experimentally determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30–day period.

(ii) Based on studies conducted in accordance with the Pesticide Assessment Guidelines Subdivision N or other reliable scientific data, it has been detected in ground water in at least three counties, unless those detections have been shown not to be a result of pesticidal activities including, but not limited to mixing, loading, application or disposal.

* * * * *

[FR Doc. 91–11294 Filed 5–13–91; 8:45 am]

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federal register

Monday
May 13, 1991

Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 4

Prohibition of Advance Disclosure of Funding Decisions; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R-91-1491; FR-2805-F-02]

RIN 2501-AB02

Prohibition of Advance Disclosure of Funding Decisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act). Section 103 proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance from the Department. Section 103 also authorizes the Department to impose civil money penalties on employees who knowingly violate the prohibitions in the section and to impose other sanctions upon applicants for assistance who may benefit from the proscribed communications. The purpose of section 103 is to strengthen HUD's controls over the conduct of participants in its programs, and to avoid unfair competition, by controlling the flow and timing of information from the Department to the participants.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone number (202) 708-3815. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Introduction

This rule implements an important part of the Department of Housing and Urban Development Reform Act of 1989 by specifying what types of information employees may not disclose in connection with the Department's selection of applicants for assistance. The proposed rule in this proceeding was published on November 23, 1990 (55 FR 49012).

The rule specifies which employees may or may not be subject to civil money penalties for improper disclosure of that information. Also, it provides that applicants for and recipients of assistance may be subject to sanctions other than civil money penalties if the Department believes that an employee has breached the disclosure proscriptions under this rule. The objective of this rule is to preclude any person from receiving or obtaining information from the Department that would give an applicant an unfair advantage over other applicants who are competing for the assistance. A detailed discussion follows.

The Selection Process and Covered Selection Information

The type of activity to which this rule applies is described generally as follows: The Department makes available funds for certain purposes either on an annual or a special basis. Those funds are the "assistance" with which this rule is concerned. The Department announces the availability of funding through a publication in the **Federal Register**, usually in the form of a Notice of Fund Availability (NOFA). Through publication of the NOFA, eligible persons are invited to apply for the assistance. After evaluating the applications, the Department selects one or more applicants to receive assistance. It is the improper disclosure of information regarding the selection that this rule is designed to proscribe and sanction. The Department will include in future NOFAs a section that alerts applicants to the requirements and consequences of this rule. Thus, even if a potential applicant might not be aware of this rule upon its implementation, the applicant will learn of it while reviewing the NOFA for a program in which it has an interest.

The critical time period for the rule's objective is the "selection process" discussed above. The statute defines the "selection process" as

> the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or a request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

However, since "development" and "issuance" are terms that are at opposite ends of a spectrum, the rule defines the selection process as beginning at the time when the HUD official who is responsible for a given assistance program forwards a written request (or a draft NOFA) to the relevant office within the Office of General Counsel for preparation of a solicitation (in whatever format) for publication in the **Federal Register**. This decision point is strictly an internal function and will occur before the publication of the solicitation in the **Federal Register**.

The proposed rule contained a provision for internal notification of particular employees to alert them to the beginning of a selection process and of the applicability of this rule's requirements. This provision (§ 4.100(b) in the proposed rule) has been stricken because the Department believes that the proposed procedure would be an infeasible means of notifying all potentially affected employees. Although the rule provides adequate notice to all HUD employees of their obligations under section 103, it will be augmented by internal instructions and training.

The types of assistance that are covered by this rule are extensive and are subject to change with the enactment of legislation that might amend current programs. Thus, this rule identifies the programs to which the rule currently will be applied, but cautions that the list is not exclusive. New funding programs will be added to the rule as they come into existence, but a new program (for example, a demonstration program) not codified in HUD regulations will be subject to the rule's prohibitions, whether or not the program appears in the listing contained in today's document.

This assistance is also of the type that entails a competition for its distribution. Thus, the Department's mortgage insurance programs and any contracts that are subject to the Federal Acquisition Regulation are excluded.

The information that is prohibited from being disclosed during the selection process is "covered selection information." As can be seen from its definition in § 4.5, "covered selection information" includes any information contained in an application and any information regarding the decision to select an applicant. The prohibition against disclosure applies to any HUD "employee", a term that is defined to include consultants or others who are retained on a contractual basis. However, "employee" does not include an independent contractor who is working under a procurement contract.

Excluded from "covered selection information" is information about program requirements, or about the timing of the decision points in the selection process. There are other items of information that are excluded from "covered selection information" as well. For example, employees may inform an applicant of its failure to qualify after a preliminary review for eligibility and completeness of its application, and about the reasons for the failure to qualify, but only employees who are authorized to have that information in the first instance may make the disclosure (§ 4.105(b)). An authorized

employee is one who is officially involved in the selection process. The rule also permits an authorized employee to contact an applicant to obtain clarification of the application. Clarification would include a request by the employee for information, for example, to assure that the employee understood the terms of the application or that all applications were complete. Section 4.105(a) lists a number of permissible disclosures that employees may make, whether or not they are "authorized employees."

The rule defines "covered selection information" in part to mean any information "otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public." (The statute defines "covered selection information" in part to mean "any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public * * * *".) If information is generally available to the public, its disclosure to a given applicant should afford no special benefit to that applicant, and an employee will not be subject to sanctions for having disclosed it.

The final rule sets out, in §§ 4.100 and 4.105, the circumstances under which disclosures may be made during the selection process. The Secretary has not chosen to provide in the rule for any other exercise of his discretionary power to permit disclosures to persons other than those described in the rule. Should the Secretary choose at a future time to enlarge the class of persons authorized to receive covered selection information, it would be necessary to amend part 4 to accomplish this purpose.

Prohibitions, Penalties and Procedures

This rule would subject a HUD employee to civil money penalties for knowingly and materially violating any prohibition against disclosing "covered selection information" during the selection process. It also would subject an employee to other available sanctions, regardless of the materiality of the disclosures made. To constitute a violation, the disclosure must have been made to a person not authorized to have the information, and any person who is not officially involved in the selection process is an unauthorized person. Thus, the unauthorized person could be someone within or outside the Department.

In the normal course of events, the employee who makes a disclosure would be an authorized employee, because an authorized employee is the person most likely to have covered selection information in the first instance. However, it is not the intention of this rule to impose absolute liability on employees, whether or not they are authorized employees. There will be situations in which disclosures to employees who are not involved in the selection process are necessary, or even routine. For example, to the extent that clerical staff might not be considered officially involved in the selection process, disclosures of covered selection information to them to accomplish clerical work would not subject the disclosing employee to a sanction of this rule. (Of course, a supervisor assigning work that includes sensitive information will be expected to alert the clerical employee to its confidential nature.) It is reasonable to expect that a HUD attorney, other than one who regularly advises authorized employees, might have need of covered selection information. A similar need might be warranted for an auditor or investigator of the Inspector General who is conducting an audit, inquiry or investigation. These are situations in which disclosure is proper, and the rule recognizes this. (§ 4.105).

Since it is the Department's policy to address conferences and meetings of potential applicants as part of its educational mission to inform the public of new programs, disclosures regarding program requirements that might not have been made public because they are recently formulated policy positions sometimes will be made. For the purpose of this rule, those types of disclosures, made at conferences, will be considered to be public statements.

Before the Department may refer an employee's case to the Departmental Civil Penalties Panel (a panel described in the proposed rule published on September 10, 1990, (55 FR 37290) to be codified at 14 CFR part 30) with a request to propose a civil money penalty, the Department must have made an initial determination through its Office of Ethics that the disclosure was made knowingly and materially. (The Office of Ethics was recently created by Secretary Kemp and charged with oversight responsibility for employee conduct.) "Knowingly" is a term used and defined throughout the Reform Act; it will be satisfied if the employee has actual knowledge of the violation. Also, it will be satisfied if the employee either acts with deliberate ignorance of, or with reckless disregard for, a prohibited disclosure. "Materially" is defined in this rule, and criteria for determining materiality are set forth at § 4.130(d). Further, a civil money penalty may be imposed only after an opportunity for a hearing before an administrative law judge pursuant to the provisions of proposed 24 CFR part 30.

Because of the variety of programs affected by this rule, it is not possible to identify specific bits of information that would be prohibited from being disclosed. However, the Department believes that this rule provides sufficient notice to employees of what conduct is unlawful through the definition of covered selection information and the examples of prohibited disclosures. Nevertheless, the Office of Ethics will publicize the requirements of this rule within the Department and conduct training for those employees who are likely to be directly affected by it.

This rule establishes a procedure to assure that an employee charged with a violation would receive fair treatment and procedural protection during the investigatory phase. The procedures prescribed by this rule call for a review of any alleged violation by the Office of Inspector General, which would conduct the appropriate investigations and provide the Office of Ethics with a report of the investigations. The Office of Ethics would then perform its own review and, among other options, would have the authority to discuss the violation with the employee alleged to have committed it. After concluding its review, the Office of Ethics could close the matter or refer it to the Departmental Civil Penalties Panel (DCPP) to consider the case for a civil money penalty. The Office of Ethics may refer the case to an appropriate HUD official for additional or alternative sanctions whether or not the violation is material (§ 4.130(e)).

Applicant Sanctions

Although this rule does not provide for civil money penalties with respect to applicants for assistance (none having been authorized by section 103 of the Reform Act), it does provide for other sanctions, for example, debarment, in the event of an employee's unlawful disclosure of information. Section 103 states that if the Secretary has information providing a reasonable basis to believe that an employee has violated the section—

the Secretary shall (1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate action; and (2) in the case of a selection that has been made, determine whether to impose certain sanctions or take any other actions that the Secretary considers appropriate.

The statutory language is so flexible that the Department has decided to treat these matters on a case-by-case basis. However, the rule does provide guidance to the officials who will consider whether to impose other sanctions. That guidance is provided in the form of factors required to be considered in making the sanction decision (§ 4.200(c)).

The Reform Act provides no "linkage" between a sanction against an applicant and a referral for consideration of a civil money penalty against an employee. Accordingly, the rule provides that an action to sanction an applicant is independent of a decision by the DCPP to seek a civil money penalty against an employee. However, since the authorization to sanction an applicant is triggered by the Secretary's conclusion that there is a "reasonable basis" to believe that an employee has violated this rule (§ 4.200), and the same "reasonable basis" test exists under which the Office of Ethics is authorized to refer an employee case for a sanction (§ 4.130 (c) and (e)), a referral by the Office of Ethics for any type of authorized sanction may be a predicate for action to sanction an applicant.

Public Comments

The Department did not recieve any public comments on its proposed rule.

Findings and Certifications

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

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides for the imposition of sanctions on persons determined to have engaged in prohibited conduct, but these sanctions are not directed at small entities *per se.*

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule regulates or prohibits certain kinds of conduct by employees of the Department and by persons who are made privy to information from these employees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and others levels of government. The rule primarily will affect HUD employees and have negligible effect on States or their political subdivisions.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17373) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, the Department amends title 24 of the Code of Federal Regulations by adding a new part 4, to read as follows:

PART 4—PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

Subpart A—General Provisions

Sec.

4.1 Purpose.
4.5 Definitions.
4.10 Scope.

Subpart B—Prohibitions and Procedures

4.100 Prohibition of advance disclosure of funding decisions.
4.105 Permissible disclosures.
4.110 Civil penalties.
4.115 Procedure upon discovery of a violation.
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4.130 Action by the Office of Ethics.

Subpart C—Applicant Sanctions

4.200 Administrative remedies.

Authority: Secs. 7(d) and 12(f), Department of Housing and Urban Development Act (42 U.S.C. 3535(d), 3537a).

Subpart A—General Provisions

§ 4.1 Purpose.

This part proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. This part also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if the violation of this part is material, and authorizes the Department to sanction the person who received information improperly by, among other things, denying assistance to that person.

§ 4.5 Definitions.

Applicant means any person that is being considered for or receiving assistance.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Department that provides by statute, regulation, or otherwise for the competitive distribution of assistance. The term does not include any mortgage insurance provided under a program administered by the Department or any contract (*e.g.*, a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). The term includes those elements of the programs listed below that provide for the competitive distribution of assistance. (Because a competitive assistance program might be established after June 12, 1991, the effective date of this regulation, the list cannot be considered an exclusive one. The list included in this rule will be amended from time to time to reflect the addition of new competitive programs. However, the fact that a new competitive program has not yet been added to the list by a conforming amendment to the rule will not create the implication that the new program is outside the reach of the prohibitions on

advance disclosure contained in this rule.)

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).

(2) Rental Rehabilitation Grants under 24 CFR part 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped, as authorized by section 162 of the Housing and Community Development Act of 1987; and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

(32) Capital advances (and project rental assistance) for Housing for the Elderly under section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act, or for Housing for Persons with Disabilities under section 811 of that Act.

Authorized employee means an employee whose responsibilities in connection with the selection process require that the employee have covered selection information to perform his or her official duties.

Covered selection information means any information

(1) That is required by statute, regulation, or order to be confidential;

(2) That is contained in an application or request for assistance;

(3) That is otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public.

Department or HUD means the Department of Housing and Urban Development.

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and to special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Personnel and Training appointment. However, "employee" does not include an independent contractor, *e.g.*, a firm or individual working under the authority of a procurement contract.

Knowing or knowingly means having actual knowledge of, or acting with deliberate ignorance of or reckless disregard for, the requirements of § 4.100.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

NOFA means Notice of Fund Availability—a notice published in the Federal Register which announces the availability of assistance.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Secretary means the Secretary of Housing and Urban Development.

Selection means the determination of which applicant or applicants for assistance are to receive assistance

under the program for which assistance is sought.

Selection Official means the person within the Department who makes the final decision to provide assistance in response to an application or applications for assistance. The Selection Official may be denominated as Assistant Secretary, a Grant Officer or any other HUD employee authorized to make the decision.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the **Federal Register**. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.10 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department.

(b) *Applicability.* The prohibitions contained in this part apply to conduct occuring on or after June 12, 1991.

Subpart B—Prohibitions and Procedures

§ 4.100 Prohibition of advance disclosure of funding decisions.

(a) *In general.* Except as otherwise provided in § 4.105, during the selection process an employee shall not knowingly disclose any covered selection information regarding the selection process to any person other than an employee authorized to receive that information.

(b) *Examples of prohibited disclosures.* There are many disclosures that will be prohibited by this section, but since they will be fact-specific to a particular program, they cannot be specified here. However, the following are examples of types of information, the disclosure of which shall be a violation of this section:

(1) Information regarding any applicant's relative standing;

(2) The amount of assistance requested by any applicant;

(3) The identity of any applicant;

(4) The number of applicants;

(5) Any information contained in an application.

§ 4.105 Permissible disclosures.

(a) Notwithstanding the provisions of § 4.100, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements, provided that the requirements or statements are disclosed on a uniform basis to any applicant;

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the **Federal Register** in a NOFA or otherwise;

(4) Any information which has been made public through means other than the **Federal Register**;

(5) An official audit, inquiry or investigation, if the disclosure is made to an auditor or investigator authorized by the HUD Inspector General to conduct the audit or investigation;

(6) Legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible to the Department in connection with the activities; or

(7) Procedures that are required to be performed to process an application, *e.g.*, environmental or budget reviews.

(b) An authorized employee, during the selection process, may contact an applicant for the purpose of:

(1) Communicating the fact of the applicant's failure to qualify, after a preliminary review for eligibility and completeness with respect to his or her application, and the reasons for the failure to qualify;

(2) Communicating the fact of the applicant's failure to be determined to be technically acceptable after a full review; or

(3) Seeking a clarification of the terms of the applicant's application. A clarification, for the purpose of this paragraph, may include a request for additional information consistent with regulatory requirements.

§ 4.110 Civil penalties.

(a) *In general.* Whenever any employee knowingly and materially violates the prohibition in § 4.100, the Secretary may propose a civil money penalty on the employee through the Departmental Civil Penalties Panel in accordance with the provisions of 24 CFR part 30.

(b) *Amount.* The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(c) *Cumulative remedy.* A civil money penalty may be sought in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

§ 4.115 Procedure upon discovery of a violation.

(a) *In general.* When an alleged violation of § 4.100 comes to the attention of any person, including an employee, he or she may either—

(1) Contact the HUD Office of Ethics to provide information about the alleged violation; or

(2) Contact the HUD Office of Inspector General to request an inquiry of investigation into the matter.

(b) *Office of Ethics.* When the Office of Ethics receives information concerning an alleged violation of § 4.100, it shall refer the matter to the Inspector General stating the facts of the alleged violation and requesting that the Inspector General make an inquiry or investigation into the matter.

(c) *Inspector General.* When the Inspector General receives information concerning an alleged violation of § 4.100, he or she shall notify the Office of Ethics when the Inspector General begins an inquiry or investigation into the matter.

(d) *Protection of employee complainants.* (1) No official of the Office of Ethics, after receipt of information from an employee stating the facts of an alleged violation of this part, shall disclose the identity of the employee without the consent of that employee. The Inspector General, after receipt of information stating the facts of an alleged violation of this part, shall not disclose the identity of the employee who provided the information without the consent of that employee, unless the Inspector General determines that disclosure of the employee's identity is unavoidable during the course of an investigation. However, any employee who reports an alleged violation of this part known to that employee to be false, or made with willful disregard for the truth, is not so protected and may be subject to disciplinary action.

(2) Any employee who has authority to take, direct others to take, recommend or approve a personnel action is prohibited from threatening, taking, failing to take, recommending, or approving any personnel action as reprisal against another employee for providing information to investigating officials.

§ 4.120 Investigation by Office of Inspector General.

The Office of Inspector General shall undertake a review of every matter or complaint alleging a violation of § 4.100. If after a review the Office of Inspector General determines that further investigation is not warranted, it shall notify the Office of Ethics of that

determination. If, after a review, the Office of Inspector General determines that additional investigation is warranted, it shall conduct the investigation and upon completion issue a report of the investigation to the Office of Ethics as to each alleged violation.

§ 4.125 Review of Inspector General's report by Office of Ethics.

After receipt of the Inspector General's report, the Office of Ethics shall review the facts and circumstances of the alleged violations. In addition, the Office of Ethics may—

(a) Return the report to the Inspector General with a request for further investigation;

(b) Discuss the violation with the employee alleged to have committed the violation; or

(c) Interview any other person, including employees who it believes will be helpful in furnishing information relevant to the inquiry.

§ 4.130 Action by the Office of Ethics.

(a) After review of the Inspector General's report, the Office of Ethics shall determine whether or not there is sufficient information providing a reasonable basis to believe that a violation of § 4.100 has occurred.

(b) If the Office of Ethics determines that there is no reasonable basis to believe that a violation of § 4.100 has occurred, it shall close the matter and send its determination to the Office of Inspector General.

(c) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it shall:

(1) Send its determination to the Office of Inspector General; and

(2) Refer the matter to the Departmental Civil Penalties Panel (DCPP) for review as to whether to impose a civil money penalty in accordance with 24 CFR part 30; *provided,* however, that the Office of Ethics shall not make a civil money penalty recommendation unless it finds the violation to have been knowing and material. The DCPP may consider whether to impose a civil money penalty in a particular matter only upon referral from the Office of Ethics.

(d) In determining whether a violation is material, the Office of Ethics shall consider the following factors, as applicable:

(1) The content of the disclosure and its significance to the person to whom the disclosure was made;

(2) The time during the selection process when the disclosure was made;

(3) The person to whom the disclosure was made;

(4) The dollar amount of assistance requested by the person to whom the disclosure was made;

(5) The dollar amount of assistance available for a given competition or program;

(6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;

(7) The potential injury to the Department; for example, the opportunity for litigation or administrative contest against the Department or the likelihood of the violation's bringing the Department into disrepute.

(e) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it may, in addition to referring the matter to the DCPP, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph shall be reported to the Inspector General and may be reported to the employee's supervisor.

Subpart C—Applicant Sanctions

§ 4.200 Administrative remedies.

If the Department receives or obtains information providing a reasonable basis to believe that a violation of § 4.100 has occurred, the Department may impose a sanction, as determined to be appropriate, upon an applicant for or a recipient of assistance who has received covered selection information.

(a) In the case of a selection that has not been made, the Secretary shall determine whether to terminate the selection process or take other appropriate actions.

(b) In the case of a selection that has been made, the Secretary shall determine whether to:

(1) Void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(2) Impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing; for example, the Secretary may seek to debar the applicant after an opportunity for a hearing before an administrative law judge pursuant to 5 U.S.C. 554, et seq. and 24 CFR part 26;

(3) Permit the violating applicant selected to continue to participate in the program; or

(4) Take any other actions that the Secretary considers appropriate.

(c) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing, the Secretary shall consider the factors listed at § 4.130(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(d) The Secretary may impose a sanction authorized by this section whether or not the Office of Ethics refers a case to the DCPP, or the DCPP proposes a civil money penalty against an employee.

Dated: April 25, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–11260 Filed 5–10–91; 8:45 am]

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federal register

Monday
May 13, 1991

Part VIII

Environmental Protection Agency

40 CFR Subchapter R

Comprehensive Review of Lead in the Environment under TSCA; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Subchapter R

[OPTS–62094; FRL–3797–9]

Comprehensive Review of Lead in the Environment under TSCA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is exploring the desirability and feasibility of various approaches under the Toxic Substances Control Act (TSCA) to significantly reduce any unreasonable risks to human health and the environment from exposures to lead (Pb) as part of an Agency-wide initiative to control unacceptable Pb risks. For purposes of this ANPR, Pb will refer to elemental Pb and Pb-containing compounds. This regulatory investigation will explore use of TSCA section 6 to determine if uses of Pb present unreasonable risks. To that end, the Office of Toxic Substances intends to: (1) Control existing or new uses of Pb which pose an unreasonable risk of injury to health or the environment; and (2) explore the desirability and feasibility of discouraging overall consumption of Pb in general, while encouraging environmentally sound recycling of Pb products. The regulatory investigation will evaluate specific market approaches, such as fees and marketable permits where appropriate, which may offer more efficient ways of achieving the same goals.

EPA is issuing this ANPR to invite comment and to request information on the issues outlined in this document in order to determine if the risks are unreasonable. Discussion of issues relating to abatement of Pb already in the environment is beyond the scope of this document. However, these issues, along with the activities included in this ANPR and other Agency-wide activities, are discussed at length in the Agency's Strategy to Reduce Lead Exposures. To receive more information on the Agency Strategy or to receive a copy of the Strategy document, contact the office listed under "**FOR FURTHER INFORMATION CONTACT.**"

DATES: Written comments must be received by the Agency no later than August 12, 1991.

ADDRESSES: Comments should be submitted in triplicate to: The TSCA Docket Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, rm. NE–G004, 401 M St., SW., Washington, DC 20460, Attention: OPTS–62094.

Comments containing confidential business information (CBI) should be submitted in triplicate to: The Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, rm. E–105, 401 M St., SW., Washington, DC 20460, Attention: OPTS–62094. A sanitized copy of confidential comments must be provided in triplicate to the TSCA Public Docket Office.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division, Office of Toxic Substances, Environmental Protection Agency, rm. E–543, 401 M St., SW., Washington, DC 20460, 202/554–1404, TDD: 202/554–0551.

SUPPLEMENTARY INFORMATION: EPA is considering proposing rules to control Pb exposures, if unreasonable risks are present, under TSCA to:

1. Limit or, if appropriate, ban new or existing uses of Pb in specific products which present an unreasonable risk of injury to health or the environment.
2. Limit or, if appropriate, severely restrict overall Pb mining, importation, manufacturing, processing and distribution.
3. Limit or prohibit methods of disposal other than recycling for certain Pb products.

Rules based on (or using) economic incentives (as well as command and control rules) may achieve the goals of all the regulatory approaches mentioned above. Some examples of economic incentive approaches include a marketable permit system involving allocation by EPA (or by government-run auction or sale) of rights to produce or use Pb or fees on such production or use. EPA invites comment generally on the feasibility and desirability of promulgating economic incentive based rules to reduce the unreasonable risks posed by Pb in the environment. In addition, EPA invites comments on methods of integrating TSCA with other statutory authorities to achieve the goal of controlling unreasonable risks.

I. Regulatory Framework

This document announces initiation of a regulatory investigation of Pb under TSCA, and solicits comment on several regulatory approaches under consideration. The legal framework within which these approaches will be considered is described below.

TSCA conveys authority to regulate chemical substances. To regulate under section 6, TSCA requires a finding that there is a reasonable basis to conclude that activities involving the chemical substance, in this case Pb, present or will present an unreasonable risk of injury to health or the environment. The finding of unreasonable risk reflects a general cost/benefit analysis, in which the adverse health and environmental effects resulting from exposure to a substance are found to outweigh its overall societal benefits. Finding a risk "unreasonable" would involve weighing the health and environmental benefits of reducing specific Pb exposures--e.g., by limiting, or, if appropriate, banning particular Pb uses or products--against the societal costs of substituting other products or processes. EPA will also consider the desirability of overall reductions in Pb production and use if the Agency determines that the introduction of Pb into the environment, in general, presents unreasonable risks.

The regulatory initiatives discussed in this notice will be coordinated, within the framework of an overall Agency strategy to reduce unacceptable Pb exposures, with several other ongoing EPA research and control activities. These other activities include reviews of existing standards regarding Pb exposure under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act. Potential actions include revision of the national primary drinking water regulations for Pb; an ANPR to solicit comments on options to encourage recycling; review of the New Source Performance Standard for secondary smelters; issuance of a Notice of Proposed Rulemaking on the National Ambient Air Quality Standards for Pb; promulgation of regulations for the use/disposal of sewage sludge; research to evaluate critical Pb issues such as the impact of abating Pb-contaminated soil on children's blood lead (PbB) levels; and a joint Agency effort to develop a program to reduce unacceptable exposures to Pb.

II. Background

Over the last two decades EPA has taken a number of actions to control exposure to Pb because of its toxic properties. Most notable of these actions has been the virtual removal of Pb from gasoline. As a result of this action, along with the voluntary phase-out of Pb solder in food cans by domestic manufacturers, the average PbB level in U.S. children has declined from about 17 micrograms per deciliter ($\mu g/dl$) to between approximately 4 and 6 $\mu g/dl$ over the past decade.

A. Human Health Effects

Exposure to Pb can produce a spectrum of human health effects across a wide range of exposure levels. Recent studies indicate that these toxic effects may occur at exposure levels considerably lower than previously recognized. PbB is the most common index of Pb exposure. The current PbB level of concern may be reduced as more is learned about Pb toxicity.

Young children and fetuses are especially vulnerable to Pb. High PbB levels (> 40–60 in μg/dl) in children are associated with anemia, mental retardation, encephalopathy, and at extremely high levels (> 100 μg/dl), even death. There is also concern that high Pb exposures might play a role in spontaneous abortions. Even at low doses, where impacts are more subtle, Pb exposure has been associated with a variety of effects including slight increases in blood pressure in adults, and subtle deficits in attention span, hearing, learning abilities, and heme synthesis and vitamin D metabolism in children. Pb exposure is also associated with reproductive effects in men and women, and with decreased birth weight and decreased physical and mental development in neonates. Recent studies suggest that even children with subclinical effects (i.e., no obvious symptoms) might suffer significant and persistent changes.

While Federal government interest in Pb poisoning has focused on children, there is substantial evidence that exposed adults also face health risks. Since Pb is stored in bone, it may be mobilized during periods of stress or greater metabolic demands for calcium such as pregnancy and in individuals suffering from osteoporosis.

B. Environmental Effects

Pb is one of the most common toxicants in large and small animals. Pb poisoning is the most frequently diagnosed toxicological problem in veterinary medicine; its occurrence has been reported in all domestic species and in several species of zoo animals. Pb poisoning has also affected every major species of waterfowl in North America and has been reported in many birds elsewhere in the world. Sources of these exposures have typically included Pb wastes, Pb paint, spent Pb shot, fishing sinkers, and contaminated forage near Pb smelters.

Laboratory and field data show that at high concentrations, Pb can affect certain plants and inhibit photosynthesis, reduce growth, and alter species composition. Other studies also indicate that high Pb concentrations alter the composition of soil microbial communities and inhibit invertebrate activity resulting in delayed decomposition of organic matter, reduced nutrient supply, and altered soil properties, such as lower organic content.

Pb is toxic to all phyla of aquatic biota. Water Pb concentrations as low as 19 to 30 μg/l have been associated with increased mortality and impaired reproduction in aquatic invertebrates. Vertebrates (i.e., fish) appear even more sensitive. Studies have shown that freshwater vertebrates and invertebrates are more sensitive to Pb in soft than in hard water.

C. Current Uses of Pb

Some uses of Pb have the potential to be replaced by substitutes for a reasonable cost. Other uses, such as Pb-acid batteries and radiation shielding, may not be easily replaced. Given Pb's toxicity and persistence, EPA plans a comprehensive life cycle review of all uses of Pb to identify further steps which might be taken to reduce any unreasonable human and environmental risks. EPA requests information on the range of specific current uses of Pb, the amounts of Pb involved in each of these uses, and the potential risks associated with the uses and the cost of substitutes. Specific types of information requested are listed under Unit III.

III. Summary of TSCA Pb Pollution Prevention Regulatory Plan

This summary includes a description of activities the Agency is currently exploring under TSCA section 6 to reduce unreasonable risks from Pb uses, with the exception that Pb-acid battery recycling is not discussed here. The battery initiative was described in a separate **Federal Register** notice (55 FR 52864, December 24, 1990) and is currently the subject of an ongoing regulatory negotiation. Questions on the battery recycling regulatory negotiation should be addressed to Nancy Laurson, U.S. EPA (TS–794), 401 M St., SW., Washington, DC 20460, telephone (202) 382-3945.

A. Phase-out of Current Uses of Pb Posing Unreasonable Risks

Initiative. EPA will initiate a regulatory investigation under TSCA section 6(a) to determine whether any of several specific current uses of Pb pose unreasonable risks. Specific uses or products tentatively identified for consideration include, but are not necessarily limited to: brass and bronze plumbing fittings and fixtures (e.g., faucets), Pb solder used to join pipes carrying drinking water, and Pb in nonresidential paint (e.g. for bridges, water towers, and roads).

Rationale. Several current uses of Pb have the potential to generate high human or environmental risk during or after use. For instance, new brass plumbing fixtures and Pb solder used to join pipes carrying drinking water can be major sources of Pb contamination of drinking water. It is also believed that Pb solder, banned from use in potable water supplies in a 1986 amendment to the Safe Drinking Water Act, is still being used by a number of professional plumbers and "do-it-yourselfers." Removal of Pb-based paint from bridges and similar structures can contribute to high human and environmental risks. EPA intends to investigate such uses, considering the benefits of each product relative to the risk, in order to determine if they pose an unreasonable risk, and, if necessary, control their use under TSCA.

EPA requests comments and information pertinent to brass and bronze plumbing fittings and fixtures, illegally installed Pb solder, Pb in nonresidential paint, and other high exposures, including: Actual exposures associated with these Pb uses and products, typical and high end PbB levels as well as exposure histories in workers and others exposed in each of the major use categories, environmental and ecosystem effects, annual volume of Pb consumption for each use, benefits of Pb in each use, available substitutes for Pb for each use, comparative health and environmental effects of the substitutes, the effectiveness of the current ban on Pb solder in drinking water systems and mechanisms to improve it, and other high exposure uses and products.

B. General Pb Reduction

Initiative. EPA is exploring, after considering the range of lead products, the possibility of using TSCA to limit or reduce general Pb production if the Agency determines that use of Pb presents an unreasonable risk of injury to health and the environment. Possible TSCA section 6(a) rules to achieve this end, based on a balancing of the benefits to society of various reductions against their associated costs, include: (1) Limitations or, if appropriate, bans on certain Pb uses and/or categories of uses; (2) restrictions on general consumption of Pb; and (3) economic incentives for reducing Pb use.

Under TSCA, the basis for any or all of these actions would be that continued environmental loading of Pb presents an unreasonable risk of injury to health and the environment. The finding of unreasonable risk reflects cost/benefit

analysis in which EPA would be required to demonstrate that benefits to society of the exposure reduction actions exceed the cost of such controls. The Agency requests comments on the level (e.g., lifecycle, product category, or product) it should use for the cost-benefit analysis.

EPA also requests comment on the feasibility of the following approaches to reduce unreasonable risks from overall Pb production and use, which include but are not limited to the following:

1. EPA could focus on specific uses, or categories of uses, of Pb. This approach could be similar to the approach used for the phase-out of current Pb uses described above, or additional criteria could be used. EPA requests comment on the criteria which should be used in selecting uses for reductions, on examples of uses which might satisfy these criteria, and information on exposure and risk associated with various products and/or product categories, and the cost and risk of substitutes.

2. EPA could focus on reducing the use of Pb through market incentives. This approach could result in less toxic materials being substituted for Pb in products where those substitutions seem most feasible, without further EPA intervention. EPA requests comment on the feasibility of this approach, including whether these market incentives should focus only on virgin Pb or on all Pb, ways for EPA to estimate potential benefits (reductions in risk) likely to be achieved through this approach, whether this approach is likely to address the uses of greatest concern and, if those uses are not adequately addressed, ways to modify this approach so that the uses of greatest concern will be addressed.

3. EPA could focus on mandating recycling. EPA requests comment on the feasibility of this approach for uses other than batteries, including the questions noted below.

To further help EPA decide whether or not to limit production, consumption or use of Pb that pose unreasonable risks, the Agency requests comment and information on the following:

1. *Reducing the volume of Pb introduced into the environment.* i. The nature and strength of the relationship between general consumption of Pb under current and anticipated future patterns of usage and current and/or future human and environmental exposure.

ii. The effect of restricting the amount of virgin Pb refined and introduced into the environment on other metals which are coproduced with Pb.

2. *Current and future Pb use and consumption posing unreasonable risks.* i. The identity of current Pb uses, including specific products, and the amount of Pb used in specific products.

ii. The availability of feasible substitutes, and the cost increases and risks associated with such substitutes.

iii. Ongoing or planned research to identify substitutes for Pb in products.

3. *Recycling Pb.* i. The desirability of regulations to encourage recycling of Pb products in addition to Pb-acid batteries.

ii. The effectiveness of restricting production of virgin Pb as a means to encourage recycling.

iii. The relative effects of restricting virgin Pb versus restricting consumption of all Pb as a means of encouraging recycling.

4. *Product stewardship.* i. Identification of the life cycle of Pb (including Pb-containing products).

ii. Current industry procedures and practices to minimize exposure to Pb for each major use, from mining to disposal.

iii. Effectiveness of the above procedures and practices, including weaknesses either because of the inherent weakness of the practice or because of significant potential for people to fail to follow procedures.

iv. The effectiveness of various waste disposal methods for controlling unreasonable risks for discarded Pb products.

v. The extent/rate to which natural processes can be expected to reduce human or environmental exposure.

vi. Amount of Pb and risk, by product category, disposed of in municipal solid waste landfills.

5. *Means to reduce any unreasonable risks from Pb uses.* For any of the possible goals named above (regarding specific products or overall Pb use), identify:

i. Market mechanisms or economic incentives that could be applied to achieve them.

ii. Regulatory mechanisms that could be implemented to achieve them.

iii. Pollution prevention approaches.

iv. Methods of dealing with imports into the U.S. and exports of Pb and Pb-containing products under any of the above approaches to reducing unreasonable risks from Pb uses.

IV. Rulemaking Record

EPA has established a record for this advanced notice of proposed rulemaking (docket control number OPTS–62094). A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office, from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room NE–G004, 401 M St., SW., Washington, DC.

The following supporting documentation for this ANPR is available upon request from the address listed above:

1. Davis, J. Michael and David J. Svendsgaard, "Lead and Child Development," *Nature*, 329, (September 24, 1987): 297–300.

2. USDHHS, PHS, *Healthy People 2000: National Health Promotion and Disease Prevention Objectives*, February 1991.

3. USDHHS, PHS, Agency for Toxic Substances and Disease Registry (ATSDR), *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress*, July 1988.

4. USEPA, *Strategy for Reducing Lead Exposures*, February 21, 1991.

5. USEPA, OAQPS, AQMD, *Review of the National Ambient Air Quality Standards for Lead: Assessment of Scientific and Technical Information*, OAQPS Staff Paper, June 1989.

6. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead: Volume I*, EPA/600/8–83/028aF, June 1986.

7. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume II*, EPA/600/8–83/028bF, June 1986.

8. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume III*, EPA/600/8–83/028cf, June 1986.

9. USEPA, ORD, OHEA, ECAO, *Air Quality Criteria for Lead, Volume IV*, EPA-600/8–83/028dF, June 1986.

10. USEPA, ORD, OHEA, *Supplement to the 1986 EPA Air Quality Criteria for Lead - Volume I Addendum*, EPA/600/8–89/049F, August 1990.

11. USEPA, ORD, OHEA, *Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds: In Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102, Review Draft*, EPA/600/8–89/045A, March 1989.

Dated: May 3, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–11293 Filed 5–10–91; 8:45 am]

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Monday
May 13, 1991

Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991-92 Hunting Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots, and Certain Other Species Beginning in the 1991-92 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this rule concludes the implementation program that began in 1986 to phase-in nationwide the requirement to use nontoxic shot for all taking of waterfowl, coots and certain other species by the 1991-92 hunting season.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240 (703/358-1773), or write Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 Arlington Square, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: This rule implements the final year (1991-92) of the 5-year component of the strategy to phase-in a nontoxic shot requirement for waterfowl hunting nationwide by the 1991-92 season, as set out by the preferred alternative of the Final Supplementary Environmental Impact Statement (SEIS) on the Use of Lead Shot for Hunting Migratory Birds in the United States. This SEIS was published in June 1986 (FES 86-16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of the Interior's responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 701 *et seq.*; 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Department of the Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987-88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rules for the 1987-88, 1988-89, 1989-90 and 1990-91 waterfowl hunting seasons published in the **Federal Register** on Tuesday, July 21, 1987 (52 FR 27352), Tuesday, June 28, 1988 (53 FR 24284), Thursday, April 13, 1989 (54 FR 14814) and Thursday, August 16, 1990 (55 FR 33626), respectively.

The remaining counties scheduled by the implementation plan to convert in their entireties to nontoxic shot use in the 1991-92 waterfowl season are those counties having had an average annual waterfowl harvest of 5 or less per square mile over the 10-year period 1971-80, as referenced by Carney *et al.* 1983 (Distribution of waterfowl species harvested in States and counties during 1971-80 hunting seasons. U.S. Fish Wildl. Serv., Spec. Sci. Rpt.—Wildl. No. 254, Washington, DC 20240). Counties converting in the last year of implementation are not listed in Appendix N of the SEIS, as they were for previous years. All counties, and other areas referenced in this rulemaking, are converted to nontoxic shot use for waterfowl and coot hunting in the 1991-92 hunting season. Thus, in this coming season, all of the waterfowl and coot harvest will occur in zones established for nontoxic shot.

The public is reminded here that 50 CFR 20.101, (Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands); 20.102, (Seasons, limits and shooting hours for Alaska); and 20.105, (Seasons, limits and shooting hours for waterfowl, coots and gallinules), have provisions for nontoxic shot use that take effect in the 1991-92 waterfowl hunting season. Hunters in Puerto Rico and the Virgin Islands will be required to use nontoxic shot for hunting waterfowl, coots and certain other species (as applicable). The State of Alaska will convert statewide to nontoxic shot use for waterfowl hunting. Section 20.105 of 50 CFR provides that "* * * areas of the United States outside of State boundaries, i.e., the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.21(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991-92 season."

Also, this final rulemaking contains a typographical error correction for 50 CFR 20.105, Seasons, limits and shooting hours for waterfowl, coots and gallinules. The reference, therein, to § 20.2(j) should have been instead to § 20.21(j), which appears under subpart C—Taking.

Summary of General Public Comment on the Proposed Rule

Aside from official State responses, only three letters of comment were received on the proposed rule (56 FR 1446), for this final rule, during the announced 30-day comment period that closed on February 13, 1991. One of the letters was submitted by a private individual, a waterfowl hunter in Jackson, Mississippi. This letter is in opposition to the proposed action. The other 2 letters were sent by officials representing the Humane Society (Society) of the Untied States and the North American Wildlife Foundation (Foundation). The letter from the Foundation stated a cautionary position, and the letter from the Society supported the action, with further recommendations.

The Mississippi hunter wrote to protest the proposed requirement for use of nontoxic shot for waterfowl hunting "* * * anywhere in the Untied States except for areas of extreme hunting pressure over shallow water with nonpermeable soils. (Namely, public refuges and other similar hunting facilities.)" The writer prefers this "hotspot" approach to requiring the use of nontoxic shot. This individual continued by stating his opposition to steel shot because of its "ineffectiveness" in taking waterfowl, and that in his experience "* * * losses from crippling with steel shot far exceed dubious losses from waterfowl ingestion

of lead shot." He stated that his comments apply to close range hunting over decoys. In addition, he advanced the argument that much of the hunting in the South is done over seasonally flooded areas that through normal agricultural practices are turned annually, and that many of these seasonally flooded areas are hunted infrequently and usually not every season. The Mississippi hunter closes by saying that "[T]hose of us in the conservation community have long been suspect of the so called [sic] 'scientific basis' used to justify the outlawing [of] lead shot. I challenge you and your Agency to conduct a new, fair and impartial study of the question and abide by its results."

The comments of the Foundation largely echoed the "ineffectiveness of steel" and "hotspot" themes contained in the Mississippi letter. The Foundation letter reports that there is a widespread perception in the waterfowling community that steel shot is inferior to lead shot and that more waterfowl, particularly geese, are being lost due to an increased crippling rate than were dying from lead shot ingestion. The Foundation's concern is for the "* * * overall impact of the widespread use of steel shot on waterfowl populations due to potentially increased crippling losses." The Foundation encouraged the Service to undertake research to determine if the change from lead to steel has actually reduced overall waterfowl mortality.

The Service response here addresses both of the above letters because both essentially raise the same issues. However, one letter does raise an issue not contained in the other, that of the validity of the scientific studies carried out on lead poisoning, that needs to be addressed. The Mississippi letter implies that the conservation community considers the "scientific basis" for the actions taken to eliminate lead poisoning in waterfowl and other migratory birds to be "suspect," and calls for new studies that are "fair and impartial."

On the basis of correspondence and other feedback to the agency from conservation organizations, as well as a series of legal actions, the Service believes that the course being pursued to eliminate the use of lead shot for waterfowl and coot hunting is the correct one. Further, the Service believes that the majority of responsible hunters are convinced of the validity of the scientific evidence gathered on lead poisoning of waterfowl, understand the need for this action and support the conversion of waterfowl and coot hunting to nontoxic shot. It may be true that a portion of the waterfowl hunting community continues to believe a change to nontoxic shot is not necessary, however, it is apparent that most States and the conservation community as a whole support the Service's conversion of waterfowl hunting from lead to nontoxic shot to eliminate lead poisoning in certain migratory birds.

The preferred alternative of the SEIS, published in 1986 (referenced earlier), originated with the International Association of Fish and Wildlife Agencies as a strategy recommendation to the Service for phasing out the use of lead shot for waterfowling. This came about because the preponderance of scientific evidence, collected by both State and Federal Governments, showed that the loss of waterfowl to lead poisoning was a serious problem. Too, the scientific basis for the actions taken by the Service to phase out lead shot for waterfowl hunting has been reviewed and found adequate by the courts. On September 28, 1987, the Federal District Court for the Eastern District of California affirmed the Service's right to impose nontoxic shot zones over the objections of the California Fish and Game Commission and the National Rifle Association, in part on the weight of the scientific evidence. Later, the Commission's appeal was rejected by the appellate court. Also, in 1989, the National Academy of Science (Academy) was asked by the International Shooting and Hunting Allicance to review the Service's actions and the scientific evidence that served as the basis for the decision to phaseout lead shot for waterfowl and coot hunting. After review, the Academy concluded there were no grounds for questioning the scientific evidence, the interpretation of that evidence or the actions of the Service in this matter.

With regard to the ineffectiveness of steel shot/crippling issue, the Service anticipated (and so advised the public) that there would be an initial increase in the unretrieved rates for the waterfowl hunting community as a whole because of hunters having to adjust to the different characteristics of steel shot loads. The Service also anticipated, and advised the public, that unretrieved harvest rates would likely drop again to approximately former levels as hunters made the adjustment. This pattern has been seen thus far in the reports provided by waterfowl hunters. There has been an overall increase in unretrieved harvest rates for ducks and geese over the last 4 hunting years. However, for ducks, the rate appears to have reached a peak in 1988 and declined in the last reported hunting year. For geese, the rate peaked in 1987 and has declined over the last 2 hunting years. In terms of rates: For ducks, the unretrieved harvest rate (UHR, in birds/total harvest) in 1985 was 16.5 percent, in 1988 was 20.0 percent, and in 1989 was 18.3 percent. For geese, the UHR in 1985 was 12.4 percent, in 1987 was 17.0 percent, and in 1989 was 13.7 percent. However, it remains to be seen whether or not these trends will continue. The source of this information is the annual, Federal hunter questionnaire that is sent out to a sample of the waterfowling community. Obviously, this information is subject to human error and is not an absolute representation of annual unretrieved harvest. Nevertheless, the information is valuable in terms of trends. It should be noted that, historically, early UHR's with lead shot were approximately as high as the more recent ones with steel.

Nevertheless, the slight rate increase in UHR experienced with steel the past few years cannot reasonably be interpreted as a substitution for the lead poisoning loss of previous years. Among other factors, an important consideration is that lead shot kills indiscriminately through ingestion, whether or not a species is legal to hunt, whereas steel shot UHR is incurred by those species in the waterfowl population that management has determined can best sustain harvest. The bulk of lead poisoning losses result from current year hunting; if deposition of lead shot by waterfowlers is discontinued most of the lead poisoning incidence will be stopped. The exception to this is where the substrates do not allow lead shot to sink out of the reach of feeding waterfowl. In these areas it may be many years before lead poisoning is eliminated.

The suggestion that steel shot requirements be limited to certain areas is commonly known as the "hotspot" approach. However, available information and analyses do not support this as the best alternative to eliminate lead poisoning in migratory birds. Many States and other commentors have agreed with this assessment in the past. States (e.g., New Jersey) that managed waterfowl hunting with steel shot on the basis of "hotspots" for a relatively long period of time consider this approach to be unworkable as it results in substantial difficulty in management and enforcement. Too, waterfowl with lead shot embedded from shooting outside of "hotspots" are able to transport a predator lead toxicity

problem into widely dispersed geographic locations.

The (Humane) Society's letter of comment included a statement of strong support for the proposed action to complete implementation of the plan to require nontoxic shot for hunting waterfowl and coot nationwide. However, in pointing out the magnitude of the previous annual migratory bird mortality ascribed to lead poisoning, the Society stated that "[t]hese deaths are . . . also from lead shot spent by upland game hunters." The Society further stated that the potential for lead poisoning in migratory birds would continue while the use of lead shot is legal, and believes the nontoxic shot requirement should be extended to all types of hunting. Additional reference was made by the Society to making lead shot illegal, and it pointed out that the Service has legal responsibility to protect all migratory birds and endangered species under the Migratory Bird Treaties, Migratory Bird Treaty Act and the Endangered Species Act.

The Service's response to the above is that all migratory birds have been and will continue to be afforded necessary protections under the referenced Treaties and Acts. The Service's basic strategy and actions to eliminate lead poisoning in waterfowl and certain other migratory birds are supported by those authorities and others, including the National Environmental Policy Act (NEPA) of 1973, as amended.

While it is true that lead shot is in most instances legal for use by upland game hunters, there is no evidence that such use is inimical to the health and welfare of waterfowl or any other migratory bird population. Also, the Service does not have the authority to make manufacture or use of lead shot illegal, only to make its use illegal for hunting certain migratory birds, i.e., those for which a lead poisoning problem has been scientifically documented. Additionally, the Service does not have the authority to require nontoxic shot for taking many upland game species because many of these are nonmigratory birds and other species that are managed by the States.

State Responses for the Proposed Rule

It has been the policy of the Service to consult each year with the States over identification, implementation and enforcement of nontoxic shot zones. Twelve of the 50 States potentially affected by this final rulemaking responded. Those States (Alabama, Florida, Idaho, Indiana, Iowa, Maryland, Michigan, North Carolina, Oregon, Utah, Wisconsin and Wyoming) provided letters ranging from a simple nonobjection to those enthusiastically endorsing the conclusion of the nationwide nontoxic shot implementation. All of the other States, as well as Puerto Rico and the Virgin Islands, that failed to provide a response to the proposed rule are assumed not to object to this final rulemaking.

In summary, for the 1991–92 waterfowl hunting season, this rule amends § 20.108 of 50 CFR to expand the existing nontoxic shot requirement nationwide, corrects a regulatory reference mistake in § 20.105, and reminds the waterfowl hunting public of other nontoxic shot-related restrictions that become effective.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there could be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Fish and Wildlife Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986, consultation was carried out on the potential impacts of the provisions of this rule on bald eagles. The "section 7" biological opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" biological opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this proposed rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the *Code of Federal Regulations* is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. In § 20.105, the last sentence is amended by changing the reference "§ 20.2(j)" to read "§ 20.21(j)".

3. Section 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

Beginning September 1, 1991, the contiguous 48 United States, and the States of Alaska and Hawaii, the Territories of Puerto Rico and the Virgin Islands, and the territorial waters of the United States, are designated for the

purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species. "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bags and concurrent seasons.

Dated: April 12, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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[5] 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.

[6] 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.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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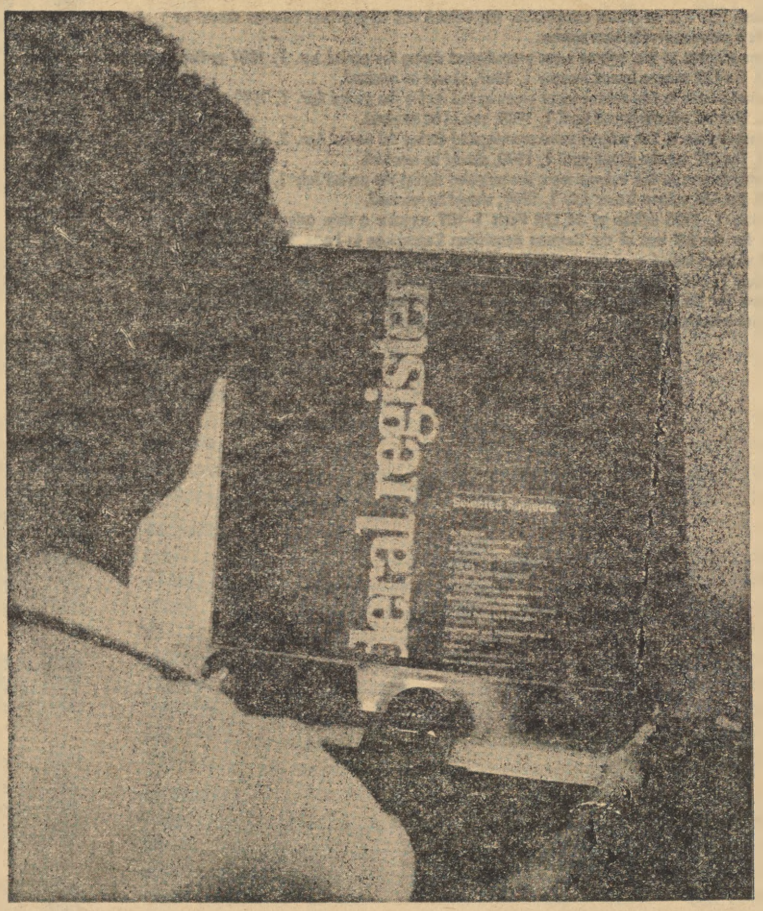

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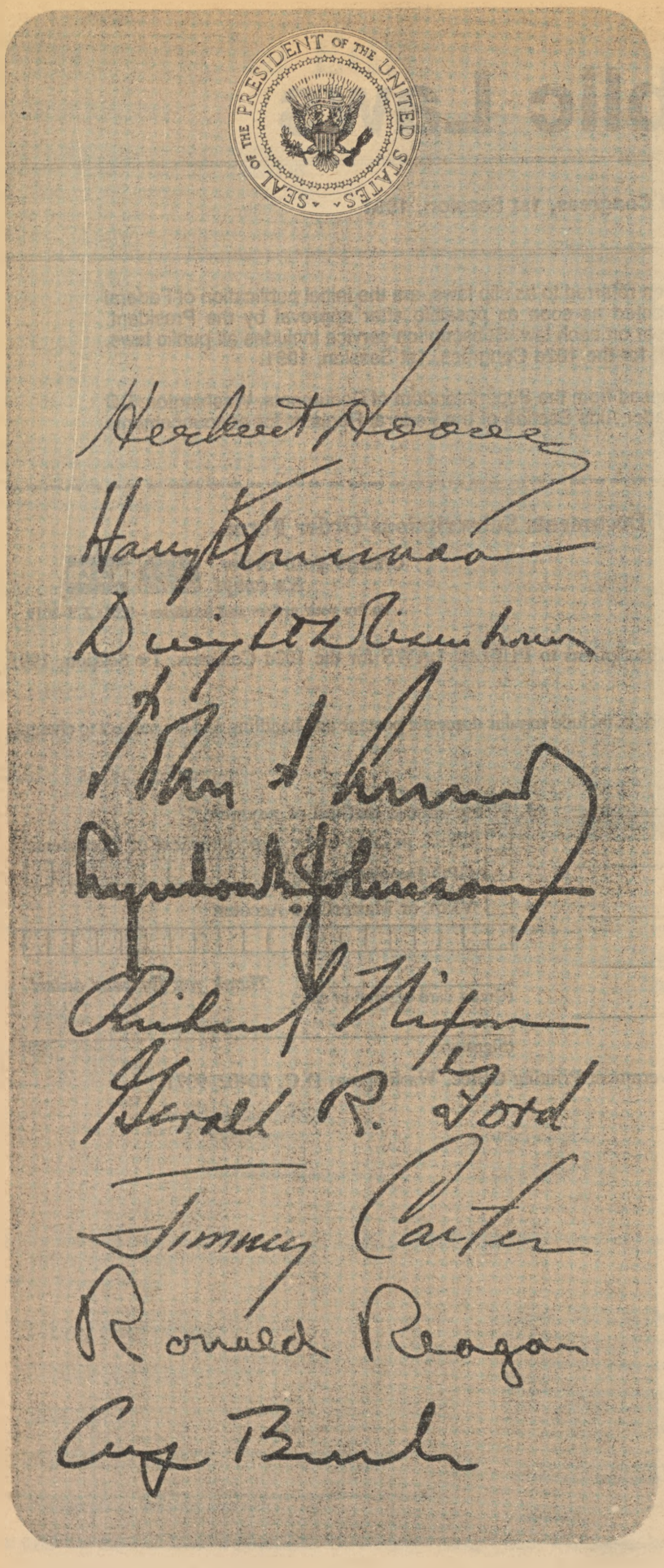

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